

1 AN ACT

2 relating to certain requirements for reinsurance contracts
3 covering, and to certain restrictions regarding, title insurance
4 policies issued in this state.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Subchapter A, Chapter 2502, Insurance Code, is
7 amended by adding Section 2502.006 to read as follows:

8 Sec. 2502.006. CERTAIN EXTRA HAZARDOUS COVERAGES
9 PROHIBITED. (a) A title insurance company may not insure against
10 loss or damage sustained by reason of any claim that under federal
11 bankruptcy, state insolvency, or similar creditor's rights laws the
12 transaction vesting title in the insured as shown in the policy or
13 creating the lien of the insured mortgage is:

14 (1) a preference or preferential transfer under 11
15 U.S.C. Section 547;

16 (2) a fraudulent transfer under 11 U.S.C. Section 548;

17 (3) a transfer that is fraudulent as to present and
18 future creditors under Section 24.005, Business & Commerce Code, or
19 a similar law of another state; or

20 (4) a transfer that is fraudulent as to present
21 creditors under Section 24.006, Business & Commerce Code, or a
22 similar law of another state.

23 (b) The commissioner may by rule designate coverages that
24 violate this section. It is not a defense against a claim that a

1 title insurance company has violated this section that the
2 commissioner has not adopted a rule under this subsection.

3 (c) Title insurance issued in or on a form prescribed by the
4 commissioner shall be considered to comply with this section.

5 (d) Nothing in this section prohibits title insurance with
6 respect to liens, encumbrances, or other defects to title to land
7 that:

8 (1) appear in the public records before the date on
9 which the contract of title insurance is made;

10 (2) occur or result from transactions before the
11 transaction vesting title in the insured or creating the lien of the
12 insured mortgage; or

13 (3) result from failure to timely perfect or record
14 any instrument before the date on which the contract of title
15 insurance is made.

16 (e) A title insurance company may not engage in the business
17 of title insurance in this state if the title insurance company
18 provides insurance of the type prohibited by Subsection (a)
19 anywhere in the United States, except to the extent that the laws of
20 another state require the title insurance company to provide that
21 type of insurance.

22 SECTION 2. Section 2551.302, Insurance Code, is amended to
23 read as follows:

24 Sec. 2551.302. REQUIREMENTS FOR REINSURING POLICIES. A
25 title insurance company may reinsure any of its policies and
26 contracts issued on real property located in this state or on
27 policies and contracts issued in this state under Chapter 2751, if:

1 (1) the reinsuring title insurance company is
2 authorized to engage in business in this state under this title; or
3 ~~[and]~~

4 (2) the title insurance company acquires reinsurance
5 in accordance with Section 2551.305 ~~[the department first approves~~
6 ~~the form of the reinsurance contract]~~.

7 SECTION 3. Section 2551.305, Insurance Code, is amended to
8 read as follows:

9 Sec. 2551.305. CERTAIN REINSURANCE ALLOWED.

10 (a) Notwithstanding any other provision of this subchapter, a
11 title insurance company may acquire reinsurance on an individual
12 policy or facultative basis from a title insurance company not
13 authorized to engage in the business of title insurance in this
14 state if:

15 (1) the title insurance company from which the
16 reinsurance is acquired:

17 (A) has a combined capital and surplus of at
18 least \$20 million as stated in the company's most recent annual
19 statement preceding the acceptance of reinsurance; and

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

23 (2) the title insurance company acquiring reinsurance
24 gives written notice to the department at least 30 days before
25 acquiring the reinsurance, and the commissioner does not, before
26 the expiration of the 30-day period and on the ground that the
27 transaction may result in a hazardous financial condition, prohibit

1 the title insurance company from obtaining reinsurance under this
2 section.

3 (b) The notice required under Subsection (a)(2) must
4 provide sufficient information to enable the commissioner to
5 evaluate the proposed transaction, including a summary of the
6 significant terms of the reinsurance, the financial impact of the
7 transaction on the title insurance company acquiring reinsurance,
8 and the specific identity and state of domicile of each title
9 insurance company from which reinsurance is acquired.

10 (c) Notwithstanding any other provision of this subchapter,
11 the department may, on application and hearing, permit a title
12 insurance company to acquire reinsurance that does not comply with
13 Subsection (a) on an individual policy or facultative basis from a
14 title insurance company domiciled in another state and not
15 authorized to engage in the business of title insurance in this
16 state, if:

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

20 (2) the title insurance company from which the
21 reinsurance is acquired has a combined capital and surplus of at
22 least \$2 [~~\$1.4~~] million as stated in its annual statement preceding
23 the acceptance of reinsurance.

24 (d) [~~(b)~~] Notwithstanding any other provision of this
25 subchapter, the department may, on application and hearing, permit
26 a title insurance company, including an authorized reinsuring title
27 insurance company, to retain an additional potential liability of

1 not more than 40 percent of the company's capital stock and surplus
2 as stated in the most recent annual statement of the company, if:

3 (1) the company has exhausted the opportunity to
4 acquire reinsurance under Subsection (c) [~~(a)~~]; and

5 (2) the additional potential liability of the company
6 is incurred only if the loss suffered by the insured under the
7 policy exceeds the amount of insurance and reinsurance accepted by
8 the company and its reinsuring title insurance companies under the
9 other provisions of this subchapter.

10 SECTION 4. Section 2551.303, Insurance Code, is repealed.

11 SECTION 5. Section 2502.006, Insurance Code, as added by
12 this Act, applies only to an insurance policy that is delivered,
13 issued for delivery, or renewed on or after January 1, 2012. A
14 policy delivered, issued for delivery, or renewed before January 1,
15 2012, is governed by the law as it existed immediately before the
16 effective date of this Act, and that law is continued in effect for
17 that purpose.

18 SECTION 6. The change in law made by this Act applies only
19 to a reinsurance contract entered into by a title insurance company
20 on or after the effective date of this Act. A reinsurance contract
21 entered into by a title insurance company before the effective date
22 of this Act is governed by the law in effect immediately before the
23 effective date of this Act, and the former law is continued in
24 effect for that purpose.

25 SECTION 7. This Act takes effect September 1, 2011.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 322 passed the Senate on May 17, 2011, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendment on May 27, 2011, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 322 passed the House, with amendment, on May 17, 2011, by the following vote: Yeas 144, Nays 0, one present not voting.

Chief Clerk of the House

Approved:

Date

Governor