

1-1 By: Creighton S.B. No. 2333
 1-2 (In the Senate - Filed March 8, 2019; March 21, 2019, read
 1-3 first time and referred to Committee on Business & Commerce;
 1-4 May 6, 2019, reported adversely, with favorable Committee
 1-5 Substitute by the following vote: Yeas 8, Nays 0; May 6, 2019, sent
 1-6 to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8	X			
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16			X	
1-17	X			

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 2333 By: Creighton

1-19 A BILL TO BE ENTITLED
 1-20 AN ACT

1-21 relating to the operation of the Texas Title Insurance Guaranty
 1-22 Association.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. Section 2602.008(a), Insurance Code, is amended
 1-25 to read as follows:

1-26 (a) Liability does not exist and a cause of action does not
 1-27 arise against any of the following persons for a good faith action
 1-28 or omission of the person in exercising the person's powers and
 1-29 performing the person's duties under this chapter:

1-30 (1) the commissioner or the commissioner's
 1-31 representative;

1-32 (2) the association or the association's agent,
 1-33 representative, or employee;

1-34 (3) a title insurance company or the company's agent or
 1-35 employee;

1-36 (4) a board member; and

1-37 (5) a special deputy receiver or the special deputy
 1-38 receiver's agent or employee.

1-39 SECTION 2. Subchapter A, Chapter 2602, Insurance Code, is
 1-40 amended by adding Section 2602.013 to read as follows:

1-41 Sec. 2602.013. VENUE. An action against the association or
 1-42 an action against the association's board member, agent,
 1-43 representative, or employee that arises from the exercise of the
 1-44 person's powers or performance of the person's duties under this
 1-45 chapter must be brought in a district court in Travis County.

1-46 SECTION 3. Section 2602.057(a), Insurance Code, is amended
 1-47 to read as follows:

1-48 (a) A title insurance company is not prohibited, because the
 1-49 company has an officer, director, or employee serving as a board
 1-50 member, from negotiating for or entering into a contract of
 1-51 reinsurance or assumption of liability or a contract of
 1-52 substitution to provide for liabilities for covered claims with the
 1-53 association, the commissioner, or the receiver or conservator of an
 1-54 impaired title insurance company or agent.

1-55 SECTION 4. Section 2602.101(a), Insurance Code, is amended
 1-56 to read as follows:

1-57 (a) In addition to the other powers and duties provided by
 1-58 this chapter, the association may:

1-59 (1) borrow money as necessary to implement this
 1-60 chapter according to the plan of operation;

2-1 (2) lend money to the receiver, supervisor, or
 2-2 conservator of an impaired title insurance company or its agent;
 2-3 (3) sue and be sued, including taking any legal action
 2-4 necessary or proper to recover an unpaid assessment;
 2-5 (4) enter into contracts as necessary or proper to
 2-6 implement this chapter;
 2-7 (5) ensure payment of the policy obligations of an
 2-8 impaired title insurance company;
 2-9 (6) negotiate and contract with a rehabilitator,
 2-10 conservator, supervisor, receiver, [~~or~~] ancillary receiver, or
 2-11 other third party to exercise the powers and perform the duties of
 2-12 the association;
 2-13 (7) guarantee, assume, or reinsure, or cause to be
 2-14 guaranteed, assumed, or reinsured, a policy or contract of an
 2-15 impaired title insurance company;
 2-16 (8) take legal action necessary to avoid the payment
 2-17 of improper claims or to settle claims or potential claims against
 2-18 an impaired title insurance company or agent, or the association;
 2-19 (9) assume control of and consolidate the escrow
 2-20 accounts transferred to the association by an impaired agent that
 2-21 has been placed in receivership, supervision, or conservatorship,
 2-22 and:
 2-23 (A) pay covered claims from the consolidated
 2-24 escrow accounts to facilitate processing and payment of claims;
 2-25 (B) maintain a separate accounting for each
 2-26 transferred escrow account; and
 2-27 (C) return money not used to pay a covered claim
 2-28 to the owner of the money in accordance with the contract governing
 2-29 the escrow of the money; and
 2-30 (10) [~~(9)~~] perform any other acts as necessary or
 2-31 proper to implement this chapter.
 2-32 SECTION 5. Sections 2602.102(a) and (b), Insurance Code,
 2-33 are amended to read as follows:
 2-34 (a) The association shall perform its functions under a plan
 2-35 of operation. The plan of operation must contain provisions
 2-36 necessary or proper for the execution of the association's powers
 2-37 and duties. The plan of operation must, in addition to the other
 2-38 requirements of this chapter:
 2-39 (1) establish:
 2-40 (A) procedures for handling the assets of the
 2-41 association;
 2-42 (B) the amount and method of reimbursing board
 2-43 members;
 2-44 (C) regular places and times for board meetings;
 2-45 (D) procedures for maintaining records of all
 2-46 financial transactions of the association, its agents, and the
 2-47 board; and
 2-48 (E) procedures for determining the amount of
 2-49 guaranty fees, for collecting those fees, and for assessments;
 2-50 (2) provide for the establishment of a claims filing
 2-51 procedure that includes:
 2-52 (A) notice by the association to claimants;
 2-53 (B) procedures for filing claims seeking
 2-54 recovery from the association; and
 2-55 (C) a procedure for appealing the denial of
 2-56 claims by the association; and
 2-57 (3) [~~(2)~~] contain additional provisions necessary or
 2-58 proper for the execution of the association's powers and duties.
 2-59 (b) The association shall submit to the commissioner any
 2-60 amendment to the plan of operation necessary or suitable to ensure
 2-61 the fair, reasonable, and equitable administration of the
 2-62 association. The amendment takes effect on the commissioner's
 2-63 written approval or the 90th day after the date the amendment is
 2-64 submitted unless disapproved by the commissioner.
 2-65 SECTION 6. Sections 2602.103(b) and (c), Insurance Code,
 2-66 are amended to read as follows:
 2-67 (b) On the commissioner's approval [~~request~~], the
 2-68 association shall reimburse the department out of the guaranty fee
 2-69 account for the cost, including reasonable and necessary expenses,

3-1 to employ or retain one or more persons to:

3-2 (1) audit and review agent escrow and trust accounts,
3-3 financial condition, and compliance with applicable statutes and
3-4 rules; ~~and]~~

3-5 (2) report to the commissioner on the accounts,
3-6 condition, and compliance; or

3-7 (3) supervise a person employed or retained to perform
3-8 audit and review under Subdivision (1).

3-9 (c) A person employed or retained under Subsection (b) acts
3-10 solely under the direction of and as assigned by the commissioner
3-11 but shall report the person's activity and expenses to the
3-12 association on the request of the association.

3-13 SECTION 7. Section 2602.104(a), Insurance Code, is amended
3-14 to read as follows:

3-15 (a) The association shall maintain a record of its [~~each~~
3-16 ~~negotiation or meeting in which the association or the~~
3-17 ~~association's representative discusses the association's]~~
3-18 activities in exercising its powers and performing its duties under
3-19 this chapter.

3-20 SECTION 8. Section 2602.105, Insurance Code, is amended to
3-21 read as follows:

3-22 Sec. 2602.105. MEETING BY CONFERENCE CALL. Notwithstanding
3-23 Chapter 551, Government Code, the board may hold an open meeting by
3-24 telephone conference call if immediate action is required and
3-25 convening of a quorum of the board at a single location is not
3-26 reasonable or practical. The meeting is subject to the notice
3-27 requirements that apply to other meetings. The notice of the
3-28 meeting must specify as the location of the meeting the location at
3-29 which meetings of the board are usually held. Each [~~, and each~~] part
3-30 of the meeting that is required to be open to the public must be
3-31 audible to the public at that location and must be recorded. The
3-32 audio [~~tape-recorded. The tape~~] recording shall be retained and
3-33 made available to the public for 30 days after the meeting date.

3-34 SECTION 9. Section 2602.107, Insurance Code, is amended by
3-35 amending Subsection (b) and adding Subsection (e) to read as
3-36 follows:

3-37 (b) The association may transfer income from investment of
3-38 the association's money in any account to the administrative
3-39 account.

3-40 (e) The association may advance money from any account to
3-41 the administrative account to pay the administrative expenses of
3-42 the association.

3-43 SECTION 10. Section 2602.109(a), Insurance Code, is amended
3-44 to read as follows:

3-45 (a) The [~~If the~~] association shall reserve in the title
3-46 account the amount of money the association determines [~~that money~~
3-47 ~~in the title account exceeds the amount]~~ reasonably necessary for
3-48 efficient future administration [~~operation~~] under this chapter.
3-49 The [~~, the~~] association shall return the excess money pro rata to the
3-50 holders of participation receipts on which an outstanding balance
3-51 exists after deducting any credits against premium taxes taken
3-52 under Section 2602.210. The amount deducted for those credits
3-53 shall be deposited with the comptroller for credit to the general
3-54 revenue fund. The association shall transfer to the guaranty fee
3-55 account any excess money remaining in the title account after the
3-56 distribution and reservation of money for administration.

3-57 SECTION 11. Section 2602.110, Insurance Code, is amended to
3-58 read as follows:

3-59 Sec. 2602.110. EXPENSES OF ADMINISTERING IMPAIRED INSURER
3-60 OR IMPAIRED AGENT. (a) The association may spend or advance money
3-61 necessary to pay the expenses of administering the supervision,
3-62 rehabilitation, receivership, conservatorship, or, as determined
3-63 by a court of competent jurisdiction, other insolvency of an
3-64 impaired title insurance company or impaired agent, on terms the
3-65 association negotiates, if the company's or agent's assets are
3-66 insufficient to pay those expenses.

3-67 (b) The association may file a claim in a receivership
3-68 proceeding against an impaired title insurance company or impaired
3-69 agent to recover the association's reasonable costs incurred in

4-1 exercising the association's powers or performing the association's
4-2 duties under this chapter with respect to the impaired title
4-3 insurance company or impaired agent. Payment of a claim asserted by
4-4 the association under this section in a receivership proceeding in
4-5 this state is governed by Section 443.301. Payment of a claim
4-6 asserted by the association under this section in a receivership
4-7 proceeding in another state is governed by the law governing
4-8 priority of payment of distributions on unsecured claims by an
4-9 insurance guaranty association in that state.

4-10 SECTION 12. Section 2602.111(a), Insurance Code, is amended
4-11 to read as follows:

4-12 (a) The plan of operation may provide that, on approval of
4-13 the board [~~and the commissioner~~], a power or duty of the association
4-14 may be delegated to a corporation or other organization that:

4-15 (1) performs or will perform in two or more states
4-16 functions similar to those of the association or its equivalent;
4-17 and

4-18 (2) provides protection not substantially less
4-19 favorable and effective than that provided by this chapter.

4-20 SECTION 13. Section 2602.114(b), Insurance Code, is amended
4-21 to read as follows:

4-22 (b) The meeting is not open to the public. Only board
4-23 members, association counsel and other association
4-24 representatives, the commissioner, and persons the commissioner
4-25 authorizes may attend the meeting.

4-26 SECTION 14. Section 2602.116, Insurance Code, is amended to
4-27 read as follows:

4-28 Sec. 2602.116. BOARD ACCESS TO RECORDS. The receiver,
4-29 supervisor, conservator, or other statutory successor of an
4-30 impaired title insurance company or agent shall give the board or
4-31 its representative:

4-32 (1) access to the company's or agent's records as
4-33 necessary for the board to perform its functions under this chapter
4-34 relating to covered claims; and

4-35 (2) copies of those records on the board's request and
4-36 at the board's expense.

4-37 SECTION 15. Section 2602.153, Insurance Code, is amended by
4-38 amending Subsection (a) and adding Subsection (e) to read as
4-39 follows:

4-40 (a) The association shall collect, receive, retain, [~~and~~]
4-41 disburse, and advance the guaranty fees only as specifically
4-42 provided by this chapter.

4-43 (e) The association may advance money from the guaranty fee
4-44 account as the association considers necessary to provide for the
4-45 payment of covered claims related to an impaired agent and
4-46 administrative expenses related to the evaluation and payment of
4-47 those claims. The advanced money shall be repaid to the guaranty
4-48 fee account as soon as is practicable with money from guaranty fees
4-49 or the estate of the impaired agent. No interest may accrue on the
4-50 advanced money.

4-51 SECTION 16. Section 2602.201(a), Insurance Code, is amended
4-52 to read as follows:

4-53 (a) If the commissioner determines that a title insurance
4-54 company [~~or agent~~] has become impaired, the association shall
4-55 promptly estimate the amount of additional money needed to
4-56 supplement the assets of the impaired title insurance company [~~or~~
4-57 ~~agent~~] to pay all covered claims and administrative expenses,
4-58 including expenses related to processing and payment of the claims.

4-59 SECTION 17. Section 2602.202(b), Insurance Code, is amended
4-60 to read as follows:

4-61 (b) The assessment of each title insurance company must be
4-62 in the proportion that the net direct written premiums of that
4-63 company in this state for the calendar year preceding the
4-64 assessment bear to the net direct written premiums of all title
4-65 insurance companies for that year. Assessments and supplemental
4-66 assessments may be made in consecutive years until the association
4-67 has collected an amount sufficient to pay the obligations and
4-68 expenses described under Subsection (a). The association may make
4-69 a supplemental assessment only against the same title insurance

5-1 companies and in the same proportion for each company as the initial
 5-2 assessment.

5-3 SECTION 18. Section 2602.203, Insurance Code, is amended to
 5-4 read as follows:

5-5 Sec. 2602.203. NOTICE AND PAYMENT. The [(a) Not later
 5-6 than the 30th day before the date an assessment is due, the]
 5-7 association shall give each [notify the] title insurance company to
 5-8 be assessed at least 90 days' written notice of the due date of the
 5-9 assessment [company].

5-10 [(b) Not later than the 30th day after the date an
 5-11 assessment is made, the title insurance company shall pay the
 5-12 association the amount of the assessment.]

5-13 SECTION 19. Section 2602.206(b), Insurance Code, is amended
 5-14 to read as follows:

5-15 (b) The holder of the receipt is a general creditor of the
 5-16 impaired title insurance company, except that if the amount of
 5-17 assessments the association receives exceeds the amount paid for
 5-18 covered claims and administrative expenses, the holders of
 5-19 participation receipts have preference over other general
 5-20 creditors to, and are entitled to share pro rata in, the excess.

5-21 SECTION 20. Section 2602.208(a), Insurance Code, is amended
 5-22 to read as follows:

5-23 (a) Money from assessments is considered to supplement the
 5-24 marshalling of an impaired title insurance company's assets to make
 5-25 payments of covered claims on the impaired title insurance
 5-26 company's behalf and to pay administrative expenses related to
 5-27 payment of covered claims. The association may assess title
 5-28 insurance companies or use money from assessments to pay covered
 5-29 claims before the receiver exhausts the impaired title insurance
 5-30 company's assets.

5-31 SECTION 21. Section 2602.210, Insurance Code, is amended by
 5-32 amending Subsection (a) and adding Subsection (d) to read as
 5-33 follows:

5-34 (a) A title insurance company is entitled to recover in its
 5-35 rates for the succeeding 12 months [~~calendar year~~] amounts paid in
 5-36 assessments not to exceed one percent of the company's net direct
 5-37 written premiums. In promulgating or establishing rates the
 5-38 commissioner shall consider assessments and refunds of assessments
 5-39 and shall adjust the rates to allow for recovery under this
 5-40 subsection.

5-41 (d) If the association receives money related to a title
 5-42 insurance company receivership from any source, including payment
 5-43 of a claim made by the association against the estate of the title
 5-44 insurance company, that is in excess of the amount title insurance
 5-45 companies have recovered or are entitled to recover under this
 5-46 section, the excess money shall be held by the association in its
 5-47 title account to offset the amounts required for future assessments
 5-48 or administrative expenses of the association.

5-49 SECTION 22. Section 2602.251, Insurance Code, is amended to
 5-50 read as follows:

5-51 Sec. 2602.251. COVERED CLAIMS IN GENERAL. An unpaid claim
 5-52 is a covered claim if:

5-53 (1) the claim is made by an insured under a title
 5-54 insurance policy to which this chapter applies;

5-55 (2) the claim arises out of the policy and is within
 5-56 the coverage and applicable limits of the policy, subject to all
 5-57 applicable policy provisions and defenses available under the
 5-58 policy and applicable law;

5-59 (3) the title insurance company that issued the policy
 5-60 or assumed the policy under an assumption certificate is an
 5-61 impaired title insurance company; and

5-62 (4) the insured real property or a lien on the property
 5-63 is located in this state.

5-64 SECTION 23. Section 2602.252, Insurance Code, is amended to
 5-65 read as follows:

5-66 Sec. 2602.252. CLAIM AGAINST TRUST FUNDS OR ESCROW ACCOUNT.
 5-67 An unpaid claim is a covered claim if the claim:

5-68 (1) is:
 5-69 (A) against trust funds or an escrow account of

6-1 an impaired title insurance company or agent; or
 6-2 (B) for money received by an impaired title
 6-3 insurance company, the company's agent, or an authorized agent of
 6-4 the company's agent for deposit into a trust fund or an escrow
 6-5 account; and

6-6 (2) is unpaid because of a shortage of those funds or
 6-7 in that account, including a shortage that exists because the money
 6-8 was not deposited by the impaired title insurance company or the
 6-9 company's agent in the fund or account.

6-10 SECTION 24. Section 2602.255, Insurance Code, is amended to
 6-11 read as follows:

6-12 Sec. 2602.255. CLAIMS NOT COVERED. The following are not
 6-13 covered claims:

6-14 (1) an amount due a reinsurer, title insurance
 6-15 company, insurance pool, or underwriting association as a
 6-16 subrogation recovery or otherwise;

6-17 (2) a supplementary payment obligation incurred
 6-18 before a determination is made under this chapter that a title
 6-19 insurance company or agent is impaired, including:

6-20 (A) adjustment fees or expenses;

6-21 (B) attorney's fees or expenses;

6-22 (C) court costs;

6-23 (D) interest;

6-24 (E) enhanced damages, sought as a recovery
 6-25 against the insured, the impaired title insurance company or agent,
 6-26 or the association, that arise under Chapter 541 of this code or
 6-27 Subchapter E, Chapter 17, Business & Commerce Code, or a similar law
 6-28 of another state; and

6-29 (F) bond premiums;

6-30 (3) a shortage of trust funds or in an escrow account
 6-31 resulting from the insolvency of a financial institution;

6-32 (4) exemplary, extracontractual, or bad faith damages
 6-33 awarded against an insured or title insurance company by a court
 6-34 judgment;

6-35 (5) a claim under Section 2602.252 by a claimant who
 6-36 has a lien against the real property that was the subject of the
 6-37 transaction from which the claim arises, unless the lien is held to
 6-38 be invalid as a matter of law;

6-39 (6) a claim under Section 2602.251, 2602.252, or
 6-40 2602.253 by a claimant who caused or substantially contributed to
 6-41 the claimant's loss by the claimant's action or omission, as
 6-42 determined by the association or the association's agent; and

6-43 (7) a claim filed with the association after the claim
 6-44 filing deadline for [~~final date set by the court for the filing of~~
 6-45 ~~claims against a receiver of~~] an impaired title insurance company
 6-46 or agent.

6-47 SECTION 25. Section 2602.256, Insurance Code, is amended to
 6-48 read as follows:

6-49 Sec. 2602.256. AMOUNT OF COVERED CLAIM; LIMIT. (a) A
 6-50 covered claim under Section 2602.251 or 2602.253 may not exceed the
 6-51 lesser of \$500,000 [~~\$250,000~~] for each claimant or \$500,000
 6-52 [~~\$250,000~~] for each policy.

6-53 (b) A covered claim under Section 2602.252 may not exceed
 6-54 the lesser of \$500,000 [~~\$250,000~~] for each claimant or the amount of
 6-55 money actually received by [~~delivered to~~] the impaired title
 6-56 insurance company or agent as trust funds or an escrow account for
 6-57 each claimant in a transaction from which the claim arises, except
 6-58 that the cumulative amount of covered claims arising from a single
 6-59 transaction may not exceed \$500,000 [~~\$250,000~~].

6-60 SECTION 26. Section 2602.259(c), Insurance Code, is amended
 6-61 to read as follows:

6-62 (c) In a proceeding considering a covered claim, a judgment
 6-63 against an insured taken after the date the delinquency proceeding
 6-64 or supervision begins or a conservator is appointed is not evidence
 6-65 of liability or of the amount of damages, and a default or consent
 6-66 judgment against an insured or the impaired title insurance company
 6-67 or a settlement, release, or judgment entered into by the insured or
 6-68 the impaired title insurance company does not bind the association
 6-69 and is not evidence of liability or of the amount of damages in

7-1 connection with a claim brought against the association or another
7-2 party under this chapter.

7-3 SECTION 27. Section 2602.260, Insurance Code, is amended to
7-4 read as follows:

7-5 Sec. 2602.260. ADMISSIBILITY OF PAYMENT. In a lawsuit
7-6 brought by a conservator, supervisor, or receiver of an impaired
7-7 title insurance company or agent to recover assets of the company or
7-8 agent, the fact that a claim against the company or agent has been
7-9 or will be paid under this chapter is not admissible and may not be
7-10 placed before a jury by evidence, argument, or reference.

7-11 SECTION 28. Subchapter F, Chapter 2602, Insurance Code, is
7-12 amended by adding Section 2602.261 to read as follows:

7-13 Sec. 2602.261. APPEAL OF CLAIM DETERMINATION. A claimant's
7-14 right of appeal with respect to a claim determination by the
7-15 association is governed by the association's plan of operation. A
7-16 claimant must bring an action, including an action for declaratory
7-17 relief, challenging denial of a claim not later than one year after
7-18 the date the claim was denied.

7-19 SECTION 29. Section 2602.302, Insurance Code, is amended by
7-20 amending Subsections (a) and (b) and adding Subsections (b-1) and
7-21 (f) to read as follows:

7-22 (a) The association shall pay covered claims:

7-23 (1) existing before the determination of impairment;
7-24 or

7-25 (2) arising on or before:

7-26 (A) the date of cancellation of the impaired
7-27 title insurance company's policies or the claim deadline for claims
7-28 against the impaired title insurance company, as applicable; or

7-29 (B) the claim deadline for covered claims against
7-30 an impaired agent, which is the first anniversary of the date of
7-31 determination of impairment.

7-32 (b) A [The] court in this state in which [the] receivership
7-33 proceedings of an impaired title insurance company are pending
7-34 shall set, as applicable:

7-35 (1) the date of cancellation of the policies, which
7-36 may not be later than the fifth anniversary of the date of
7-37 determination of impairment; or

7-38 (2) the claim deadline, which may not be later than the
7-39 first anniversary of the date of determination of impairment.

7-40 (b-1) If an impaired title insurance company is in
7-41 receivership proceedings outside of this state, the claim deadline
7-42 is the first anniversary of the date of determination of
7-43 impairment.

7-44 (f) On payment of the last timely filed covered claim, the
7-45 association is discharged from the association's obligations under
7-46 this chapter. This subsection does not discharge the association
7-47 of obligations related to pending litigation.

7-48 SECTION 30. Section 2602.452(b), Insurance Code, is amended
7-49 to read as follows:

7-50 (b) The association may employ or retain a person or persons
7-51 to perform any action required under Subsection (a), in accordance
7-52 with Section 2602.103(a).

7-53 SECTION 31. Section 2602.103(d), Insurance Code, is
7-54 repealed.

7-55 SECTION 32. (a) Except as provided by this section, the
7-56 changes in law made by this Act apply only with respect to a title
7-57 insurance company or agent that is designated as impaired on or
7-58 after the effective date of this Act. The law as it existed
7-59 immediately before the effective date of this Act applies with
7-60 respect to a title insurance company or agent that was designated as
7-61 impaired before the effective date of this Act, and that law is
7-62 continued in effect for that purpose.

7-63 (b) Section 2602.013, Insurance Code, as added by this Act,
7-64 and Section 2602.260, Insurance Code, as amended by this Act, apply
7-65 only to an action commenced on or after the effective date of this
7-66 Act. An action commenced before the effective date of this Act is
7-67 governed by the law applicable to the action immediately before the
7-68 effective date of this Act, and that law is continued in effect for
7-69 that purpose.

8-1 SECTION 33. This Act takes effect September 1, 2019.

8-2 * * * * *