

BILL ANALYSIS

C.S.H.B. 1357
By: Sheets
Insurance
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties note that modern large commercial real estate transactions often require title insurance that exceeds the capacity of many insurance companies' financial ability to insure an interest alone, which causes those companies to use reinsurance. Many companies have traditionally reinsured with each other and, as a way to properly spread risk, have taken primary risk, obtained reinsurance from another title insurance company, and then additionally taken another round of risk as a reinsurer. Interested parties contend that many projects are now greatly exceeding the capacity of the entire title insurance industry and that there is a movement away from this practice and toward a more active market in reinsurance with non-title reinsurers.

There are concerns regarding the limit on the amount of single-risk that a title insurance company in Texas can retain, whether just primary or primary and reinsurance, as a percentage of a company's capital and surplus. Different states require different percentages but the parties contend that certain other states have no limit as to the amount of single-risk a company can retain and that the companies in those states have limits that are self-imposed. The parties further note that the National Association of Insurance Commissioners (NAIC) has adopted model legislation to address this issue that they say will help remove cumbersome barriers to efficiency in the fast-paced commercial real estate environment. C.S.H.B. 1357 seeks to modify statutory single-risk premium limits in accordance with the NAIC model legislation.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1357 amends the Insurance Code to change the maximum title insurance policy liability from 50 percent of the title insurance company's capital stock and surplus as stated in the company's most recent annual statement to a maximum policy liability that is 50 percent of the sum of the title insurance company's surplus as regards policyholders and the company's statutory premium reserves as stated in the company's most recent annual statement.

C.S.H.B. 1357 removes as conditions for the authorization for a title insurance company to acquire reinsurance on an individual policy or facultative basis from a title insurance company that is not authorized to engage in the business of title insurance in Texas the condition that a title insurance company give written notice to the Texas Department of Insurance (TDI) within a certain period and the condition that a company not be prohibited by the commissioner of

insurance from obtaining reinsurance, before the expiration of that period, on the ground that the transaction may result in a hazardous financial condition.

C.S.H.B. 1357 removes TDI's authorization, on application and hearing and subject to certain conditions, to permit a title insurance company to acquire reinsurance on an individual policy or facultative basis from a title insurance company domiciled in another state and not authorized to engage in the business of title insurance in Texas that is not compliant with the applicable requirements for such reinsurance. The bill removes TDI's authorization, on application and hearing and subject to certain conditions, to permit a title insurance company to retain an additional potential liability of not more than 40 percent of the company's capital stock and surplus.

C.S.H.B. 1357 revises certain requirements applicable to a title insurance company's authorization to obtain reinsurance from an insurer that is not another title insurance company to make that authorization contingent on providing TDI notice, instead of an affidavit, that contains representations that the title insurance company was unable after diligent effort to procure sufficient reinsurance from another title insurance company, instead of containing facts that demonstrate that inability, and that summarizes the terms of the reinsurance treaty or other agreement, instead of stating those terms.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1357 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED	HOUSE COMMITTEE SUBSTITUTE
SECTION 1. Section 2551.301, Insurance Code, is amended.	SECTION 1. Same as introduced version.
SECTION 2. Section 2551.302, Insurance Code, is amended.	SECTION 2. Same as introduced version.
SECTION 3. Subchapter G, Chapter 2551, Insurance Code, is amended by amending Section 2551.305 and adding Section 2551.3055 to read as follows: Sec. 2551.305. <u>Sec. 2551.3055. REINSURANCE FROM INSURER OTHER THAN A TITLE INSURER.</u> [(e)] Notwithstanding any other provision of this subchapter, a title insurance company may obtain reinsurance by a reinsurance treaty or other reinsurance agreement from an assuming insurer with a financial strength rating of B+ or better from	SECTION 3. Subchapter G, Chapter 2551, Insurance Code, is amended by amending Section 2551.305 and adding Section 2551.3055 to read as follows: Sec. 2551.305. <u>Sec. 2551.3055. REINSURANCE FROM INSURER OTHER THAN TITLE INSURER.</u> [(e)] Notwithstanding any other provision of this subchapter, a title insurance company may obtain reinsurance by a reinsurance treaty or other reinsurance agreement from an assuming insurer with a financial strength rating of B+ or better from

the A. M. Best Company that meets the requirements of Subchapter C, Chapter 493, if the title insurance company has provided the department with an affidavit that:

- (1) contains facts that demonstrate the title insurance company was unable after diligent effort to procure sufficient reinsurance from another title insurance company; and
- (2) states the terms of the reinsurance treaty or other reinsurance agreement that the title insurance company will obtain.

SECTION 4. Section 2703.001(c), Insurance Code, is amended.

SECTION 5. (a) Section 2551.301, Insurance Code, as amended by this Act, applies only to a title insurance policy issued on or after the effective date of this Act. A title insurance policy issued before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

(b) Sections 2551.302 and 2551.305, Insurance Code, as amended by this Act, and Section 2551.3055, Insurance Code, as added by this Act, apply only to a reinsurance contract entered into by a title insurance company on or after the effective date of this Act. A reinsurance contract entered into by a title insurance company before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

SECTION 6. This Act takes effect September 1, 2015.

the A. M. Best Company which reinsurance ~~[that]~~ meets the requirements of Subchapter C, Chapter 493, if the title insurance company has provided the department with notice [an affidavit] that:

- (1) contains representations [facts] that [demonstrate] the title insurance company was unable after diligent effort to procure sufficient reinsurance from another title insurance company; and
- (2) summarizes [states] the terms of the reinsurance treaty or other reinsurance agreement that the title insurance company will obtain.

SECTION 4. Same as introduced version.

SECTION 5. Same as introduced version.

SECTION 6. Same as introduced version.