

By: Hartnett

H.B. No. 1852

A BILL TO BE ENTITLED

AN ACT

relating to the maintenance of certain interest-bearing accounts by escrow officers and the use of the interest on those accounts.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 2652.005, Insurance Code, is amended to read as follows:

Sec. 2652.005. ESCROW ACCOUNT AUDIT. Each escrow account used by a licensed escrow officer for closing a transaction, including an account established under Section 2652.021, is subject to the audit requirements of Subchapter D, Chapter 2651.

SECTION 2. Chapter 2652, Insurance Code, is amended by adding Subchapter A-1 to read as follows:

SUBCHAPTER A-1. MAINTENANCE OF CERTAIN ACCOUNTS

Sec. 2652.021. INTEREST-BEARING ACCOUNT FOR CERTAIN FUNDS; OTHER ACCOUNTS AND INVESTMENTS AUTHORIZED. (a) An escrow officer shall establish and maintain at a financial institution an interest-bearing demand account that is functionally equivalent to an account commonly known as an Interest on Lawyers Trust Account (IOLTA) as described by 12 C.F.R. Section 370.2(h)(3)(i) for the deposit of funds that are nominal in amount or that the escrow officer reasonably anticipates will be held for a short period of time.

(b) An account established or maintained under Subsection (a) may be a single, unsegregated account.

1       (c) This section does not prohibit an escrow officer from  
2 establishing at the request of a purchaser and seller other  
3 interest-bearing accounts or other investments for a specific  
4 transaction authorized by this title for the deposit of funds that  
5 are not required to be deposited under this subchapter.

6       Sec. 2652.022. INTEREST ON ACCOUNT. (a) An escrow officer  
7 establishing an interest-bearing account under Section 2652.021  
8 shall attempt in good faith to obtain a rate of interest payable on  
9 the account that is not less than the rate a financial institution  
10 pays to other depositors with accounts of a similar size and  
11 duration.

12       (b) If a financial institution offers the escrow officer an  
13 account with a higher interest rate or dividend on a deposit meeting  
14 certain time or minimum amount requirements, the escrow officer may  
15 establish that account if the right to withdraw or transfer the  
16 principal is not materially impaired other than by the statutory  
17 notification requirements generally applicable to that type of  
18 account.

19       Sec. 2652.023. REMITTANCE OF INTEREST ON ACCOUNT; REPORTS.  
20 An escrow officer establishing an interest-bearing account under  
21 Section 2652.021 shall direct the financial institution to:

22           (1) remit, at least quarterly, interest earned on the  
23 average daily balance in the account, less a reasonable service  
24 charge, to the administrative entity designated by the Texas  
25 Supreme Court;

26           (2) transmit, with the remittance described by  
27 Subdivision (1), a statement of the name and mailing address of the

1 escrow officer maintaining the account, the rate or rates of  
2 interest applied to the account, and the amount of service charge  
3 deducted for the period for which the statement is made; and

4 (3) transmit to the depositing escrow officer and the  
5 department, at the same interval under which a remittance is made  
6 under Subdivision (1), a report showing:

7 (A) the amount of the remittance under  
8 Subdivision (1);

9 (B) the rate or rates of interest applied to the  
10 account;

11 (C) the amount of service charge deducted for the  
12 period for which the report is made; and

13 (D) the average daily balance for each month of  
14 that period.

15 Sec. 2652.024. CONSTRUCTION WITH OTHER LAW; OFFICER  
16 LIABILITY. (a) Nothing in this subchapter affects an escrow  
17 officer's obligations concerning funds other than funds required to  
18 be deposited in an interest-bearing account under Section 2652.021.

19 (b) An escrow officer is not liable for a good faith  
20 determination of which funds must be deposited under Section  
21 2652.021, if the determination is made in accordance with this  
22 subchapter and any applicable commissioner rules.

23 Sec. 2652.025. RULES. The commissioner shall adopt rules to  
24 ensure compliance with this subchapter, including rules that, for  
25 the purposes of this subchapter:

26 (1) define "nominal" and "short duration";

27 (2) prescribe the requirements that a financial

1 institution must meet before an escrow officer may establish an  
2 account under Section 2652.021 at the institution; and

3 (3) designate procedures for the collection and  
4 transmittal of interest funds to the administrative entity  
5 designated by the Texas Supreme Court.

6 SECTION 3. Section 2651.152(a), Insurance Code, is amended  
7 to read as follows:

8 (a) Each title insurance company shall have an annual audit  
9 made of trust fund accounts, including accounts established under  
10 Section 2652.021, for each county in which it operates in its own  
11 name. The company shall pay for the audit.

12 SECTION 4. The commissioner of insurance shall adopt rules  
13 required by Section 2652.025, Insurance Code, as added by this Act,  
14 not later than the 90th day after the effective date of this Act.

15 SECTION 5. The change in law made by this Act applies only  
16 to funds deposited with an escrow officer on or after the effective  
17 date of the rules adopted under Section 2652.025, Insurance Code,  
18 as added by this Act. Funds deposited with an escrow officer before  
19 the effective date of the rules adopted under Section 2652.025,  
20 Insurance Code, as added by this Act, are covered by the law in  
21 effect on the date the funds are deposited, and the former law is  
22 continued in effect for that purpose.

23 SECTION 6. This Act takes effect immediately if it receives  
24 a vote of two-thirds of all the members elected to each house, as  
25 provided by Section 39, Article III, Texas Constitution. If this  
26 Act does not receive the vote necessary for immediate effect, this  
27 Act takes effect September 1, 2009.