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H.B. No. 1614

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

1 person's powers or performance of the person's duties under this
2 chapter must be brought in a district court in Travis County.

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

5 (a) A title insurance company is not prohibited, because the
6 company has an officer, director, or employee serving as a board
7 member, from negotiating for or entering into a contract of
8 reinsurance or assumption of liability or a contract of
9 substitution to provide for liabilities for covered claims with the
10 association, the commissioner, or the receiver or conservator of an
11 impaired title insurance company or agent.

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

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

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

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

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

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

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

26 (6) negotiate and contract with a rehabilitator,
27 conservator, supervisor, receiver, [~~or~~] ancillary receiver, or

1 other third party to exercise the powers and perform the duties of
2 the association;

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

6 (8) take legal action necessary to avoid the payment
7 of improper claims or to settle claims or potential claims against
8 an impaired title insurance company or agent, or the association;

9 (9) assume control of and consolidate the escrow
10 accounts transferred to the association by an impaired agent that
11 has been placed in receivership, supervision, or conservatorship,
12 and:

13 (A) pay covered claims from the consolidated
14 escrow accounts to facilitate processing and payment of claims;

15 (B) maintain a separate accounting for each
16 transferred escrow account; and

17 (C) return money not used to pay a covered claim
18 to the owner of the money in accordance with the contract governing
19 the escrow of the money; and

20 (10) [~~9~~] perform any other acts as necessary or
21 proper to implement this chapter.

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

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

1 requirements of this chapter:

2 (1) establish:

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

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

7 (C) regular places and times for board meetings;

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

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

13 (2) provide for the establishment of a claims filing
14 procedure that includes:

15 (A) notice by the association to claimants;

16 (B) procedures for filing claims seeking
17 recovery from the association; and

18 (C) a procedure for appealing the denial of
19 claims by the association; and

20 (3) [~~2~~] contain additional provisions necessary or
21 proper for the execution of the association's powers and duties.

22 (b) The association shall submit to the commissioner any
23 amendment to the plan of operation necessary or suitable to ensure
24 the fair, reasonable, and equitable administration of the
25 association. The amendment takes effect on the commissioner's
26 written approval or the 90th day after the date the amendment is
27 submitted unless disapproved by the commissioner.

1 SECTION 6. Sections 2602.103(b) and (c), Insurance Code,
2 are amended to read as follows:

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

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

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

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

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

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

20 (a) The association shall maintain a record of its [~~each~~
21 ~~negotiation or meeting in which the association or the~~
22 ~~association's representative discusses the association's~~]
23 activities in exercising its powers and performing its duties under
24 this chapter.

25 SECTION 8. Section 2602.105, Insurance Code, is amended to
26 read as follows:

27 Sec. 2602.105. MEETING BY CONFERENCE CALL. Notwithstanding

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

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

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

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

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

23 (a) The ~~[If the]~~ association shall reserve in the title
24 account the amount of money the association determines ~~[that money~~
25 ~~in the title account exceeds the amount]~~ reasonably necessary for
26 efficient future administration ~~[operation]~~ under this chapter.
27 The~~[, the]~~ association shall return the excess money pro rata to

1 the holders of participation receipts on which an outstanding
2 balance exists after deducting any credits against premium taxes
3 taken under Section 2602.210. The amount deducted for those credits
4 shall be deposited with the comptroller for credit to the general
5 revenue fund. The association shall transfer to the guaranty fee
6 account any excess money remaining in the title account after the
7 distribution and reservation of money for administration.

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

10 Sec. 2602.110. EXPENSES OF ADMINISTERING IMPAIRED INSURER
11 OR IMPAIRED AGENT. (a) The association may spend or advance money
12 necessary to pay the expenses of administering the supervision,
13 rehabilitation, receivership, conservatorship, or, as determined
14 by a court of competent jurisdiction, other insolvency of an
15 impaired title insurance company or impaired agent, on terms the
16 association negotiates, if the company's or agent's assets are
17 insufficient to pay those expenses.

18 (b) The association may file a claim in a receivership
19 proceeding against an impaired title insurance company or impaired
20 agent to recover the association's reasonable costs incurred in
21 exercising the association's powers or performing the association's
22 duties under this chapter with respect to the impaired title
23 insurance company or impaired agent. Payment of a claim asserted by
24 the association under this section in a receivership proceeding in
25 this state is governed by Section 443.301. Payment of a claim
26 asserted by the association under this section in a receivership
27 proceeding in another state is governed by the law governing

1 priority of payment of distributions on unsecured claims by an
2 insurance guaranty association in that state.

3 SECTION 12. Section 2602.111(a), Insurance Code, is amended
4 to read as follows:

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

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

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

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

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

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

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

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

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

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

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

9 (e) The association may advance money from the guaranty fee
10 account as the association considers necessary to provide for the
11 payment of covered claims related to an impaired agent and
12 administrative expenses related to the evaluation and payment of
13 those claims. The advanced money shall be repaid to the guaranty
14 fee account as soon as is practicable with money from guaranty fees
15 or the estate of the impaired agent. No interest may accrue on the
16 advanced money.

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

19 (a) If the commissioner determines that a title insurance
20 company ~~[or agent]~~ has become impaired, the association shall
21 promptly estimate the amount of additional money needed to
22 supplement the assets of the impaired title insurance company ~~[or~~
23 ~~agent]~~ to pay all covered claims and administrative expenses,
24 including expenses related to processing and payment of the claims.

25 SECTION 17. Section 2602.202(b), Insurance Code, is amended
26 to read as follows:

27 (b) The assessment of each title insurance company must be

1 in the proportion that the net direct written premiums of that
2 company in this state for the calendar year preceding the
3 assessment bear to the net direct written premiums of all title
4 insurance companies for that year. Assessments and supplemental
5 assessments may be made in consecutive years until the association
6 has collected an amount sufficient to pay the obligations and
7 expenses described under Subsection (a). The association may make
8 a supplemental assessment only against the same title insurance
9 companies and in the same proportion for each company as the initial
10 assessment.

11 SECTION 18. Section 2602.203, Insurance Code, is amended to
12 read as follows:

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

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

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

23 (b) The holder of the receipt is a general creditor of the
24 impaired title insurance company, except that if the amount of
25 assessments the association receives exceeds the amount paid for
26 covered claims and administrative expenses, the holders of
27 participation receipts have preference over other general

1 creditors to, and are entitled to share pro rata in, the excess.

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

4 (a) Money from assessments is considered to supplement the
5 marshalling of an impaired title insurance company's assets to make
6 payments of covered claims on the impaired title insurance
7 company's behalf and to pay administrative expenses related to
8 payment of covered claims. The association may assess title
9 insurance companies or use money from assessments to pay covered
10 claims before the receiver exhausts the impaired title insurance
11 company's assets.

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

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

22 (d) If the association receives money related to a title
23 insurance company receivership from any source, including payment
24 of a claim made by the association against the estate of the title
25 insurance company, that is in excess of the amount title insurance
26 companies have recovered or are entitled to recover under this
27 section, the excess money shall be held by the association in its

1 title account to offset the amounts required for future assessments
2 or administrative expenses of the association.

3 SECTION 22. Section 2602.251, Insurance Code, is amended to
4 read as follows:

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

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

9 (2) the claim arises out of the policy and is within
10 the coverage and applicable limits of the policy, subject to all
11 applicable policy provisions and defenses available under the
12 policy and applicable law;

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

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

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

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

22 (1) is:

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

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

1 account; and

2 (2) is unpaid because of a shortage of those funds or
3 in that account, including a shortage that exists because the money
4 was not deposited by the impaired title insurance company or the
5 company's agent in the fund or account.

6 SECTION 24. Section 2602.255, Insurance Code, is amended to
7 read as follows:

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

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

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

16 (A) adjustment fees or expenses;

17 (B) attorney's fees or expenses;

18 (C) court costs;

19 (D) interest;

20 (E) enhanced damages, sought as a recovery
21 against the insured, the impaired title insurance company or agent,
22 or the association, that arise under Chapter 541 of this code or
23 Subchapter E, Chapter 17, Business & Commerce Code, or a similar law
24 of another state; and

25 (F) bond premiums;

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

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

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

8 (6) a claim under Section 2602.251, 2602.252, or
9 2602.253 by a claimant who caused or substantially contributed to
10 the claimant's loss by the claimant's action or omission, as
11 determined by the association or the association's agent; and

12 (7) a claim filed with the association after the claim
13 filing deadline for [~~final date set by the court for the filing of~~
14 ~~claims against a receiver of~~] an impaired title insurance company
15 or agent.

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

18 Sec. 2602.256. AMOUNT OF COVERED CLAIM; LIMIT. (a) A
19 covered claim under Section 2602.251 or 2602.253 may not exceed the
20 lesser of \$500,000 [~~\$250,000~~] for each claimant or \$500,000
21 [~~\$250,000~~] for each policy.

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

1 transaction may not exceed \$500,000 [~~\$250,000~~].

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

4 (c) In a proceeding considering a covered claim, a judgment
5 against an insured taken after the date the delinquency proceeding
6 or supervision begins or a conservator is appointed is not evidence
7 of liability or of the amount of damages, and a default or consent
8 judgment against an insured or the impaired title insurance company
9 or a settlement, release, or judgment entered into by the insured or
10 the impaired title insurance company does not bind the association
11 and is not evidence of liability or of the amount of damages in
12 connection with a claim brought against the association or another
13 party under this chapter.

14 SECTION 27. Section 2602.260, Insurance Code, is amended to
15 read as follows:

16 Sec. 2602.260. ADMISSIBILITY OF PAYMENT. In a lawsuit
17 brought by a conservator, supervisor, or receiver of an impaired
18 title insurance company or agent to recover assets of the company or
19 agent, the fact that a claim against the company or agent has been
20 or will be paid under this chapter is not admissible and may not be
21 placed before a jury by evidence, argument, or reference.

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

24 Sec. 2602.261. APPEAL OF CLAIM DETERMINATION. A claimant's
25 right of appeal with respect to a claim determination by the
26 association is governed by the association's plan of operation. A
27 claimant must bring an action, including an action for declaratory

1 relief, challenging denial of a claim not later than one year after
2 the date the claim was denied.

3 SECTION 29. Section 2602.302, Insurance Code, is amended by
4 amending Subsections (a) and (b) and adding Subsections (b-1) and
5 (f) to read as follows:

6 (a) The association shall pay covered claims:

7 (1) existing before the determination of impairment;

8 or

9 (2) arising on or before:

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

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

16 (b) A [The] court in this state in which [the] receivership
17 proceedings of an impaired title insurance company are pending
18 shall set, as applicable:

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

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

24 (b-1) If an impaired title insurance company is in
25 receivership proceedings outside of this state, the claim deadline
26 is the first anniversary of the date of determination of
27 impairment.

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

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

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

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

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

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

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