

By: Smithee

H.B. No. 4338

Substitute the following for H.B. No. 4338:

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C.S.H.B. No. 4338

A BILL TO BE ENTITLED

1 AN ACT

2 relating to title insurance agents and title insurance companies.

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

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

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

9 (1) be geographically arranged;

10 (2) cover a period beginning not later than January 1,
11 1979, and be kept current; and

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

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

16 (a) This chapter is for:

17 (1) the purposes and findings stated in Sections
18 441.001, 441.003, 441.005, and 441.006; ~~[and]~~

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

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

21 SECTION 3. Section 2602.003(6), Insurance Code, is amended
22 to read as follows:

23 (6) "Impaired title insurance company" means a title
24 insurance company that is[+]

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

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

4 ~~[(ii) conservatorship after the~~
5 ~~commissioner determines that the company is insolvent; and~~

6 ~~[(B)]~~ designated by the commissioner as an
7 impaired title insurance company or is:

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

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

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

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

18 SECTION 4. Sections 2602.011(a) and (e), Insurance Code,
19 are amended to read as follows:

20 (a) The commissioner shall notify the association of the
21 existence of an impaired title insurance company not later than the
22 third day after the date on which the commissioner gives notice of
23 the designation of impairment or learns the title insurance company
24 is impaired as described by Sections 2602.003(6)(A)-(D). The
25 association is entitled to a copy of any complaint seeking an order
26 of receivership with a finding of insolvency against a title
27 insurance company at the time the complaint is filed with a court.

1 (e) The commissioner may require that the association
2 notify the insureds of the impaired title insurance company and any
3 other interested party that the company is impaired [~~of the~~
4 ~~designation of impairment~~] and of the person's rights under this
5 chapter. Notification by publication in a newspaper of general
6 circulation is sufficient notice under this section.

7 SECTION 5. Section 2602.110, Insurance Code, is amended to
8 read as follows:

9 Sec. 2602.110. EXPENSES OF ADMINISTERING IMPAIRED INSURER
10 [~~RECEIVERSHIP OR CONSERVATORSHIP~~]. The association may advance
11 money necessary to pay the expenses of administering the
12 supervision, rehabilitation, receivership, [~~or~~] conservatorship,
13 or, as determined by a court, other insolvency [~~estate~~] of an
14 impaired title insurance company or impaired agent, on terms the
15 association negotiates, if the company's or agent's assets are
16 insufficient to pay those expenses.

17 SECTION 6. Section 2602.152, Insurance Code, is amended to
18 read as follows:

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

24 SECTION 7. Sections 2602.153(b) and (d), Insurance Code,
25 are amended to read as follows:

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

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

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

4 (3) conservator and receiver expenses under Section
5 2602.254; and

6 (4) administrative expenses with respect to the estate
7 of an impaired agent under Section 2602.110.

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

9 (1) ~~covered~~ claims described by Subsection (b) ~~or~~
10 ~~(c)]~~; and

11 (2) expenses related to an audit or an examination
12 conducted by the department or the association ~~[and review expenses~~
13 ~~under Section 2602.103(b)]~~.

14 SECTION 8. Section 2602.251, Insurance Code, is amended to
15 read as follows:

16 Sec. 2602.251. COVERED CLAIMS IN GENERAL. An unpaid claim
17 is a covered claim if:

18 (1) the claim is made by an insured under a title
19 insurance policy to which this chapter applies;

20 (2) the claim arises out of the policy and is within
21 the coverage and applicable limits of the policy;

22 (3) the title insurance company that issued the policy
23 or assumed the policy under an assumption certificate is an
24 impaired title insurance company that has been placed in
25 receivership or conservatorship; and

26 (4) the insured real property or a lien on the property
27 is located in this state.

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

3 (a) If an assessment has been made under this chapter for an
4 impaired title insurance company or association funds have been
5 provided for the company, the company, on release from the
6 supervision, rehabilitation, conservatorship, [or] receivership,
7 or other proceeding in which the company was found by a court of
8 competent jurisdiction to be insolvent or otherwise unable to pay
9 obligations as they come due, may not issue a new or renewal
10 insurance policy until the company:

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

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

16 (b) If an assessment has been made under this chapter for an
17 [~~impaired~~] agent or guaranty fees have been provided for the agent,
18 the agent, on release from the supervision, conservatorship,
19 rehabilitation, [or] receivership, or other proceeding in which the
20 agent was found by a court of competent jurisdiction to be insolvent
21 or otherwise unable to pay obligations as they come due, subject to
22 dischargeability, may not act as an agent [~~issue a new or renewal~~
23 ~~insurance policy~~] until the agent has repaid in full the amount of
24 guaranty fees paid by the association.

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

27 SUBCHAPTER J. ADDITIONAL DUTIES OF ASSOCIATION

1 Sec. 2602.451. APPLICABILITY. This subchapter applies, at
2 the commissioner's discretion and regardless of whether there are
3 covered claims against an agent, to any agent that is designated by
4 the commissioner as an impaired agent or that is placed under an
5 order of supervision, conservatorship, rehabilitation, or
6 liquidation or is otherwise found by a court of competent
7 jurisdiction to be insolvent or otherwise unable to pay obligations
8 as they come due.

9 Sec. 2602.452. ACTIONS FOR CERTAIN AGENTS. At the
10 commissioner's discretion, the commissioner may require the
11 association, at the association's expense, to take on behalf of the
12 agent the following actions:

- 13 (1) close real estate transactions;
- 14 (2) disburse escrow funds;
- 15 (3) pay existing liens against real property;
- 16 (4) record documents; and
- 17 (5) issue final title insurance policies.

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

21 (c) The completed application must state that:

- 22 (1) the proposed agent is:
 - 23 (A) an individual who is a bona fide resident of
 - 24 this state;
 - 25 (B) an association or firm composed only of Texas
 - 26 residents; or
 - 27 (C) a Texas corporation or a foreign corporation

1 authorized to engage in business in this state;

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

5 (3) [~~2~~] the proposed agent, including a
6 corporation's managerial personnel, if applicable, has reasonable
7 experience or instruction in the field of title insurance;

8 (4) [~~3~~] the title insurance company:

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

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

13 (5) [~~4~~] the proposed agent qualifies as a title
14 insurance agent under this chapter.

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

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

23 Sec. 2651.0021. PROFESSIONAL TRAINING PROGRAM. (a) The
24 commissioner shall adopt by rule a professional training program
25 for a title insurance agent and the management personnel of the
26 title insurance agent.

27 (b) The professional training program must be designed to

1 provide information regarding:

2 (1) the basic principles and coverages related to
3 title insurance;

4 (2) recent and prospective changes in those principles
5 and coverages;

6 (3) applicable rules and laws;

7 (4) proper conduct of the license holder's title
8 insurance business;

9 (5) accounting principles and practices and financial
10 responsibilities and practices relevant to title insurance; and

11 (6) the duties and responsibilities of a title
12 insurance agent.

13 (c) Professional training program hours may be used to
14 satisfy the continuing education requirements established under
15 Section 2651.204.

16 (d) A professional training program course must be offered
17 by:

18 (1) a statewide title insurance association,
19 statewide title agents' association or professional association,
20 or local chapter of a statewide title insurance or title agents'
21 association or professional association;

22 (2) an accredited college or university;

23 (3) a career school or college as defined by Section
24 132.001, Education Code;

25 (4) the State Bar of Texas;

26 (5) an educational publisher;

27 (6) a title insurance company authorized to engage in

1 business in this state;

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

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

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

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

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

14 Sec. 2651.011. PRIVILEGED COMMUNICATIONS; FINANCIAL
15 INFORMATION. (a) Any information, including a document, record, or
16 statement, and including information provided to or received from
17 the commissioner under Subsection (b) or (c), required to be made or
18 disclosed to the department under this subchapter, other than
19 Section 2651.001, is not public information subject to Chapter 552,
20 Government Code, is [+]

21 [~~1~~] a privileged communication, [+] and is

22 [~~2~~] not admissible in evidence in a court action or
23 proceeding except under a subpoena issued by a court of record. This
24 subsection does not apply to a document, record, or statement
25 required to be made or disclosed to the department under Chapter 36.

26 (b) A title insurance company may provide information to, or
27 receive information from, the commissioner about a financial matter

1 that would reasonably call into question the solvency of an agent
2 that the company appointed. An entity, other than the title
3 insurance company appointing the agent, may not request or receive
4 the information described by this subsection from the commissioner.

5 (c) Each title insurance agent shall, on a quarterly basis,
6 provide the department with a copy of the agent's quarterly
7 withholding tax report furnished by the agent to the United States
8 Internal Revenue Service. The title insurance agent must also
9 provide to the department proof of the payment. An agent that does
10 not have employees shall, on a quarterly basis, certify to the
11 department that there has not been a material change in the agent's
12 financial condition.

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

16 SECTION 14. Subchapter A, Chapter 2651, Insurance Code, is
17 amended by adding Sections 2651.012 and 2651.013 to read as
18 follows:

19 Sec. 2651.012. UNENCUMBERED ASSETS. (a) In this section,
20 "unencumbered assets" means:

- 21 (1) cash;
22 (2) assets that do not have any lien against them;
23 (3) assets that have value, such as furniture,
24 fixtures, equipment, computers, and software in excess of any
25 encumbrances; and
26 (4) investments such as mutual funds, certificates of
27 deposit, and stocks and bonds.

1 (b) Except as provided by Subsection (e), an agent must
2 maintain unencumbered assets in excess of liabilities, exclusive of
3 the value of abstract plants, in the following amounts unless the
4 commissioner establishes different amounts by rule:

5 (1) if the agent maintains its principal office in a
6 county with a population of 10,000 or more but less than 50,000:
7 \$25,000;

8 (2) if the agent maintains its principal office in a
9 county with a population of 50,000 or more but less than 200,000:
10 \$50,000;

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

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

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

19 (d) An agent that maintains a principal office in more than
20 one county must meet the asset standards for the largest county for
21 which the agent will hold a license.

22 (e) An agent may elect to:

23 (1) maintain unencumbered assets as required by this
24 section; or

25 (2) place a deposit with the department in the manner
26 authorized by Section 2652.102.

27 (f) An agent that holds a license on September 1, 2009, and

1 that has held the license for at least three years on that date is
2 not required to comply with Subsection (b) on September 1, 2009, but
3 shall increase the unencumbered assets held by the agent, or make
4 and increase the required deposit, until the agent is in compliance
5 with the required capitalization amounts in accordance with the
6 schedule established by this subsection. The agent must hold
7 unencumbered assets, or make a deposit in an amount, such that:

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

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

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

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

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

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

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

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

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

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

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

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

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

7 (D) the agent has at least 80 percent of the
8 required capitalization amount on September 1, 2013; and

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

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

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

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

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

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

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

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

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

27 (A) the agent has at least 14.29 percent of the

- 1 required capitalization amount on September 1, 2010;
2 (B) the agent has at least 28.58 percent of the
3 required capitalization amount on September 1, 2011;
4 (C) the agent has at least 42.87 percent of the
5 required capitalization amount on September 1, 2012;
6 (D) the agent has at least 57.16 percent of the
7 required capitalization amount on September 1, 2013;
8 (E) the agent has at least 71.45 percent of the
9 required capitalization amount on September 1, 2014;
10 (F) the agent has at least 85.74 percent of the
11 required capitalization amount on September 1, 2015; and
12 (G) the agent has at least 100 percent of the
13 required capitalization amount on September 1, 2016;
14 (6) if the agent has been licensed at least eight years
15 but less than nine years:
16 (A) the agent has at least 12.5 percent of the
17 required capitalization amount on September 1, 2010;
18 (B) the agent has at least 25 percent of the
19 required capitalization amount on September 1, 2011;
20 (C) the agent has at least 37.5 percent of the
21 required capitalization amount on September 1, 2012;
22 (D) the agent has at least 50 percent of the
23 required capitalization amount on September 1, 2013;
24 (E) the agent has at least 62.5 percent of the
25 required capitalization amount on September 1, 2014;
26 (F) the agent has at least 75 percent of the
27 required capitalization amount on September 1, 2015;

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

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

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

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

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

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

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

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

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

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

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

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

24 (g) This subsection and Subsection (f) expire September 2,
25 2018.

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

27 (a) The funds held by a title insurance agent that are owed to a

1 title insurance company, another title insurance agent, or a direct
2 operation arising from a division of premium, whether as determined
3 under rules adopted by the commissioner or by agreement among the
4 parties, are considered to be held in trust for the title insurance
5 company, other title insurance agent, or direct operation.

6 (b) This section does not require, and the commissioner may
7 not require by rule, that funds described by Subsection (a) be held
8 in a separate account or be subject to an audit of the department.

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

11 Sec. 2651.158. CERTIFICATION OF UNENCUMBERED ASSETS. (a)
12 Unless the agent has elected to make a deposit with the department
13 under Section 2651.012(e), the annual audit of escrow accounts must
14 be accompanied by a certification by a certified public accountant
15 that the title insurance agent has the appropriate unencumbered
16 assets in excess of liabilities, exclusive of the value of its
17 abstract plants, as required by Section 2651.012.

18 (b) The commissioner by rule shall establish:

19 (1) a procedure to be used by an agent and the agent's
20 certified public accountant to determine the value of categories of
21 assets; and

22 (2) the method by which the certification required by
23 this section must be made.

24 SECTION 16. Subchapter E, Chapter 2651, Insurance Code, is
25 amended by adding Section 2651.205 to read as follows:

26 Sec. 2651.205. POSSESSION OF GUARANTY FILE. (a) A title
27 insurance agent may not give possession of the agent's guaranty

1 file to any third party, including a landlord or storage facility,
2 unless the third party:

3 (1) accepts possession of the file subject to the
4 right of access of the title insurance company involved in the
5 transaction that the file documents, whether the right of access
6 exists by contract or other statutory basis; and

7 (2) agrees to maintain the confidentiality of
8 nonpublic information in the title insurance agent's file according
9 to state and federal laws that govern the title insurance agent.

10 (b) If the title insurance agent ceases operations without
11 complying with rules adopted by the commissioner, the Texas Title
12 Insurance Guaranty Association shall take possession of each
13 guaranty file of the agent and make the file available to the title
14 insurance company involved in the transaction that the file
15 documents.

16 (c) A title insurance company may not enter into a new
17 contract or agreement or amend an existing contract or agreement
18 with an individual, firm, association, or corporation to act as the
19 company's agent unless the contract or amendment contains a
20 requirement that any lease, storage agreement, or other contract
21 entered into by the agent that may relate to files maintained by the
22 agent contains the following language:

23 "The (landlord or other party entering into the agreement)
24 acknowledges that Section 2651.205 of the Texas Insurance Code
25 guarantees access to title insurance files to the Texas Title
26 Insurance Guaranty Association and certain title insurance
27 companies that the tenant represents and the right of access

1 supersedes any landlord's lien on any other property or the right to
2 deny the association or a title insurance company access to the
3 premises. The (landlord or other party entering into the
4 agreement) agrees to maintain the confidentiality of nonpublic
5 information in the title insurance agent's file according to state
6 and federal laws that govern the title insurance agent."

7 (d) In this section, title insurance agent includes an agent
8 owned in whole or in part by a title insurance company and includes
9 a direct operation.

10 SECTION 17. Section 2602.153(c), Insurance Code, is
11 repealed.

12 SECTION 18. An abstract plant that exists on September 1,
13 2009, but that does not, on that date, cover a period beginning not
14 later than January 1, 1979, as required by Section 2501.004,
15 Insurance Code, as amended by this Act, is not required to comply
16 with that section before January 1, 2014.

17 SECTION 19. Section 2651.158, Insurance Code, as added by
18 this Act, applies beginning with annual audits conducted under
19 Subchapter D, Chapter 2651, Insurance Code, for the 2011 calendar
20 year.

21 SECTION 20. (a) Not later than September 30, 2009, the
22 commissioner of insurance may, by order, delay the implementation
23 of Section 2651.205, Insurance Code, as added by this Act, if the
24 commissioner determines that rules to implement that section are
25 necessary to the effective administration of that section.

26 (b) Section 2651.205, Insurance Code, as added by this Act,
27 applies only to the conduct of a title insurance agent, and a

1 contract or agreement executed or renewed by a title insurance
2 agent, on or after:

3 (1) January 1, 2010, if the commissioner of insurance
4 does not issue an order under Subsection (a) of this section; or

5 (2) the effective date of rules adopted by the
6 commissioner, if the commissioner of insurance does issue an order
7 under Subsection (a) of this section.

8 (c) The conduct of a title insurance agent, and a contract
9 or agreement executed or renewed by a title insurance agent, before
10 the date determined under Subsection (b) of this section are
11 governed by the law as it existed immediately before the effective
12 date of this Act, and that law is continued in effect for that
13 purpose.

14 SECTION 21. This Act takes effect September 1, 2009.