

AN ACT

relating to title insurance agents and title insurance companies.

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

SECTION 1. Section 2501.004(b), Insurance Code, is amended to read as follows:

(b) To provide for the safety and protection of policyholders, the department shall require that an abstract plant ~~be~~:

(1) be geographically arranged;

(2) cover a period beginning not later than January 1, 1979, and be kept current; and

(3) be adequate for use in insuring titles, as determined by the department.

SECTION 2. Section 2602.002(a), Insurance Code, is amended to read as follows:

(a) This chapter is for:

(1) the purposes and findings stated in Sections 441.001, 441.003, 441.005, and 441.006; ~~and~~

(2) the protection of holders of covered claims; and

(3) the protection of consumers served by impaired agents.

SECTION 3. Sections 2602.003(5) and (6), Insurance Code, are amended to read as follows:

(5) "Impaired agent" means a title ~~an~~ agent or

1 direct operation that is[+]

2 [~~(A)~~ placed in:

3 [~~(i)~~ temporary or permanent receivership  
4 ~~under a court order based on a finding of insolvency, or~~

5 [~~(ii)~~ conservatorship ~~after~~ the  
6 ~~commissioner determines that the agent is insolvent, and~~

7 [~~(B)~~] designated by the commissioner as an  
8 impaired agent and is:

9 (A) placed by a court in this state or another  
10 state under an order of supervision, conservatorship,  
11 rehabilitation, or liquidation;

12 (B) placed under an order of supervision or  
13 conservatorship under Chapter 441;

14 (C) placed under an order of rehabilitation or  
15 liquidation under Chapter 443; or

16 (D) otherwise found by a court of competent  
17 jurisdiction to be insolvent or otherwise unable to pay obligations  
18 as they come due.

19 (6) "Impaired title insurance company" means a title  
20 insurance company that is[+]

21 [~~(A)~~ placed in:

22 [~~(i)~~ temporary or permanent receivership  
23 ~~under a court order based on a finding of insolvency, or~~

24 [~~(ii)~~ conservatorship ~~after~~ the  
25 ~~commissioner determines that the company is insolvent, and~~

26 [~~(B)~~] designated by the commissioner as an  
27 impaired title insurance company and is:

1           (A) placed by a court in this state or another  
2 state under an order of supervision, conservatorship,  
3 rehabilitation, or liquidation;

4           (B) placed under an order of supervision or  
5 conservatorship under Chapter 441;

6           (C) placed under an order of rehabilitation or  
7 liquidation under Chapter 443; or

8           (D) otherwise found by a court of competent  
9 jurisdiction to be insolvent or otherwise unable to pay obligations  
10 as they come due.

11           SECTION 4. Section 2602.011(a), Insurance Code, is amended  
12 to read as follows:

13           (a) The commissioner shall notify the association of the  
14 existence of an impaired title insurance company or impaired agent  
15 not later than the third day after the date on which the  
16 commissioner gives notice of the designation of impairment to the  
17 impaired agent or impaired title insurance company. The  
18 association is entitled to a copy of any complaint seeking an order  
19 of receivership with a finding of insolvency against a title  
20 insurance company at the time the complaint is filed with a court.

21           SECTION 5. Section 2602.107, Insurance Code, is amended by  
22 adding Subsection (d) to read as follows:

23           (d) The association shall pay from the guaranty fee account  
24 fees and reasonable and necessary expenses that the department  
25 incurs in an examination or audit of a title agent or direct  
26 operation under this chapter and Chapter 2651.

27           SECTION 6. Section 2602.110, Insurance Code, is amended to

1 read as follows:

2           Sec. 2602.110. EXPENSES OF ADMINISTERING IMPAIRED INSURER  
3 OR IMPAIRED AGENT [~~RECEIVERSHIP OR CONSERVATORSHIP~~]. The  
4 association may advance money necessary to pay the expenses of  
5 administering the supervision, rehabilitation, receivership, [or]  
6 conservatorship, or, as determined by a court of competent  
7 jurisdiction, other insolvency [estate] of an impaired title  
8 insurance company or impaired agent, on terms the association  
9 negotiates, if the company's or agent's assets are insufficient to  
10 pay those expenses.

11           SECTION 7. Section 2602.152, Insurance Code, is amended to  
12 read as follows:

13           Sec. 2602.152. AMOUNT OF FEE. Annually or more frequently,  
14 the board shall determine the amount of the guaranty fee[~~, not to~~  
15 ~~exceed \$5~~], considering the amount of money to be maintained in the  
16 guaranty fee account that is reasonably necessary for efficient  
17 future operation under this chapter.

18           SECTION 8. Sections 2602.153(b) and (d), Insurance Code,  
19 are amended to read as follows:

20           (b) The following [~~covered~~] claims shall be paid from  
21 guaranty fees only and may not be paid from assessments:

22                   (1) covered claims against trust funds or an escrow  
23 account of an impaired agent under Section 2602.252; [~~and~~]

24                   (2) expenses incurred in complying with Subchapter J;

25                   (3) conservator and receiver expenses under Section  
26 2602.254; and

27                   (4) administrative expenses with respect to the estate

1 of an impaired agent under Section 2602.110.

2 (d) Guaranty fees may be used only for payment of:

3 (1) ~~[covered]~~ claims described by Subsection (b) ~~[or~~  
4 ~~(c)]~~; and

5 (2) expenses related to:

6 (A) an audit or an examination conducted by the  
7 department or the association under this chapter;

8 (B) the supervision and coordination of such an  
9 audit or examination; and

10 (C) an action under Section 2602.452 ~~[and review~~  
11 ~~expenses under Section 2602.103(b)]~~.

12 SECTION 9. Sections 2602.401(a) and (b), Insurance Code,  
13 are amended to read as follows:

14 (a) If an assessment has been made under this chapter for an  
15 impaired title insurance company or association funds have been  
16 provided for the company, the company, on release from the  
17 supervision, rehabilitation, conservatorship, [or] receivership,  
18 or other proceeding in which the company was found by a court of  
19 competent jurisdiction to be insolvent or otherwise unable to pay  
20 obligations as they come due, may not issue a new or renewal  
21 insurance policy until the company:

22 (1) has repaid pro rata in full to each holder of a  
23 participation receipt the assessment amount paid by the receipt  
24 holder or its assignee; and

25 (2) has repaid in full the amount of guaranty fees paid  
26 by the association.

27 (b) If an assessment has been made under this chapter for an

1 impaired agent or guaranty fees have been provided for the impaired  
2 agent, the agent, on release from the supervision, conservatorship,  
3 rehabilitation, [or] receivership, or other proceeding in which the  
4 agent was found by a court of competent jurisdiction to be insolvent  
5 or otherwise unable to pay obligations as they come due, subject to  
6 dischargeability, may not act as an agent [~~issue a new or renewal~~  
7 ~~insurance policy~~] until the agent has repaid in full the amount of  
8 guaranty fees paid by the association.

9 SECTION 10. Chapter 2602, Insurance Code, is amended by  
10 adding Subchapter J to read as follows:

11 SUBCHAPTER J. ADDITIONAL DUTIES OF ASSOCIATION

12 Sec. 2602.451. APPLICABILITY. This subchapter applies, at  
13 the commissioner's discretion and regardless of whether there are  
14 covered claims against an agent, to any agent that is designated by  
15 the commissioner as an impaired agent.

16 Sec. 2602.452. ACTIONS FOR CERTAIN AGENTS. (a) The  
17 commissioner may direct the association, at the association's  
18 expense and on behalf of an impaired agent, to:

- 19 (1) close real estate transactions;  
20 (2) disburse escrow funds;  
21 (3) record documents; and  
22 (4) issue final title insurance policies.

23 (b) The association may employ or retain a person in  
24 accordance with Section 2602.103(a).

25 Sec. 2602.453. AUTHORITY OF ASSOCIATION; COOPERATION OF  
26 OFFICERS, OWNERS, AND EMPLOYEES. (a) On the direction of the  
27 commissioner under Section 2602.452, the association may implement

1 any direction made by the commissioner and may access all books,  
2 records, accounts, networks, and electronic document storage and  
3 management systems as necessary to implement the commissioner's  
4 direction.

5 (b) Any present or former officer, manager, director,  
6 trustee, owner, employee, or agent of the agent, or any other person  
7 with authority over or in charge of any segment of the agent's  
8 affairs, shall cooperate with the association. For purposes of  
9 this subsection:

10 (1) "Person" includes a person who exercised or  
11 exercises control directly or indirectly over activities of the  
12 agent through a holding company or other affiliate of the agent.

13 (2) "Cooperate" means:

14 (A) replying promptly in writing to any request  
15 for information from the association within the period established  
16 in the request; and

17 (B) making available to the association any  
18 books, accounts, documents, or other records or information of, or  
19 relating to, the agent within the period set in the request.

20 (c) A person who fails to cooperate as required under  
21 Subsection (b) is subject to sanctions under Chapter 82, in  
22 addition to all other sanctions available under law.

23 SECTION 11. Section 2651.002, Insurance Code, is amended by  
24 amending Subsection (c) and adding Subsection (d) to read as  
25 follows:

26 (c) The completed application must state that:

27 (1) the proposed agent is:

1 (A) an individual who is a bona fide resident of  
2 this state;

3 (B) an association or firm composed only of Texas  
4 residents; or

5 (C) a Texas corporation or a foreign corporation  
6 authorized to engage in business in this state;

7 (2) the proposed agent has unencumbered assets in  
8 excess of liabilities, exclusive of the value of abstract plants,  
9 as required by Section 2651.012;

10 (3) [~~2~~] the proposed agent, including a  
11 corporation's managerial personnel, if applicable, has reasonable  
12 experience or instruction in the field of title insurance;

13 (4) [~~3~~] the title insurance company:

14 (A) knows that the proposed agent has a good  
15 business reputation and is worthy of the public trust; and

16 (B) is unaware of any fact or condition that  
17 disqualifies the proposed agent from receiving a license; and

18 (5) [~~4~~] the proposed agent qualifies as a title  
19 insurance agent under this chapter.

20 (d) Except as provided by Section 2651.0021(e), an agent  
21 applying for an initial license under this subchapter must provide  
22 evidence that the agent and its management personnel have  
23 successfully completed a professional training program that  
24 complies with Section 2651.0021. The program must have been  
25 completed within one year preceding the date of application.

26 SECTION 12. Subchapter A, Chapter 2651, Insurance Code, is  
27 amended by adding Section 2651.0021 to read as follows:



1       Sec. 2651.0021. PROFESSIONAL TRAINING PROGRAM. (a) The  
2 commissioner shall adopt by rule a professional training program  
3 for a title insurance agent and the management personnel of the  
4 title insurance agent.

5       (b) The professional training program must be designed to  
6 provide information regarding:

7           (1) the basic principles and coverages related to  
8 title insurance;

9           (2) recent and prospective changes in those principles  
10 and coverages;

11           (3) applicable rules and laws;

12           (4) proper conduct of the license holder's title  
13 insurance business;

14           (5) accounting principles and practices and financial  
15 responsibilities and practices relevant to title insurance; and

16           (6) the duties and responsibilities of a title  
17 insurance agent.

18       (c) Professional training program hours may be used to  
19 satisfy the continuing education requirements established under  
20 Section 2651.204.

21       (d) A professional training program course must be offered  
22 by:

23           (1) a statewide title insurance association,  
24 statewide title agents' association or professional association,  
25 or local chapter of a statewide title insurance or title agents'  
26 association or professional association;

27           (2) an accredited college or university;

1           (3) a career school or college as defined by Section  
2 132.001, Education Code;

3           (4) the State Bar of Texas;

4           (5) an educational publisher;

5           (6) a title insurance company authorized to engage in  
6 business in this state;

7           (7) a company that owns one or more title insurance  
8 companies authorized to engage in business in this state;

9           (8) a public school system in this state; or

10           (9) an individual accredited as an instructor by an  
11 entity described by Subdivisions (1)-(8).

12           (e) An individual is exempt from the professional training  
13 requirement of this section if the individual has held in this state  
14 for at least five years a position as management personnel with a  
15 title insurance agent, or a comparable position, as determined  
16 under rules adopted by the commissioner.

17           SECTION 13. Section 2651.011, Insurance Code, is amended to  
18 read as follows:

19           Sec. 2651.011. PRIVILEGED       COMMUNICATIONS;       FINANCIAL  
20 INFORMATION. (a) Any information, including a document, record,  
21 or statement, and including information provided to or received  
22 from the commissioner under Subsection (b) or (c), or any other  
23 information required or permitted to be made or disclosed to or by  
24 the department under this subchapter, other than Section 2651.001,  
25 is not public information subject to Chapter 552, Government Code,  
26 except to the extent described by Subsection (b), and is a  
27 privileged communication and may not be disclosed to the public

1 except as evidence in an administrative hearing or proceeding.  
2 This subsection does not apply to a document, record, or statement  
3 required to be made or disclosed to the department under Chapter  
4 36[+

5 ~~[(1) a privileged communication, and~~  
6 ~~[(2) not admissible in evidence in a court action or~~  
7 ~~proceeding except under a subpoena issued by a court of record].~~

8 (b) A title insurance company may provide information to the  
9 commissioner about a financial matter that would reasonably call  
10 into question the solvency of a title agent that the title insurance  
11 company appointed. Each title insurance company shall provide  
12 annually to the department a list of officers authorized to provide  
13 to the department the information under this subsection.  
14 Information provided under this subsection is not subject to  
15 Chapter 552, Government Code, except that the commissioner may  
16 release information that the commissioner received under this  
17 subsection to a title insurance company that has appointed, or that  
18 is considering appointing, the title agent. The commissioner may  
19 also release information that the commissioner received under this  
20 subsection to a title agent under Section 2651.206, Insurance Code,  
21 if the information is evidence on which an audit report or  
22 examination report relies. A title insurance company that receives  
23 information under this subsection may not release the information  
24 except under a subpoena issued by a court of competent  
25 jurisdiction.

26 (c) Each title insurance agent shall provide the  
27 department, on a quarterly basis, with a copy of the agent's

1 quarterly withholding tax report furnished by the agent to the  
2 United States Internal Revenue Service. The title insurance agent  
3 must also provide to the department proof of the payment of the tax.  
4 An agent that does not have employees shall certify to the  
5 department on a quarterly basis that there has not been a material  
6 change in the agent's financial condition.

7 (d) The commissioner by rule may prescribe the types of  
8 information under Subsections (b) and (c) that are privileged under  
9 Subsection (a).

10 SECTION 14. Subchapter A, Chapter 2651, Insurance Code, is  
11 amended by adding Sections 2651.012 and 2651.013 to read as  
12 follows:

13 Sec. 2651.012. UNENCUMBERED ASSETS. (a) In this section:

14 (1) "Principal office" means a principal office of the  
15 business organization, unincorporated association, sole  
16 proprietorship, or partnership in this state in which the decision  
17 makers for the organization conduct the daily affairs of the  
18 organization. The presence of an agency or representative does not  
19 establish a principal office.

20 (2) "Unencumbered assets" means:

21 (A) cash or cash equivalents;

22 (B) liquid assets that have a readily  
23 determinable market value and that do not have any lien against  
24 them;

25 (C) real estate, in excess of any encumbrances;

26 (D) investments, such as mutual funds,  
27 certificates of deposit, and stocks and bonds;

1           (E) a surety bond, the form and content of which  
2 shall be prescribed by the commissioner in accordance with this  
3 code;

4           (F) a deposit made in accordance with Section  
5 2651.102; and

6           (G) a letter of credit that meets the  
7 requirements of Section 493.104(b)(2)(C).

8           (b) The unencumbered assets required under this section are  
9 reserves for contingencies. The reserves must be deducted from  
10 premiums for purposes of proceedings conducted under Subchapter D,  
11 Chapter 2703. The reserves may only be spent or released:

12           (1) as permitted by the commissioner if the agent is  
13 declared impaired;

14           (2) if the agent merges or consolidates with another  
15 agent who maintains the amount of unencumbered assets that would be  
16 required for the survivor of the merger or consolidation;

17           (3) if the agent surrenders the agent's license under  
18 Section 2651.201 and the rules adopted under that section; or

19           (4) if the agent is liquidated.

20           (c) Except as provided by Subsection (d), an agent must  
21 maintain unencumbered assets with a market value in excess of  
22 liabilities, exclusive of the value of abstract plants, in the  
23 following amounts unless the commissioner establishes lesser  
24 amounts by rule:

25           (1) if the agent maintains its principal office in a  
26 county with a population of 10,000 or more but less than 50,000:  
27 \$25,000;

1           (2) if the agent maintains its principal office in a  
2 county with a population of 50,000 or more but less than 200,000:  
3 \$50,000;

4           (3) if the agent maintains its principal office in a  
5 county with a population of 200,000 or more but less than one  
6 million: \$100,000; and

7           (4) if the agent maintains its principal office in a  
8 county with a population of one million or more: \$150,000.

9           (d) Except as provided by the commissioner by rule, an agent  
10 that maintains its principal office in a county with a population of  
11 less than 10,000 is exempt from this section.

12           (e) An agent that maintains a principal office in more than  
13 one county must meet the asset standards for the largest county for  
14 which the agent will hold a license.

15           (f) An agent may elect to:

16                 (1) maintain unencumbered assets as required by this  
17 section; or

18                 (2) place a deposit with the department as authorized  
19 by Section 2652.102.

20           (g) An agent that holds a license on September 1, 2009, and  
21 that has held the license for at least three years as of that date is  
22 not required to comply with Subsection (c) on September 1, 2009, but  
23 shall increase the unencumbered assets held by the agent, or make  
24 and increase the required deposit, until the agent is in compliance  
25 with the required capitalization amounts in accordance with the  
26 schedule established under this subsection. The agent must hold  
27 unencumbered assets, or make a deposit in an amount, such that:

1           (1) if the agent has been licensed at least three years  
2 but less than four years:

3           (A) the agent has at least 33 percent of the  
4 required capitalization amount on September 1, 2010;

5           (B) the agent has at least 66 percent of the  
6 required capitalization amount on September 1, 2011; and

7           (C) the agent has at least 100 percent of the  
8 required capitalization amount on September 1, 2012;

9           (2) if the agent has been licensed at least four years  
10 but less than five years:

11           (A) the agent has at least 25 percent of the  
12 required capitalization amount on September 1, 2010;

13           (B) the agent has at least 50 percent of the  
14 required capitalization amount on September 1, 2011;

15           (C) the agent has at least 75 percent of the  
16 required capitalization amount on September 1, 2012; and

17           (D) the agent has at least 100 percent of the  
18 required capitalization amount on September 1, 2013;

19           (3) if the agent has been licensed at least five years  
20 but less than six years:

21           (A) the agent has at least 20 percent of the  
22 required capitalization amount on September 1, 2010;

23           (B) the agent has at least 40 percent of the  
24 required capitalization amount on September 1, 2011;

25           (C) the agent has at least 60 percent of the  
26 required capitalization amount on September 1, 2012;

27           (D) the agent has at least 80 percent of the

1 required capitalization amount on September 1, 2013; and

2 (E) the agent has at least 100 percent of the  
3 required capitalization amount on September 1, 2014;

4 (4) if the agent has been licensed at least six years  
5 but less than seven years:

6 (A) the agent has at least 16.66 percent of the  
7 required capitalization amount on September 1, 2010;

8 (B) the agent has at least 33.32 percent of the  
9 required capitalization amount on September 1, 2011;

10 (C) the agent has at least 49.98 percent of the  
11 required capitalization amount on September 1, 2012;

12 (D) the agent has at least 66.64 percent of the  
13 required capitalization amount on September 1, 2013;

14 (E) the agent has at least 83.3 percent of the  
15 required capitalization amount on September 1, 2014; and

16 (F) the agent has at least 100 percent of the  
17 required capitalization amount on September 1, 2015;

18 (5) if the agent has been licensed at least seven years  
19 but less than eight years:

20 (A) the agent has at least 14.29 percent of the  
21 required capitalization amount on September 1, 2010;

22 (B) the agent has at least 28.58 percent of the  
23 required capitalization amount on September 1, 2011;

24 (C) the agent has at least 42.87 percent of the  
25 required capitalization amount on September 1, 2012;

26 (D) the agent has at least 57.16 percent of the  
27 required capitalization amount on September 1, 2013;



1           (E) the agent has at least 71.45 percent of the  
2 required capitalization amount on September 1, 2014;

3           (F) the agent has at least 85.74 percent of the  
4 required capitalization amount on September 1, 2015; and

5           (G) the agent has at least 100 percent of the  
6 required capitalization amount on September 1, 2016;

7           (6) if the agent has been licensed at least eight years  
8 but less than nine years:

9           (A) the agent has at least 12.5 percent of the  
10 required capitalization amount on September 1, 2010;

11           (B) the agent has at least 25 percent of the  
12 required capitalization amount on September 1, 2011;

13           (C) the agent has at least 37.5 percent of the  
14 required capitalization amount on September 1, 2012;

15           (D) the agent has at least 50 percent of the  
16 required capitalization amount on September 1, 2013;

17           (E) the agent has at least 62.5 percent of the  
18 required capitalization amount on September 1, 2014;

19           (F) the agent has at least 75 percent of the  
20 required capitalization amount on September 1, 2015;

21           (G) the agent has at least 87.5 percent of the  
22 required capitalization amount on September 1, 2016; and

23           (H) the agent has at least 100 percent of the  
24 required capitalization amount on September 1, 2017; and

25           (7) if the agent has been licensed at least nine years:

26           (A) the agent has at least 11.11 percent of the  
27 required capitalization amount on September 1, 2010;

1           (B) the agent has at least 22.22 percent of the  
2 required capitalization amount on September 1, 2011;

3           (C) the agent has at least 33.33 percent of the  
4 required capitalization amount on September 1, 2012;

5           (D) the agent has at least 44.44 percent of the  
6 required capitalization amount on September 1, 2013;

7           (E) the agent has at least 55.55 percent of the  
8 required capitalization amount on September 1, 2014;

9           (F) the agent has at least 66.66 percent of the  
10 required capitalization amount on September 1, 2015;

11           (G) the agent has at least 77.77 percent of the  
12 required capitalization amount on September 1, 2016;

13           (H) the agent has at least 88.88 percent of the  
14 required capitalization amount on September 1, 2017; and

15           (I) the agent has at least 100 percent of the  
16 required capitalization amount on September 1, 2018.

17           (h) If the agent has been licensed less than three years as  
18 of September 1, 2009, the agent must have:

19                   (1) at least 50 percent of the required capitalization  
20 amount required under Subsection (c) on September 1, 2010; and

21                   (2) 100 percent of that required capitalization amount  
22 on September 1, 2011.

23           (i) This subsection and Subsection (g) expire September 2,  
24 2018.

25           (j) Notwithstanding any other provision of this section,  
26 this section takes effect only after the commissioner adopts the  
27 form, content, and procedures for use of the surety bond authorized

1 under Subsection (a). The commissioner by rule shall establish the  
2 procedures for making, filing, using, and paying for the surety  
3 bond. Notwithstanding Subsections (g) and (h), the commissioner by  
4 rule may extend the dates established under those subsections as  
5 necessary to comply with this subsection.

6 Sec. 2651.013. DIVISION OF PREMIUM HELD IN TRUST; RULES.

7 (a) The funds held by a title insurance agent that are owed to a  
8 title insurance company, another title insurance agent, or a direct  
9 operation arising from a division of premium, whether as determined  
10 under rules adopted by the commissioner or by agreement among the  
11 parties, are considered to be held in trust for the title insurance  
12 company, other title insurance agent, or direct operation.

13 (b) This section does not require, and the commissioner may  
14 not require by rule, that funds described by Subsection (a) be held  
15 in a separate account subject to an external audit. This section  
16 does not affect the department's or association's authority to  
17 examine or audit a title agent or direct operation.

18 SECTION 15. Subchapter D, Chapter 2651, Insurance Code, is  
19 amended by adding Section 2651.158 to read as follows:

20 Sec. 2651.158. CERTIFICATION OF UNENCUMBERED ASSETS. (a)  
21 Unless the agent has elected to make a deposit with the department  
22 under Section 2651.012(f), the annual audit of escrow accounts must  
23 be accompanied by a certification by a certified public accountant  
24 that the title insurance agent has the appropriate unencumbered  
25 assets in excess of liabilities, exclusive of the value of its  
26 abstract plants, as required by Section 2651.012.

27 (b) The commissioner by rule shall establish:

1           (1) a procedure to be used to determine the value of  
2 categories of assets; and

3           (2) the method by which the certification required by  
4 this section must be made which shall not include an audit of  
5 operating accounts.

6           SECTION 16. Subchapter E, Chapter 2651, Insurance Code, is  
7 amended by adding Sections 2651.205 and 2651.206 to read as  
8 follows:

9           Sec. 2651.205. TITLE AGENT RECORDS. (a) A landlord or  
10 storage facility, including electronic storage, that accepts  
11 possession of an agent's guaranty file or other records takes  
12 possession subject to:

13           (1) the right of access of the title insurance company  
14 involved in the transaction that the file documents, during  
15 customary business hours, for the purpose of copying the guaranty  
16 file; and

17           (2) the obligation to maintain the confidentiality of  
18 nonpublic information in the title insurance agent's records  
19 according to state and federal laws that govern the title insurance  
20 agent.

21           (b) If the title insurance agent has been designated  
22 impaired, the Texas Title Insurance Guaranty Association has the  
23 right to access the guaranty files and other records of the title  
24 insurance agent, including electronic records, for 60 days from the  
25 date of impairment, during customary business hours, for purposes  
26 of copying those records.

27           (c) Except for the right of access granted under Subsections

1 (a) and (b), a lien created in favor of the landlord by contract or  
2 otherwise is not impaired.

3 (d) For purposes of this section, "title insurance agent"  
4 includes an agent owned wholly or partly by a title insurance  
5 company and includes a direct operation.

6 Sec. 2651.206. EXAMINATION REPORTS. (a) An audit, review,  
7 or examination conducted under this chapter or Chapter 2602 must be  
8 conducted in accordance with rules adopted by the commissioner.  
9 The rules must provide:

10 (1) that before a report from an examination, review,  
11 or audit becomes final, the department will furnish to the title  
12 agent or direct operation a copy of the report and any evidence on  
13 which the report relies;

14 (2) a reasonable period of not less than 10 days after  
15 the title agent or direct operation receives the report and  
16 evidence from the department for the title agent or direct  
17 operation to respond;

18 (3) an opportunity for an appeal under a process  
19 similar to the process under Title 28, Part 1, Chapter 7, Subchapter  
20 A, Texas Administrative Code; and

21 (4) procedures to ensure that the report and any  
22 evidence regarding the report remain confidential and are  
23 transmitted only to designated representatives of the title agent  
24 or direct operation.

25 (b) The commissioner shall furnish the title agent or direct  
26 operation with a draft of the report and a copy of any evidence not  
27 later than the 10th day before the scheduled date of a meeting

1 requested by the department regarding a report.

2 (c) This section does not require the department to turn  
3 over work papers. For purposes of this subsection, work papers are  
4 the records of an auditor or examiner of the procedures followed,  
5 the tests performed, the information obtained, and the conclusions  
6 reached that are pertinent to the audit or examination. Work papers  
7 include work programs, analyses, memoranda, letters of  
8 confirmation and representation, abstracts of company documents  
9 and schedules, and commentaries prepared or obtained by the auditor  
10 or examiner that support the opinions of the auditor or examiner.

11 SECTION 17. Section 2703.202, Insurance Code, is amended by  
12 adding Subsections (c), (d), (e), and (f) to read as follows:

13 (c) Except as provided by Subsection (d), a public hearing  
14 held under Subsection (a) or under Section 2703.206 shall be  
15 conducted by the commissioner as a rulemaking hearing under  
16 Subchapter B, Chapter 2001, Government Code.

17 (d) Notwithstanding Subsection (c), at the request of a  
18 title insurance company or the public insurance counsel, a public  
19 hearing held under Subsection (a) or under Section 2703.206 must be  
20 conducted by the commissioner as a contested case hearing under  
21 Subchapters C through H and Subchapter Z, Chapter 2001, Government  
22 Code.

23 (e) Information received or requested by the commissioner  
24 as part of an individual audit or examination under Chapters 2602  
25 and 2651 may not be used for rate setting under Subchapter D,  
26 Chapter 2703. Nothing in this section prohibits a party from  
27 conducting discovery in a ratemaking or other proceeding or

1 producing other information requested by the department, or  
2 verifying the data reported under a statistical plan or report  
3 promulgated by the commissioner.

4 (f) Subsections (c) through (e) apply only to a public  
5 hearing held on or after January 1, 2009.

6 SECTION 18. Section 2602.056 and Section 2602.153(c),  
7 Insurance Code, are repealed.

8 SECTION 19. An abstract plant that exists on September 1,  
9 2009, but that does not, on that date, cover a period beginning not  
10 later than January 1, 1979, as required by Section 2501.004,  
11 Insurance Code, as amended by this Act, is not required to comply  
12 with that section before January 1, 2014.

13 SECTION 20. Section 2651.158, Insurance Code, as added by  
14 this Act, applies beginning with annual audits conducted under  
15 Subchapter D, Chapter 2651, Insurance Code, for the 2011 calendar  
16 year.

17 SECTION 21. The commissioner of insurance shall hold a  
18 hearing not later than the 120th day after the effective date of  
19 this Act. Not later than the 90th day after the date of that  
20 hearing, the commissioner shall issue an order prescribing the  
21 rules to be used in connection with Section 2651.206, Insurance  
22 Code, as added by this Act.

23 SECTION 22. This Act takes effect September 1, 2009.

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President of the Senate

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Speaker of the House

I certify that H.B. No. 4338 was passed by the House on May 5, 2009, by the following vote: Yeas 144, Nays 0, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 4338 on May 29, 2009, by the following vote: Yeas 143, Nays 0, 1 present, not voting.

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Chief Clerk of the House

I certify that H.B. No. 4338 was passed by the Senate, with amendments, on May 25, 2009, by the following vote: Yeas 31, Nays 0.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

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Governor