

By: Creighton

S.B. No. 2333

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 title agent
11 that has been placed in receivership, supervision, or
12 conservatorship, and pay covered claims and administrative
13 expenses from the consolidated escrow accounts to facilitate
14 processing and payment of claims; and

15 (10) [~~9~~] perform any other acts as necessary or
16 proper to implement this chapter.

17 SECTION 5. Section 2602.102(b), Insurance Code, is amended
18 to read as follows:

19 (b) The association shall submit to the commissioner any
20 amendment to the plan of operation necessary or suitable to ensure
21 the fair, reasonable, and equitable administration of the
22 association. The amendment takes effect on the commissioner's
23 written approval or the 30th day after the date the amendment is
24 submitted unless disapproved by the commissioner.

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

27 (b) On the commissioner's approval [~~request~~], the

1 association shall reimburse the department out of the guaranty fee
2 account for the cost, including reasonable and necessary expenses,
3 to employ or retain one or more persons to:

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

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

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

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

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

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

22 SECTION 8. Section 2602.105, Insurance Code, is amended to
23 read as follows:

24 Sec. 2602.105. MEETING BY CONFERENCE CALL. Notwithstanding
25 Chapter 551, Government Code, the board may hold an open meeting by
26 telephone conference call if immediate action is required and
27 convening of a quorum of the board at a single location is not

1 reasonable or practical. The meeting is subject to the notice
2 requirements that apply to other meetings. The notice of the
3 meeting must specify as the location of the meeting the location at
4 which meetings of the board are usually held. Each~~[, and each]~~ part
5 of the meeting that is required to be open to the public must be
6 audible to the public at that location and must be recorded. The
7 audio ~~[tape-recorded. The tape]~~ recording shall be retained and
8 made available to the public for 30 days after the meeting date.

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

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

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

18 SECTION 10. Section [2602.109](#)(a), Insurance Code, is amended
19 to read as follows:

20 (a) The ~~[If the]~~ association shall reserve in the title
21 account the amount of money the association determines ~~[that money~~
22 ~~in the title account exceeds the amount]~~ reasonably necessary for
23 efficient future administration ~~[operation]~~ under this chapter.

24 The~~[, the]~~ association shall return the excess money pro rata to
25 the holders of participation receipts on which an outstanding
26 balance exists after deducting any credits against premium taxes
27 taken under Section [2602.210](#). The amount deducted for those credits

1 shall be deposited with the comptroller for credit to the general
2 revenue fund. The association shall transfer to the guaranty fee
3 account any excess money remaining in the title account after the
4 distribution and reservation of money for administration.

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

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

15 (b) Money spent by or due to the association as a result of
16 payments or advances shall be given Class 1 priority in
17 distribution of the impaired title insurance company's or impaired
18 agent's assets under Section 443.301 or similar law of any
19 jurisdiction in which the impairment action is pending.

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

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

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

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

3 SECTION 13. Section 2602.114, Insurance Code, is amended by
4 amending Subsection (b) and adding Subsection (c-1) to read as
5 follows:

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

10 (c-1) The board may subpoena the officers, directors,
11 members, managers, employees, or partners of an impaired title
12 agent to compel their attendance before the board to provide sworn
13 testimony regarding the location and disposition of the assets,
14 money, and books and records of the agent and to discuss the causes
15 of any possible remedial action related to a title agent insolvency
16 or impairment.

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

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

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

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

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

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

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

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

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

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

25 (b) The assessment of each title insurance company must be
26 in the proportion that the net direct written premiums of that
27 company for the calendar year preceding the assessment bear to the

1 net direct written premiums of all title insurance companies for
2 that year. Assessments and partial assessments may be made in
3 consecutive years until the association has collected an amount
4 sufficient to pay the obligations and expenses described under
5 Subsection (a).

6 SECTION 18. Section 2602.203, Insurance Code, is amended to
7 read as follows:

8 Sec. 2602.203. NOTICE AND PAYMENT. The [~~(a) Not later than~~
9 ~~the 30th day before the date an assessment is due, the~~] association
10 shall give all affected [~~notify the~~] title insurance companies at
11 least 90 days' written notice of the due date of an assessment
12 [~~company~~].

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

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

18 (b) The holder of the receipt is a general creditor of the
19 impaired title insurance company, except that if the amount of
20 assessments the association receives exceeds the amount paid for
21 covered claims and administrative expenses, the holders of
22 participation receipts have preference over other general
23 creditors to, and are entitled to share pro rata in, the excess.

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

26 (a) Money from assessments is considered to supplement the
27 marshalling of an impaired title insurance company's assets to make

1 payments of covered claims on the impaired title insurance
2 company's behalf and to pay administrative expenses related to
3 payment of covered claims. The association may assess title
4 insurance companies or use money from assessments to pay covered
5 claims before the receiver exhausts the impaired title insurance
6 company's assets.

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

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

17 (d) If the association receives money related to a title
18 insurance company receivership from any source, including payment
19 of a claim made by the association against the estate of the title
20 insurance company, that is in excess of the amount title insurance
21 companies are entitled to recover under this section, the excess
22 money shall be held by the association in its title account to
23 offset the amounts required for future assessments or
24 administrative expenses of the association.

25 SECTION 22. Section 2602.251, Insurance Code, is amended to
26 read as follows:

27 Sec. 2602.251. COVERED CLAIMS IN GENERAL. An unpaid claim

1 is a covered claim if:

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

4 (2) the claim arises out of the policy and is within
5 the coverage and applicable limits of the policy, subject to all
6 applicable policy provisions and defenses available under the
7 policy and applicable law;

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

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

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

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

17 (1) is:

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

20 (B) for money provided to an impaired title
21 insurance company or the company's agent for deposit into trust
22 funds or an escrow account; and

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

27 SECTION 24. Section 2602.255, Insurance Code, is amended to

1 read as follows:

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

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

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

10 (A) adjustment fees or expenses;

11 (B) attorney's fees or expenses;

12 (C) court costs;

13 (D) interest;

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

19 (F) bond premiums;

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

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

25 (5) a claim under Section 2602.252 by a claimant who
26 has a lien against the real property that was the subject of the
27 transaction from which the claim arises, unless the lien is held to

1 be invalid as a matter of law;

2 (6) a claim under Section 2602.251, 2602.252, or
3 2602.253 by a claimant who caused or substantially contributed to
4 the claimant's loss by the claimant's action or omission, as
5 determined by the association or the association's agent; and

6 (7) a claim filed with the association after the final
7 date set by the commissioner or court for the filing of claims
8 against a receiver of an impaired title insurance company or agent.

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

11 Sec. 2602.256. AMOUNT OF COVERED CLAIM; LIMIT. (a) A
12 covered claim under Section 2602.251 or 2602.253 may not exceed the
13 lesser of \$500,000 [~~\$250,000~~] for each claimant or \$500,000
14 [~~\$250,000~~] for each policy.

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

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

24 (c) In a proceeding considering a covered claim, a judgment
25 against an insured taken after the date the delinquency proceeding
26 or supervision begins or a conservator is appointed is not evidence
27 of liability or of the amount of damages, and a default or consent

1 judgment against an insured or the impaired title insurance company
2 or a settlement, release, or judgment entered into by the insured or
3 the impaired title insurance company does not bind the association
4 and is not evidence of liability or of the amount of damages in
5 connection with a claim brought against the association or another
6 party under this chapter.

7 SECTION 27. Section 2602.260, Insurance Code, is amended to
8 read as follows:

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

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

17 Sec. 2602.261. APPEAL OF CLAIM DETERMINATION. A claimant's
18 right of appeal with respect to a claim determination by the
19 association is governed by the association's plan of operation. A
20 claimant must bring an action, including an action for declaratory
21 relief, challenging denial of a claim not later than one year after
22 the date the claim was denied.

23 SECTION 29. Section 2602.302, Insurance Code, is amended by
24 adding Subsections (b-1), (b-2), and (b-3) to read as follows:

25 (b-1) On good cause shown by the association or the
26 commissioner, the court in which the receivership proceedings are
27 pending may extend a cancellation date or deadline imposed under

1 Subsection (b) for a period not to exceed one year.

2 (b-2) If an impaired title insurance company or agent is not
3 in receivership in this state, the commissioner shall set a claim
4 deadline, which may not be later than the first anniversary of the
5 date of the determination of impairment.

6 (b-3) On payment of the last timely filed covered claim or
7 accepted late filed claim, the association is discharged from the
8 association's obligations under this chapter and the estate of the
9 impaired insurer or agent is closed.

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

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

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

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

25 (b) Section 2602.013, Insurance Code, as added by this Act,
26 and Section 2602.260, Insurance Code, as amended by this Act, apply
27 only to an action commenced on or after the effective date of this

1 Act. An action commenced before the effective date of this Act is
2 governed by the law applicable to the action immediately before the
3 effective date of this Act, and that law is continued in effect for
4 that purpose.

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