

BILL ANALYSIS

Senate Research Center

S.B. 572
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Title insurance is a contract of indemnity against actual loss and is commonly considered loss prevention insurance. While title insurance covers actual loss caused by a matter adverse to the insured interest, an equally valuable coverage is to pay for the defense of an attack upon that interest. For the most part, title insurance is issued property by property and there rarely is an adverse circumstance that affects a large number of policies. A major part of the title insurance premium pays for the examination of the history of interests in a property prior to closing and determine any rights of third parties and thus losses to an owner or a lender.

In Texas the statutory limit that a title insurance company can retain whether just primary or primary and reinsurance is 50 percent of a company's capital and surplus. Additionally it also allows another 40 percent as reinsurance for a total of 90 percent upon application and hearing for approval by the Texas Department of Insurance. The hearing process is rare and has been used in no more than a handful of cases.

S.B. 572 modifies the statutory single risk premium limits to 50 percent of the sum of surplus as regards policy holders plus statutory premium reserves before reinsurance is required. This change tracks the National Association of Insurance Commissioners model for the Title Insurers Model Act.

S.B. 572 also removes the hearing and application process which is unworkable in today's fast-paced commercial real estate environment.

S.B. 572 amends current law relating to certain title insurance policy liability and reinsurance requirements.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 2551.301, Insurance Code, as follows:

Sec. 2551.301. MAXIMUM POLICY LIABILITY. (a) Authorizes a title insurance company, except as provided by Subsection (b), to issue a title insurance policy on any real property located in this state involving a potential policy liability of not more than 50 percent of the sum of the company's surplus as regards policyholders and the company's statutory premium reserves as stated in the most recent annual statement of the company, rather than prohibits a title insurance company, except as provided by Subsection (b), from issuing a title insurance policy on any real property located in this state involving a potential policy liability of more than 50 percent of the company's capital stock and surplus as stated in the most recent annual statement of the company.

(b) Authorizes a title insurance company to exceed the limit described by Subsection (a) if the excess liability is reinsured in due course in accordance with

Section 2551.302, 2551.305, or 2551.3055, rather than reinsured in due course in an authorized title insurance company.

SECTION 2. Amends Section 2551.302, Insurance Code, as follows:

Sec. 2551.302. REQUIREMENTS FOR REINSURING POLICIES. Authorizes a title insurance company to reinsure any of its policies and contracts issued on real property located in this state or on policies and contracts issued in this state under Chapter 2751 (Title Insurance For Personal Property Interests), if:

- (1) Makes no change to this subdivision;
- (2) the title insurance company acquires reinsurance in accordance with Section 2551.305 or 2551.3055.

SECTION 3. Amends Subchapter G, Chapter 2551, Insurance Code, by amending Section 2551.305 and adding Section 2551.3055, as follows:

Sec. 2551.305. New heading: REINSURANCE FROM NON-ADMITTED TITLE INSURER. Authorizes a title insurance company, notwithstanding any other provision of this subchapter, to acquire reinsurance on an individual policy or facultative basis from a title insurance company not authorized to engage in the business of title insurance in this state if the title insurance company from which the reinsurance is acquired:

- (1) Creates this subdivision from existing Paragraph (A) text and makes no further change;
- (2) Creates this subdivision from exiting Paragraph (B) text and makes a nonsubstantive change. Deletes existing Subdivision (2) text providing that the title insurance company acquiring reinsurance gives written notice to the Texas Department of Insurance (TDI) at least 30 days before acquiring the reinsurance, and the commissioner of insurance (commissioner) does not, before the expiration of the 30-day period and on the ground that the transaction may result in a hazardous financial condition, prohibit the title insurance company from obtaining reinsurance under this section.

Deletes Subsection (a) designation and existing Subsection (b) requiring that the notice required under Subsection (a)(2) provide sufficient information to enable the commissioner to evaluate the proposed transaction, including a summary of the significant terms of the reinsurance, the financial impact of the transaction on the title insurance company acquiring reinsurance, and the specific identity and state of domicile of each title insurance company from which reinsurance is acquired.

Deletes existing Subsection (c) authorizing TDI, notwithstanding any other provision of this subchapter, on application and hearing, to permit a title insurance company to acquire reinsurance that does not comply with Subsection (a) on an individual policy or facultative basis from a title insurance company domiciled in another state and not authorized to engage in the business of title insurance in this state, if the company has exhausted the opportunity to acquire reinsurance from all other authorized title insurance companies and the title insurance company from which the reinsurance is acquired has a combined capital and surplus of at least \$2 million as stated in its annual statement preceding the acceptance of reinsurance.

Deletes existing Subsection (d) authorizing TDI, notwithstanding any other provision of this subchapter, to, on application and hearing, permit a title insurance company, including an authorized reinsuring title insurance company, to retain an additional potential liability of not more than 40 percent of the

company's capital stock and surplus as stated in the most recent annual statement of the company, if the company has exhausted the opportunity to acquire reinsurance under Subsection (c) and the additional potential liability of the company is incurred only if the loss suffered by the insured under the policy exceeds the amount of insurance and reinsurance accepted by the company and its reinsuring title insurance companies under the other provisions of this subchapter.

Sec. 2551.3055. REINSURANCE FROM INSURER OTHER THAN TITLE INSURER. Creates this section from text of existing Section 2551.3055(e). Authorizes a title insurance company, notwithstanding any other provision of this subchapter, to obtain reinsurance by a reinsurance treaty or other reinsurance agreement from an assuming insurer with a financial strength rating of B+ or better from the A.M. Best Company, which reinsurance meets the requirements, rather than that meets the requirements, of Subchapter C (Credit for Reinsurance), Chapter 493, if the title insurance company has provided TDI with notice, rather than an affidavit, that:

(1) contains representations, rather than facts that demonstrate, that the title insurance company was unable after diligent effort to procure sufficient reinsurance from another title insurance company; and

(2) summarizes, rather than states, the terms of the reinsurance treaty or other reinsurance agreement that the title insurance company will obtain.

SECTION 4. Amends Section 2703.001(c), Insurance Code, to provide that with respect to real property located in this state, a corporation may not issue any kind of title insurance coverage, any kind of guarantee, or reinsurance of a risk assumed under a title insurance policy, except as provided by Section 2551.305 or 2551.3055, rather than as provided by Section 2551.305(a).

SECTION 5. (a) Provides that Section 2551.301, Insurance Code, as amended by this Act, applies only to a title insurance policy issued on or after the effective date of this Act. Makes application of this Act prospective.

(b) Provides that Sections 2551.302 and 2551.305, Insurance Code, as amended by this Act, and Section 2551.3055, Insurance Code, as added by this Act, apply only to a reinsurance contract entered into by a title insurance company on or after the effective date of this Act. Makes application of this Act prospective.

SECTION 6. Effective date: September 1, 2015.