

BILL ANALYSIS

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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas Department of Insurance (TDI) currently prohibits by rule the inclusion of a creditor's rights provision in a title insurance policy because title underwriters do not have the expertise, nor do they collect the appropriate information from their insured to cover this type of risk. A title underwriter provides creditor's rights coverage when it covers risk that is not related to a title issue, but related to a creditor's security interest in collateral. In effect, such a title policy insures that certain financial transactions related to a piece of real property were performed legitimately.

A common example of creditors rights coverage in a title policy involves a situation where a person knows they may file for bankruptcy and sells property to a relative at a reduced price to avoid losing the property. With a creditor's rights provision, the title insurer would be insuring that the property had clear title, and also that the financial transactions leading up to its purchase were legitimate. If, following the purchase, the seller files for bankruptcy and a court finds that the property was sold to avoid losing it in bankruptcy, the title insurer could be liable to an insured mortgage holder for the loss based on its creditor's rights coverage.

There is concern within the title insurance industry that when the Texas economy fully recovers from the recent recession, there will be a push to allow creditor's rights coverage in Texas as is currently allowed in a few other states. Because title insurance is a highly regulated industry, title companies are limited in their competitive advantages, and if one company were to offer this product, the market would effectively necessitate the entire industry to offer the product.

This bill would put the force of law behind existing agency rules relating to creditor's rights provisions in title insurance policies by statutorily prohibiting creditor's rights coverage by Texas title insurers.

As proposed, S.B. 735 amends current law relating to prohibition of certain extra hazardous coverages by title insurance companies.

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) to by rule 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 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. Makes application of Section 2502.006, Insurance Code, as added by this Act, prospective to January 1, 2012.

SECTION 3. Effective date: September 1, 2011.