

BILL ANALYSIS

C.S.H.B. 1614
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Insurance
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Texas Title Insurance Guaranty Association was created in part to provide protection to consumers from potentially insolvent title insurers and title agents similar to the protection other guaranty associations provide for property and casualty and life insurance. It has been suggested that recent title insurer and title agent insolvencies and escrow shortages require operational updates for the Texas Title Insurance Guaranty Association to better protect consumers and streamline operations. C.S.H.B. 1614 seeks to provide these updates.

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. 1614 amends the Insurance Code to grant a Texas Title Insurance Guaranty Association representative immunity from liability for a good faith action or omission of the representative in exercising the representative's powers and performing the representative's duties under the Texas Title Insurance Guaranty Act. The bill requires an action against the association or an action against an association board member, agent, representative, or employee that arises from the exercise of the person's powers or performance of the person's duties under the act to be brought in a district court in Travis County.

C.S.H.B. 1614 expressly does not prohibit a title insurance company 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 or the commissioner of insurance because the company has an officer, director, or employee serving on the board of directors of the association.

C.S.H.B. 1614, with respect to other powers and duties provided under the act:

- clarifies that the association may lend money to the receiver, supervisor, or conservator of an impaired title insurance company or its agent;
- includes a supervisor and other third party among the persons the association may negotiate and contract with to exercise the powers and perform the duties of the association;
- includes an agent of an impaired title insurance company among the entities against which the association may take legal action necessary to avoid the payment of improper

claims or to settle claims or potential claims; and

- authorizes the association to 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 to:
 - pay covered claims from the consolidated escrow accounts to facilitate processing and payment of claims;
 - maintain a separate accounting for each transferred escrow account; and
 - return money not used to pay a covered claim to the money's owner in accordance with the contract governing the escrow of the money.

C.S.H.B. 1614, with respect to the association's plan of operation:

- requires the plan to provide for the establishment of a claims filing procedure that includes notice by the association to claimants, procedures for filing claims seeking recovery from the association, and a procedure for appealing the denial of claims by the association;
- sets an automatic effective date for an amendment to the association's plan of operation; and
- removes approval of the commissioner as a condition under which a plan may provide that a power or duty of the association may be delegated to a corporation or other specified organization.

C.S.H.B. 1614 replaces the requirement that the association board of directors' conference call meetings be tape-recorded with a requirement that they be audio recorded. The bill authorizes the association to advance money from any account to the administrative account to pay the administrative expenses of the association.

C.S.H.B. 1614 removes the association's determination that money in the title account exceeds the amount reasonably necessary for efficient future operation under the act as a condition of returning the excess money pro rata to the holders of certain participation receipts and requires the association instead to reserve in the title account the amount of money the association determines reasonably necessary for efficient future administration under the act.

C.S.H.B. 1614 authorizes the association to 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 with respect to the company or agent. The bill establishes that:

- payment of a claim asserted by the association in a receivership proceeding in Texas is governed by the Insurer Receivership Act provisions relating to the priority of payment of distributions on unsecured claims; and
- payment of a claim asserted by the association 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.

C.S.H.B. 1614 includes association counsel and other association representatives among the persons who may attend an association board meeting concerning an impaired or insolvent title insurance company or agent. The bill includes a supervisor, conservator, and impaired title insurance company agent among the entities required to give the association board or its representative access to the company's or agent's records as necessary for the board to perform its functions relating to covered claims and copies of those records on the board's request and at the association board's expense.

C.S.H.B. 1614 authorizes the association to 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 bill requires the advanced money to be repaid to the guaranty fee account as soon as is practicable with money from guaranty fees or the estate of the impaired agent. The bill establishes that no interest may accrue on the advanced money.

C.S.H.B. 1614 includes expenses related to processing and payment of claims among those for which the association is required to promptly estimate the amount of additional money needed to supplement the assets of the impaired title insurance company.

C.S.H.B. 1614 authorizes assessments and supplemental assessments to be made in consecutive years until the association has collected an amount sufficient to pay the association's obligations and the expenses of handling covered claims subsequent to an impairment and other expenses authorized by the act. The bill authorizes the association to make a supplemental assessment only against the same title insurance companies and in the same proportion for each company as the initial assessment.

C.S.H.B. 1614 revises provisions establishing the notice and payment deadlines associated with an assessment by:

- removing the requirement for the association to notify a title insurance company not later than the 30th day before the date an assessment is due;
- removing the requirement for the company to pay the association the amount of the assessment by the 30th day after the date an assessment is made; and
- requiring the association to instead give each company to be assessed at least 90 days' written notice of the due date of an assessment.

C.S.H.B. 1614 requires money received from any source by the association in relation to a title insurance company receivership that is in excess of the amount title insurance companies have recovered or are entitled to recover to be held by the association in its title account to offset the amounts required for future assessments or administrative expenses of the association. The bill, for purposes of the specification that the entitlement of a company to recover in its rates amounts paid in assessments capped at one percent of the company's net direct written premiums is applicable to rates for the succeeding calendar year, specifies that the entitlement is applicable instead to rates for the succeeding 12 months.

C.S.H.B. 1614 revises the conditions under which certain unpaid claims are considered covered claims by:

- clarifying that an unpaid general claim is considered a covered claim if 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;
- establishing that an unpaid claim against trust funds or an escrow account is considered a covered claim if the claim is 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 trust funds or an escrow account; and
- specifying that, for an unpaid claim considered to be a covered claim because the claim is unpaid due to a shortage of those funds or a shortage in that account, such shortage includes 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.

C.S.H.B. 1614 includes enhanced damages, sought as a recovery against the insured, the

impaired title insurance company or agent, or the association, that arise under a law of another state that is similar to certain specified Texas laws as determining factors in establishing that a claim is not a covered claim. The bill specifies that consideration of a claim as uncovered because the claimant caused or substantially contributed to the claimant's loss by the claimant's action or omission for purposes of certain unpaid claims is a consideration that is determined by the association or the association's agent.

C.S.H.B. 1614 raises the cap on a general covered claim and on a covered claim in connection with fidelity of an agent from the lesser of \$250,000 for each claimant or \$250,000 for each policy to the lesser of \$500,000 for each claimant or \$500,000 for each policy and raises the cap on the cumulative amount of covered claims arising from a single transaction from \$250,000 to \$500,000. The bill raises the cap on a covered claim against trust funds or an escrow account as follows: from the lesser of \$250,000 for each claimant or the amount of money actually 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 to the lesser of \$500,000 for each claimant or that amount of money actually received by the company or agent.

C.S.H.B. 1614 establishes that a claimant's right of appeal with respect to a claim determination by the association is governed by the association's plan of operation and requires a claimant to 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.

C.S.H.B. 1614, with respect to the payment of covered claims:

- clarifies that the association is required to pay covered claims arising on or before the claim deadline for claims against the impaired title insurance company;
- specifies that the claim deadline for covered claims against an impaired agent is the first anniversary of the date of determination of impairment;
- establishes that the claim deadline for an impaired title insurance company that is in receivership proceedings outside Texas is the first anniversary of the date of the determination of impairment;
- establishes that the association is discharged from the association's obligations under the act on payment of the last timely filed covered claim; and
- establishes that such a discharge does not discharge the association of obligations related to pending litigation.

C.S.H.B. 1614 clarifies that the association may employ or retain a person or persons to direct the association, at the association's expense and on behalf of an impaired agent, to close real estate transactions, disburse escrow funds, record documents, and issue final title insurance policies.

C.S.H.B. 1614 revises the provision requiring the association to retain certain persons for association functions on the request of the commissioner by:

- requiring that the commissioner instead approve the association's reimbursement of the Texas Department of Insurance out of the guaranty fee account for the cost, including reasonable and necessary expenses, to employ or retain certain persons;
- including the employment or retention of one or more persons to supervise a person employed or retained to perform the audit and review of agent escrow and trust accounts; and
- requiring an employed or retained person to report the person's activity and expenses to the association on the request of the association.

C.S.H.B. 1614 repeals Section 2602.103(d), Insurance Code.

EFFECTIVE DATE

September 1, 2019.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1614 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute does not include the following:

- an authorization for the association to pay administrative expenses from consolidated escrow accounts to facilitate processing and payment of claims;
- a requirement for money spent by or due to the association as a result of payments or advances to be given Class 1 priority in distribution of an impaired company's or impaired agent's assets;
- an authorization for the board of directors of the association to subpoena the officers, directors, members, managers, employees, or partners of an impaired agent;
- an authorization for the court in which the receivership proceedings are pending to extend a court-imposed cancellation date or deadline for a period not to exceed one year; and
- a provision closing the estate of the impaired insurer or agent on payment of the last timely filed covered claim.

The substitute does not include a requirement for the commissioner to set a claim deadline for an impaired title insurance company or impaired agent not in receivership in Texas but includes a provision setting an explicit claim deadline for an impaired title insurance company in receivership proceedings outside Texas.

The substitute includes the following:

- an authorization for the association to maintain a separate accounting for each transferred escrow account and to 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;
- a revision to the association's plan of operation and the effective date of any amendment to the plan of operation;
- an authorization for the association to file a claim in a receivership proceeding against an impaired title insurance company or impaired agent to recover the association's reasonable costs;
- a provision restricting a supplemental assessment made in consecutive years to the same title insurance companies and in the same proportion for each company as the initial assessment;
- a provision including as a covered claim an unpaid claim for money received by an authorized agent of an impaired title insurance company's agent for deposit into a trust fund or an escrow account; and
- a provision establishing that the association is not discharged from obligations related to pending litigation on payment of the last timely filed covered claim.