By:  Creighton S.B. No. 2333

(In the Senate - Filed March 8, 2019; March 21, 2019, read first time and referred to Committee on Business & Commerce; May 6, 2019, reported adversely, with favorable Committee Substitute by the following vote: Yeas 8, Nays 0; May 6, 2019, sent to printer.)

COMMITTEE VOTE

                    Yea Nay Absent  PNV

Hancock              X

Nichols              X

Campbell             X

Creighton            X

Menéndez             X

Paxton               X

Schwertner           X

Whitmire                       X

Zaffirini            X

COMMITTEE SUBSTITUTE FOR S.B. No. 2333 By:  Creighton

A BILL TO BE ENTITLED

AN ACT

relating to the operation of the Texas Title Insurance Guaranty Association.

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

SECTION 1.  Section 2602.008(a), Insurance Code, is amended to read as follows:

(a)  Liability does not exist and a cause of action does not arise against any of the following persons 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:

(1)  the commissioner or the commissioner's representative;

(2)  the association or the association's agent, representative, or employee;

(3)  a title insurance company or the company's agent or employee;

(4)  a board member; and

(5)  a special deputy receiver or the special deputy receiver's agent or employee.

SECTION 2.  Subchapter A, Chapter 2602, Insurance Code, is amended by adding Section 2602.013 to read as follows:

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

SECTION 3.  Section 2602.057(a), Insurance Code, is amended to read as follows:

(a)  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, or the receiver or conservator of an impaired title insurance company or agent.

SECTION 4.  Section 2602.101(a), Insurance Code, is amended to read as follows:

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

(1)  borrow money as necessary to implement this chapter according to the plan of operation;

(2)  lend money to the receiver, supervisor, or conservator of an impaired title insurance company or its agent;

(3)  sue and be sued, including taking any legal action necessary or proper to recover an unpaid assessment;

(4)  enter into contracts as necessary or proper to implement this chapter;

(5)  ensure payment of the policy obligations of an impaired title insurance company;

(6)  negotiate and contract with a rehabilitator, conservator, supervisor, receiver, [~~or~~] ancillary receiver, or other third party to exercise the powers and perform the duties of the association;

(7)  guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, a policy or contract of an impaired title insurance company;

(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;

(9)  assume control of and consolidate the escrow accounts transferred to the association by an impaired 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) [~~(9)~~]  perform any other acts as necessary or proper to implement this chapter.

SECTION 5.  Sections 2602.102(a) and (b), Insurance Code, are amended to read as follows:

(a)  The association shall perform its functions under a plan of operation. The plan of operation must contain provisions necessary or proper for the execution of the association's powers and duties. The plan of operation must, in addition to the other requirements of this chapter:

(1)  establish:

(A)  procedures for handling the assets of the association;

(B)  the amount and method of reimbursing board members;

(C)  regular places and times for board meetings;

(D)  procedures for maintaining records of all financial transactions of the association, its agents, and the board; and

(E)  procedures for determining the amount of guaranty fees, for collecting those fees, and for assessments;

(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) [~~(2)~~]  contain additional provisions necessary or proper for the execution of the association's powers and duties.

(b)  The association shall submit to the commissioner any amendment to the plan of operation necessary or suitable to ensure the fair, reasonable, and equitable administration of the association. The amendment 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.  Sections 2602.103(b) and (c), Insurance Code, are amended to read as follows:

(b)  On the commissioner's approval [~~request~~], the association shall reimburse the department out of the guaranty fee account for the cost, including reasonable and necessary expenses, to employ or retain one or more persons to:

(1)  audit and review agent escrow and trust accounts, financial condition, and compliance with applicable statutes and rules; [~~and~~]

(2)  report to the commissioner on the accounts, condition, and compliance; or

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

(c)  A person employed or retained under Subsection (b) acts solely under the direction of and as assigned by the commissioner but shall report the person's activity and expenses to the association on the request of the association.

SECTION 7.  Section 2602.104(a), Insurance Code, is amended to read as follows:

(a)  The association shall maintain a record of its [~~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.  Section 2602.105, Insurance Code, is amended to read as follows:

Sec. 2602.105.  MEETING BY CONFERENCE CALL. Notwithstanding Chapter 551, Government Code, the board may hold an open meeting by telephone conference call if immediate action is required and convening of a quorum of the board at a single location is not reasonable or practical. The meeting is subject to the notice requirements that apply to other meetings. The notice of the meeting must specify as the location of the meeting the location at which meetings of the board are usually held. Each[~~, and each~~] part of the meeting that is required to be open to the public must be audible to the public at that location and must be recorded. The audio [~~tape-recorded. The tape~~] recording shall be retained and made available to the public for 30 days after the meeting date.

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

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

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

SECTION 10.  Section 2602.109(a), Insurance Code, is amended to read as follows:

(a)  The [~~If the~~] association shall reserve in the title account the amount of money the association determines [~~that money in the title account exceeds the amount~~] reasonably necessary for efficient future administration [~~operation~~] under this chapter. The[~~, the~~] association shall return the excess money pro rata to the holders of participation receipts on which an outstanding balance exists after deducting any credits against premium taxes taken under Section 2602.210. The amount deducted for those credits shall be deposited with the comptroller for credit to the general revenue fund. The association shall transfer to the guaranty fee account any excess money remaining in the title account after the distribution and reservation of money for administration.

SECTION 11.  Section 2602.110, Insurance Code, is amended to read as follows:

Sec. 2602.110.  EXPENSES OF ADMINISTERING IMPAIRED INSURER OR IMPAIRED AGENT. (a)  The association may spend or 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)  The association may 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. Payment of a claim asserted by the association under this section in a receivership proceeding in this state is governed by Section 443.301. 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.  Section 2602.111(a), Insurance Code, is amended to read as follows:

(a)  The plan of operation may provide that, on approval of the board [~~and the commissioner~~], a power or duty of the association may be delegated to a corporation or other organization that:

(1)  performs or will perform in two or more states functions similar to those of the association or its equivalent; and

(2)  provides protection not substantially less favorable and effective than that provided by this chapter.

SECTION 13.  Section 2602.114(b), Insurance Code, is amended to read as follows:

(b)  The meeting is not open to the public. Only board members, association counsel and other association representatives, the commissioner, and persons the commissioner authorizes may attend the meeting.

SECTION 14.  Section 2602.116, Insurance Code, is amended to read as follows:

Sec. 2602.116.  BOARD ACCESS TO RECORDS. The receiver, supervisor, conservator, or other statutory successor of an impaired title insurance company or agent shall give the board or its representative:

(1)  access to the company's or agent's records as necessary for the board to perform its functions under this chapter relating to covered claims; and

(2)  copies of those records on the board's request and at the board's expense.

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

(a)  The association shall collect, receive, retain, [~~and~~] disburse, and advance the guaranty fees only as specifically provided by this chapter.

(e)  The association may 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. The advanced money shall be repaid to the guaranty fee account as soon as is practicable with money from guaranty fees or the estate of the impaired agent. No interest may accrue on the advanced money.

SECTION 16.  Section 2602.201(a), Insurance Code, is amended to read as follows:

(a)  If the commissioner determines that a title insurance company [~~or agent~~] has become impaired, the association shall promptly estimate the amount of additional money needed to supplement the assets of 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.  Section 2602.202(b), Insurance Code, is amended to read as follows:

(b)  The assessment of each title insurance company must 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. Assessments and supplemental assessments may be made in consecutive years until the association has collected an amount sufficient to pay the obligations and expenses described under Subsection (a). The association may 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.  Section 2602.203, Insurance Code, is amended to read as follows:

Sec. 2602.203.  NOTICE AND PAYMENT. The [~~(a)  Not later than the 30th day before the date an assessment is due, the~~] association shall give each [~~notify the~~] title insurance company to be assessed at least 90 days' written notice of the due date of the assessment [~~company~~].

[~~(b)  Not later than the 30th day after the date an assessment is made, the title insurance company shall pay the association the amount of the assessment.~~]

SECTION 19.  Section 2602.206(b), Insurance Code, is amended to read as follows:

(b)  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, the holders of participation receipts have preference over other general creditors to, and are entitled to share pro rata in, the excess.

SECTION 20.  Section 2602.208(a), Insurance Code, is amended to read as follows:

(a)  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. The association may assess title insurance companies or use money from assessments to pay covered claims before the receiver exhausts the impaired title insurance company's assets.

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

(a)  A title insurance company is entitled to recover in its rates for the succeeding 12 months [~~calendar year~~] amounts paid in assessments not to exceed one percent of the company's net direct written premiums. In promulgating or establishing rates the commissioner shall consider assessments and refunds of assessments and shall adjust the rates to allow for recovery under this subsection.

(d)  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, the excess money shall 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.  Section 2602.251, Insurance Code, is amended to read as follows:

Sec. 2602.251.  COVERED CLAIMS IN GENERAL. An unpaid claim is a covered claim if:

(1)  the claim is made by an insured under a title insurance policy to which this chapter applies;

(2)  the claim 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;

(3)  the title insurance company that issued the policy or assumed the policy under an assumption certificate is an impaired title insurance company; and

(4)  the insured real property or a lien on the property is located in this state.

SECTION 23.  Section 2602.252, Insurance Code, is amended to read as follows:

Sec. 2602.252.  CLAIM AGAINST TRUST FUNDS OR ESCROW ACCOUNT. An unpaid claim is a covered claim if the claim:

(1)  is:

(A)  against trust funds or an escrow account of an impaired title insurance company or agent; or

(B)  for money received by an impaired title insurance company, the company's agent, or an authorized agent of the company's agent for deposit into a trust fund or an escrow account; and

(2)  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.  Section 2602.255, Insurance Code, is amended to read as follows:

Sec. 2602.255.  CLAIMS NOT COVERED. The following are not covered claims:

(1)  an amount due a reinsurer, title insurance company, insurance pool, or underwriting association as a subrogation recovery or otherwise;

(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)  adjustment fees or expenses;

(B)  attorney's fees or expenses;

(C)  court costs;

(D)  interest;

(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 of this code or Subchapter E, Chapter 17, Business & Commerce Code, or a similar law of another state; and

(F)  bond premiums;

(3)  a shortage of trust funds or in an escrow account resulting from the insolvency of a financial institution;

(4)  exemplary, extracontractual, or bad faith damages awarded against an insured or title insurance company by a court judgment;

(5)  a claim under Section 2602.252 by a claimant who has a lien against the real property that was the subject of the transaction from which the claim arises, unless the lien is held to be invalid as a matter of law;

(6)  a claim under Section 2602.251, 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 [~~final date set by the court for the filing of claims against a receiver of~~] an impaired title insurance company or agent.

SECTION 25.  Section 2602.256, Insurance Code, is amended to read as follows:

Sec. 2602.256.  AMOUNT OF COVERED CLAIM; LIMIT. (a)  A covered claim under Section 2602.251 or 2602.253 may not exceed the lesser of $500,000 [~~$250,000~~] for each claimant or $500,000 [~~$250,000~~] for each policy.

(b)  A covered claim under Section 2602.252 may not exceed the lesser of $500,000 [~~$250,000~~] for each claimant or the amount of money actually received by [~~delivered to~~] the impaired title insurance company or agent as trust funds or an escrow account for each claimant in a transaction from which the claim arises, except that the cumulative amount of covered claims arising from a single transaction may not exceed $500,000 [~~$250,000~~].

SECTION 26.  Section 2602.259(c), Insurance Code, is amended to read as follows:

(c)  In a proceeding considering a covered claim, a judgment against an insured taken after the date the delinquency proceeding or supervision 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.  Section 2602.260, Insurance Code, is amended to read as follows:

Sec. 2602.260.  ADMISSIBILITY OF PAYMENT. In a lawsuit brought by a conservator, supervisor, 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 may not be placed before a jury by evidence, argument, or reference.

SECTION 28.  Subchapter F, Chapter 2602, Insurance Code, is amended by adding Section 2602.261 to read as follows:

Sec. 2602.261.  APPEAL OF CLAIM DETERMINATION. A claimant's right of appeal with respect to a claim determination by the association is governed by the association's plan of operation. A claimant must 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.  Section 2602.302, Insurance Code, is amended by amending Subsections (a) and (b) and adding Subsections (b-1) and (f) to read as follows:

(a)  The association shall pay covered claims:

(1)  existing before the determination of impairment; 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)  A [~~The~~] court in this state in which [~~the~~] receivership proceedings of an impaired title insurance company are pending shall set, as applicable:

(1)  the date of cancellation of the policies, which may not be later than the fifth anniversary of the date of determination of impairment; or

(2)  the claim deadline, which may not be later than the first anniversary of the date of determination of impairment.

(b-1)  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 determination of impairment.

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

SECTION 30.  Section 2602.452(b), Insurance Code, is amended to read as follows:

(b)  The association may employ or retain a person or persons to perform any action required under Subsection (a), in accordance with Section 2602.103(a).

SECTION 31.  Section 2602.103(d), Insurance Code, is repealed.

SECTION 32.  (a)  Except as provided by this section, the changes in law made by this Act apply only with respect to a title insurance company or agent that is designated as impaired on or after the effective date of this Act. The law as it existed immediately before the effective date of this Act applies with respect to a title insurance company or agent that was designated as impaired before the effective date of this Act, and that law is continued in effect for that purpose.

(b)  Section 2602.013, Insurance Code, as added by this Act, and Section 2602.260, Insurance Code, as amended by this Act, apply only to an action commenced on or after the effective date of this Act. An action commenced before the effective date of this Act is governed by the law applicable to the action immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 33.  This Act takes effect September 1, 2019.

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