

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 2333
By: Creighton
Business & Commerce
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

TTIGA is a non-profit, unincorporated association of all Texas-licensed title insurance companies. It exists to protect Texas title insurance policyholders and claimants when a title insurance company or agency fails.

Currently, statute limits claims to \$250,000 and lacks flexibility to provide for the most efficient means to solve problems and fulfill the duties of the TTIGA. Additionally, theft of funds by an agent of a title company intended for escrow are currently not covered. The funds in question must have made it to the actual escrow account.

S.B. 2333 would provide flexibility in the application of funds, address problems related to timeline flexibility for Guaranty Assessment Recoupment Charge ("GARC") fee periods, expand coverage limits, and address coverages for theft of funds intended for escrow. (Original Author's/Sponsor's Statement of Intent)

C.S.S.B. 2333 amends current law relating to the operation of the Texas Title Insurance Guaranty Association.

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 2602.008(a), Insurance Code, to add a representative of the Texas Title Insurance Guaranty Association (association) to a list of persons for whom liability does not exist and against whom a cause of action does not arise for a good faith action or omission of the person in exercising the person's powers and performing the person's duties under this chapter (Texas Title Insurance Guaranty Association).

SECTION 2. Amends Subchapter A, Chapter 2602, Insurance Code, by adding Section 2602.013, as follows:

Sec. 2602.013. VENUE. Provides that an action against the association or an action against a member of the association's board of directors (board) or against an association, agent, representative, or employee that arises from the exercise of the person's powers or performance of the person's duties under this chapter is required to be brought in a district court in Travis County.

SECTION 3. Amends Section 2602.057(a), Insurance Code, to provide that a title insurance company is not prohibited, because the company has an officer, director, or employee serving as a board member, from negotiating for or entering into a contract of reinsurance or assumption of liability or a contract of substitution to provide for liabilities for covered claims with the association, the commissioner of insurance (commissioner), or the receiver or conservator of an impaired title insurance company or agent, rather than with the receiver or conservator of an impaired title insurance company or agent.

SECTION 4. Amends Section 2602.101(a), Insurance Code, as follows:

(a) Authorizes the association, in addition to the other powers and duties provided by this chapter, to:

- (1) makes no changes to this subdivision;
- (2) lend money to the receiver, supervisor, or conservator of an impaired title insurance company or its agent, rather than to lend money to an impaired title insurance company;
- (3)–(5) makes no changes to these subdivisions;
- (6) negotiate and contract with a rehabilitator, conservator, supervisor, receiver, ancillary receiver, or other third party, rather than with a rehabilitator, conservator, receiver, or ancillary receiver, to exercise the powers and perform the duties of the association;
- (7) makes no changes to this subdivision;
- (8) take legal action necessary to avoid the payment of improper claims or to settle claims or potential claims against an impaired title insurance company or agent, or the association, rather than against an impaired title insurance company or the association;
- (9) assume control of and consolidate the escrow accounts transferred to the association by an impaired title agent that has been placed in receivership, supervision, or conservatorship, and:
 - (A) pay covered claims from the consolidated escrow accounts to facilitate processing and payment of claims;
 - (B) maintain a separate accounting for each transferred escrow account; and
 - (C) return money not used to pay a covered claim to the owner of the money in accordance with the contract governing the escrow of the money; and
- (10) creates this subdivision from existing Subdivision (9) and makes no further changes.

SECTION 5. Amends Section 2602.102(a) and (b), Insurance Code, as follows:

(a) Requires the plan of operation, in addition to the other requirements of this chapter, to:

- (1) makes no changes to this subdivisions;
- (2) provide for the establishment of a claims filing procedure that includes:
 - (A) notice by the association to claimants;
 - (B) procedures for filing claims seeking recovery from the association; and
 - (C) a procedure for appealing the denial of claims by the association; and
- (3) creates this subdivision from existing Subdivision (2) and makes no further changes.

(b) Provides that an amendment to the association's plan of operation takes effect on the commissioner's written approval or the 90th day after the date the amendment is submitted unless disapproved by the commissioner.

SECTION 6. Amends Sections 2602.103(b) and (c), Insurance Code, as follows:

(b) Requires the association, on the commissioner's approval, rather than request, to reimburse the Texas Department of Insurance (TDI) out of the guaranty fee account for the cost, including reasonable and necessary expenses, to employ or retain one or more persons to:

(1)–(2) makes nonsubstantive changes to these subdivisions; or

(3) supervise a person employed or retained to perform audit and review under Subdivision (1).

(c) Provides that a person employed or retained, rather than a person retained, under Subsection (b) acts solely under the direction of and as assigned by the commissioner but is required to report the person's activity and expenses to the association on the request of the association.

SECTION 7. Amends Section 2602.104(a), Insurance Code, to require the association to maintain a record of its activities in exercising its powers and performing its duties under this chapter, rather than requiring the association to maintain a record of each negotiation or meeting in which the association or the association's representative discusses the association's activities in exercising its powers and performing its duties under this chapter.

SECTION 8. Amends Section 2602.105, Insurance Code, as follows:

Sec. 2602.105. MEETING BY CONFERENCE CALL. Requires each part of a meeting that is required to be open to the public to be audible to the public at that location and to be recorded and for the audio to be retained and made available to the public for 30 days after the meeting date, rather than for the meeting to be tape recorded and for the tape recording to be made available to the public for 30 days after the meeting date.

SECTION 9. Amends Section 2602.107, Insurance Code, by amending Subsection (b) and adding Subsection (e), as follows:

(b) Authorizes the association to transfer income from investment of the association's money in any account to the administrative account.

(e) Authorizes the association to advance money from any account to the administrative account to pay the administrative expenses of the association.

SECTION 10. Amends Section 2602.109(a), Insurance Code, as follows:

(a) Requires the association to reserve in the title account the amount of money the association determines reasonably necessary for efficient future administration under this chapter, rather than requiring the association, if the association determines that money in the title account exceeds the amount reasonably necessary for efficient future operation under this chapter, to take certain action. Requires the association to transfer to the guaranty fee account any excess money remaining in the title account after the distribution and reservation of money for administration. Makes nonsubstantive changes.

SECTION 11. Amends Section 2602.110, Insurance Code, as follows:

Sec. 2602.110. EXPENSES OF ADMINISTERING IMPAIRED INSURER OR IMPAIRED AGENT. (a) Creates this subsection from existing text. Authorizes the association to spend or advance money necessary, rather than to advance money

necessary, to pay the expenses of administering the supervision, rehabilitation, receivership, conservatorship, or, as determined by a court of competent jurisdiction, other insolvency of an impaired title insurance company or impaired agent, on terms the association negotiates, if the company's or agent's assets are insufficient to pay those expenses.

(b) Authorizes the association to file a claim in a receivership proceeding against an impaired title insurance company or impaired agent to recover the association's reasonable costs incurred in exercising the association's powers or performing the association's duties under this chapter with respect to the impaired title insurance company or impaired agent. Provides that payment of a claim asserted by the association under this section in a receivership proceeding in this state is governed by Section 443.301 (Priority of Distribution). Provides that payment of a claim asserted by the association under this section in a receivership proceeding in another state is governed by the law governing priority of payment of distributions on unsecured claims by an insurance guaranty association in that state.

SECTION 12. Amends Section 2602.111(a), Insurance Code, to authorize the plan of operation to provide that, on approval of the board, rather than on approval of the board and commissioner, a power or duty of the association is authorized to be delegated to a corporation or other organization that meets certain requirements.

SECTION 13. Amends Section 2602.114(b), Insurance Code, by amending Subsection (b) and adding Subsection (c-1) to authorize only board members, association counsel and other association representatives, the commissioner, and persons the commissioner authorizes to attend a meeting of the board on an impaired title insurance company or agent.

SECTION 14. Amends Section 2602.116, Insurance Code, to make conforming changes.

SECTION 15. Amends Section 2602.153, Insurance Code, by amending Subsection (a) and adding Subsection (e), as follows:

(a) Requires the association to collect, receive, retain, disburse, and advance, rather than to collect, receive, retain, and disburse, the guaranty fees only as specifically provided by this chapter.

(e) Authorizes the association to advance money from the guaranty fee account as the association considers necessary to provide for the payment of covered claims related to an impaired agent and administrative expenses related to the evaluation and payment of those claims. Requires the advanced money to be repaid to the guaranty fee account as soon as is practicable with money from guaranty fees or the estate of the agent. Provides that no interest is authorized to accrue on the advanced money.

SECTION 16. Amends Section 2602.201(a), Insurance Code, to require the association, if the commissioner determines that a title insurance company, rather than a title insurance company or agent, has become impaired, to promptly estimate the amount of additional money needed to supplement the assets of the impaired title insurance company, rather than the impaired title insurance company or agent, to pay all covered claims and administrative expenses, including expenses related to processing and payment of the claims.

SECTION 17. Amends Section 2602.202(b), Insurance Code, as follows:

(b) Requires the assessment of each title insurance company to be in the proportion that the net direct written premiums of that company in this state for the calendar year preceding the assessment bear to the net direct written premiums of all title insurance companies for that year. Authorizes assessments and supplemental assessments to be made in consecutive years until the association has collected an amount sufficient to pay the obligations and expenses described under Subsection (a) (relating to authorizing the association to assess certain amounts). Authorizes the association to make a supplemental

assessment only against the same title insurance companies and in the same proportion for each company as the initial assessment.

SECTION 18. Amends Section 2602.203, Insurance Code, as follows:

Sec. 2602.203. NOTICE AND PAYMENT. Deletes designation as Subsection (a). Requires the association to give each title insurance company at least 90 days' written notice of the due date of an assessment, rather than requiring the association, not later than the 30th day before the date an assessment is due, to notify the title insurance company. Deletes existing text of Subsection (b) requiring the title insurance company to pay the association the amount of the assessment not later than the 30th day after the assessment is made.

SECTION 19. Amends Section 2602.206(b), Insurance Code, to provide that the holder of the receipt is a general creditor of the impaired title insurance company, except that if the amount of assessments the association receives exceeds the amount paid for covered claims and administrative expenses, rather than for covered claims, the holders of participation receipts have preference over other general creditors to, and are entitled to share pro rata in, the excess.

SECTION 20. Amends Section 2602.208(a), Insurance Code, to provide that money from assessments is considered to supplement the marshalling of an impaired title insurance company's assets to make payments of covered claims on the impaired title insurance company's behalf and to pay administrative expenses related to payment of covered claims.

SECTION 21. Amends Section 2602.210, Insurance Code, by amending Subsection (a) and adding Subsection (d), as follows:

(a) Entitles a title insurance company to recover in its rates for the succeeding 12 months, rather than for the calendar year, amounts paid in assessments not to exceed one percent of the company's net direct written premiums.

(d) Requires the excess money, if the association receives money related to a title insurance company receivership from any source, including payment of a claim made by the association against the estate of the title insurance company, that is in excess of the amount title insurance companies have recovered or are entitled to recover under this section, to be held by the association in its title account to offset the amounts required for future assessments or administrative expenses of the association.

SECTION 22. Amends Section 2602.251, Insurance Code, to include a claim that arises out of the policy and is within the coverage and applicable limits of the policy, subject to all applicable policy provisions and defenses available under the policy and applicable law to a list of covered claims that are unpaid claims.

SECTION 23. Amends Section 2602.252, Insurance Code, to provide that an unpaid claim is a covered claim if the claim is against trust funds or an escrow account of an impaired title insurance company or agent or for money recovered by an impaired title insurance company, or an authorized agent of the company's agent for deposit into trust funds or an escrow account and is unpaid because of a shortage of those funds or in that account, including a shortage that exists because the money was not deposited by the impaired title insurance company or the company's agent in the fund or account.

SECTION 24. Amends Section 2602.255, Insurance Code, as follows:

Sec. 2602.255. CLAIMS NOT COVERED. Provides that the following are not covered claims:

(1) makes no changes to this subdivision;

(2) a supplementary payment obligation incurred before a determination is made under this chapter that a title insurance company or agent is impaired, including:

(A) through (D) makes no changes to these paragraphs;

(E) enhanced damages, sought as a recovery against the insured, the impaired title insurance company or agent, or the association, that arise under Chapter 541 (Unfair Methods of Competition and Unfair or Deceptive Acts or Practices) of this code or Subchapter E (Deceptive Trade Practices and Consumer Protection), Chapter 17, Business & Commerce Code, or a similar law of another state; and

(F) makes no changes to this paragraph;

(3)–(5) makes no changes to these subdivisions;

(6) a claim under Section 2602.251 (Covered Claims in General), 2602.252, or 2602.253 by a claimant who caused or substantially contributed to the claimant's loss by the claimant's action or omission, as determined by the association or the association's agent; and

(7) a claim filed with the association after the claim filing deadline for an impaired title insurance company or agent, rather than a claim filed with the association after the final date set by the court for the filing of claims against a receiver of an impaired title insurance company or agent.

SECTION 25. Amends Section 2602.256, Insurance Code, to prohibit a covered claim under certain sections from exceeding the lesser of \$500,000 for each claimant or \$500,000 for each policy, rather than \$250,000 for each claimant or \$250,000 for each policy and makes a nonsubstantive change.

SECTION 26. Amends Section 2602.259(c), Insurance Code, as follows:

(c) Provides that in a proceeding considering a covered claim, a judgment against an insured taken after the date the delinquency proceeding or supervision, rather than delinquency proceeding, begins or a conservator is appointed is not evidence of liability or of the amount of damages, and a default or consent judgment against an insured or the impaired title insurance company or a settlement, release, or judgment entered into by the insured or the impaired title insurance company does not bind the association and is not evidence of liability or of the amount of damages in connection with a claim brought against the association or another party under this chapter.

SECTION 27. Amends Section 2602.260, Insurance Code, as follows:

Sec. 2602.260. **ADMISSIBILITY OF PAYMENT.** Provides that in a lawsuit brought by a conservator, supervisor, or receiver, rather than a conservator or receiver, of an impaired title insurance company or agent to recover assets of the company or agent, the fact that a claim against the company or agent has been or will be paid under this chapter is not admissible and is prohibited from being placed before a jury by evidence, argument, or reference.

SECTION 28. Amends Subchapter F, Chapter 2602, Insurance Code, by adding Section 2602.261, as follows:

Sec. 2602.261. **APPEAL OF CLAIM DETERMINATION.** Provides that a claimant's right of appeal with respect to a claim determination by the association is governed by the association's plan of operation. Requires a claimant to bring an action, including an action for declaratory relief, challenging denial of a claim not later than one year after the date the claim was denied.

SECTION 29. Amends Section 2602.302, Insurance Code, by amending Subsections (a) and (b) and adding Subsections (b-1) and (f), as follows:

(a) Requires the association to pay covered claims:

(1) makes no changes to this subdivision; or

(2) arising on or before:

(A) the date of cancellation of the impaired title insurance company's policies or the claim deadline for claims against the impaired title insurance company, as applicable; or

(B) the claim deadline for covered claims against an impaired agent, which is the first anniversary of the date of determination of impairment.

(b) Requires a court in this state in which receivership proceedings of an impaired title insurance company are pending, as applicable, to set certain dates and deadlines, rather than requiring the court in which the receivership proceedings are pending, as applicable, to set certain dates and deadlines.

(b-1) Provides that if an impaired title insurance company is in receivership proceedings outside of this state, the claim deadline is the first anniversary of the date of the determination of impairment.

(f) Provides that on payment of the last timely filed covered claim, the association is discharged from the association's obligations under this chapter. Provides that this subsection does not discharge the association of obligations related to pending litigation.

SECTION 30. Amends Section 2602.452(b), Insurance Code, to authorize the association to employ or retain a person or persons to perform any action required under Subsection (a) (relating to certain actions taken on behalf of an impaired agent), in accordance with Section 2602.103(a) (relating to authorizing the association to employ agents, including persons necessary to handle the association's financial transactions).

SECTION 31. Repealer: Section 2602.103(d) (relating to compensation and reimbursement from the guaranty fee account for certain retained agents), Insurance Code.

SECTION 32. Makes application of this Act prospective.

SECTION 33. Effective date: September 1, 2019.