

BILL ANALYSIS

Senate Research Center

S.B. 322
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Current law requires that the Texas Department of Insurance (TDI) approve certain aspects of the purchase of title reinsurance when the reinsurer is eligible, but has not been admitted to sell insurance in Texas. This process is infrequently used in practice because there are few desirable reinsurers not admitted in Texas. TDI's review does not focus on critical aspects of the reinsurance policy such as rates or policy language. However, the process costs both the insurer and the agency in time and resources and those costs are passed on to consumers and taxpayers.

Title reinsurance is a process where a title insurer is required or chooses to contract with other title insurers to cover the risk associated with a policy that it sells. The lead insurer generally assumes the responsibility of obtaining reinsurance in accordance with policy guidelines negotiated between the insurer and the insured, and reinsurers may agree to accept varying levels of risk.

There are a number of reasons for requiring reinsurance. For example, an insurer may not have the funds available to cover a given risk, and therefore may have to purchase reinsurance; a party to be insured may mandate reinsurance; and when an insurer provides coverage for a single risk that accounts for more than 50 percent of that insurer's capital and surplus, Texas law requires the purchase of reinsurance.

This bill would remove the TDI approval requirement for title reinsurance and place the duty of compliance on the title insurers, eliminating time consuming and expensive regulatory action by TDI. The bill would also require that a reasonable effort be made by an insurer to obtain reinsurance from admitted carriers before going to a non-admitted carrier. Also, the bill would increase the minimum capital requirements associated with reinsurance to mirror current requirements for standard title insurers found in Section 2551.053 (Stock and Surplus Requirements), Insurance Code. This bill would not abrogate TDI's enforcement ability outside of the scope of the title reinsurance review process.

S.B. 322 amends current law relating to certain requirements for reinsurance contracts covering, and to certain restrictions regarding, title insurance policies issued in this state.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the commissioner of insurance in SECTION 1 (Section 2502.006, Insurance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter A, Chapter 2502, Insurance Code, by adding Section 2502.006, as follows:

Sec. 2502.006. CERTAIN EXTRA HAZARDOUS COVERAGES PROHIBITED. (a) Prohibits a title insurance company from insuring against loss or damage sustained by reason of any claim that under federal bankruptcy, state insolvency, or similar creditor's rights laws the transaction vesting title in the insured as shown in the policy or creating the lien of the insured mortgage is:

- (1) a preference or preferential transfer under 11 U.S.C. Section 547;
- (2) a fraudulent transfer under 11 U.S.C Section 548;
- (3) a transfer that is fraudulent as to present and future creditors under Section 24.005 (Transfers Fraudulent as to Present and Future Creditors), Business & Commerce Code, or a similar law of another state; or
- (4) a transfer that is fraudulent as to present creditors under Section 24.006 (Transfers Fraudulent as to Present Creditors), Business & Commerce Code, or a similar law of another state.

(b) Authorizes the commissioner of insurance (commissioner) by rule to designate coverages that violate this section. Provides that it is not a defense against a claim that a title insurance company has violated this section that the commissioner has not adopted a rule under this subsection.

(c) Requires that title insurance issued in or on a form prescribed by the commissioner to be considered to comply with this section.

(d) Provides that nothing in this section prohibits title insurance with respect to liens, encumbrances, or other defects to title to land that:

- (1) appear in the public records before the date on which the contract of title insurance is made;
- (2) occur or result from transactions before the transaction vesting title in the insured or creating the lien of the insured mortgage; or
- (3) result from failure to timely perfect or record any instrument before the date on which the contract of title insurance is made.

(e) Prohibits a title insurance company from engaging in the business of title insurance in this state if the title insurance company provides insurance of the type prohibited by Subsection (a) anywhere in the United States, except to the extent that the laws of another state require the title insurance company to provide that type of insurance.

SECTION 2. Amends Section 2551.302, Insurance Code, to authorize 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 the reinsuring title insurance company is authorized to engage in business in this state under this title, or the title insurance company acquires reinsurance in accordance with Section 2251.305, rather than if the reinsuring title company is authorized to engage in business in this state under this title and the Texas Department of Insurance (TDI) first approves the form of the reinsurance contract.

SECTION 3. Amends Section 2551.305, Insurance Code, as follows:

Sec. 2551.305. CERTAIN REINSURANCE ALLOWED. (a) 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:

- (1) the title insurance company from which the reinsurance is acquired:
 - (A) has a combined capital and surplus of at least \$20 million as stated in the company's most recent annual statement preceding the acceptance of reinsurance; and

(B) is domiciled in another state and is authorized to engage in the business of title insurance in one or more states; and

(2) the title insurance company acquiring reinsurance gives written notice to TDI at least 30 days before acquiring the reinsurance, and the 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.

(b) Requires 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.

(c) Creates this subsection from existing Subsection (a). Authorizes 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:

(1) the company has exhausted the opportunity to acquire reinsurance from all other authorized title insurance companies; and

(2) the title insurance company from which the reinsurance is acquired has a combined capital and surplus of at least \$2 million, rather than \$1.4 million, as stated in its annual statement preceding the acceptance of reinsurance.

(d) Redesignates existing Subsection (b) as Subsection (d). Makes a conforming change.

SECTION 4. Repealer: Section 2551.303 (Form of Reinsurance Contract), Insurance Code.

SECTION 5. Provides that Section 2502.006, Insurance Code, as added by this Act, applies only to an insurance policy that is delivered, issued for delivery, or renewed on or after January 1, 2012. Provides that a policy delivered, issued for delivery, or renewed before January 1, 2012, is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 6. Makes application of this Act prospective.

SECTION 7. Effective date: September 1, 2011.