

1-1 By: Smithee (Senate Sponsor - Fraser) H.B. No. 4338  
1-2 (In the Senate - Received from the House May 6, 2009;  
1-3 May 7, 2009, read first time and referred to Committee on Business  
1-4 and Commerce; May 22, 2009, reported adversely, with favorable  
1-5 Committee Substitute by the following vote: Yeas 9, Nays 0;  
1-6 May 22, 2009, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 4338 By: Fraser

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to title insurance agents and title insurance companies.  
1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:  
1-12 SECTION 1. Section 2501.004(b), Insurance Code, is amended  
1-13 to read as follows:

1-14 (b) To provide for the safety and protection of  
1-15 policyholders, the department shall require that an abstract plant  
1-16 ~~[be]~~:

- 1-17 (1) be geographically arranged;  
1-18 (2) cover a period beginning not later than January 1,  
1-19 1979, and be kept current; and  
1-20 (3) be adequate for use in insuring titles, as  
1-21 determined by the department.

1-22 SECTION 2. Section 2602.002(a), Insurance Code, is amended  
1-23 to read as follows:

- 1-24 (a) This chapter is for:  
1-25 (1) the purposes and findings stated in Sections  
1-26 441.001, 441.003, 441.005, and 441.006; ~~[and]~~  
1-27 (2) the protection of holders of covered claims; and  
1-28 (3) the protection of consumers served by agents.

1-29 SECTION 3. Sections 2602.003(5) and (6), Insurance Code,  
1-30 are amended to read as follows:

1-31 (5) "Impaired agent" means a title ~~[an]~~ agent or  
1-32 direct operation that is ~~[+]~~

- 1-33 ~~[(A) placed in:~~  
1-34 ~~[(i) temporary or permanent receivership~~  
1-35 ~~under a court order based on a finding of insolvency; or~~  
1-36 ~~[(ii) conservatorship after the~~  
1-37 ~~commissioner determines that the agent is insolvent; and~~  
1-38 ~~[(B)] designated by the commissioner as an~~  
1-39 impaired agent and is:

1-40 (A) placed by a court in this state or another  
1-41 state under an order of supervision, conservatorship,  
1-42 rehabilitation, or liquidation;

1-43 (B) placed under an order of supervision or  
1-44 conservatorship under Chapter 441;

1-45 (C) placed under an order of rehabilitation or  
1-46 liquidation under Chapter 443; or

1-47 (D) otherwise found by a court of competent  
1-48 jurisdiction to be insolvent or otherwise unable to pay obligations  
1-49 as they come due.

1-50 (6) "Impaired title insurance company" means a title  
1-51 insurance company that is ~~[+]~~

- 1-52 ~~[(A) placed in:~~  
1-53 ~~[(i) temporary or permanent receivership~~  
1-54 ~~under a court order based on a finding of insolvency; or~~  
1-55 ~~[(ii) conservatorship after the~~  
1-56 ~~commissioner determines that the company is insolvent; and~~  
1-57 ~~[(B)] designated by the commissioner as an~~  
1-58 impaired title insurance company and is:

1-59 (A) placed by a court in this state or another  
1-60 state under an order of supervision, conservatorship,  
1-61 rehabilitation, or liquidation;

1-62 (B) placed under an order of supervision or  
1-63 conservatorship under Chapter 441;

2-1 (C) placed under an order of rehabilitation or  
2-2 liquidation under Chapter 443; or  
2-3 (D) otherwise found by a court of competent  
2-4 jurisdiction to be insolvent or otherwise unable to pay obligations  
2-5 as they come due.

2-6 SECTION 4. Section 2602.011(a), Insurance Code, is amended  
2-7 to read as follows:

2-8 (a) The commissioner shall notify the association of the  
2-9 existence of an impaired title insurance company or impaired agent  
2-10 not later than the third day after the date on which the  
2-11 commissioner gives notice of the designation of impairment to the  
2-12 impaired title agent or direct operation. The association is  
2-13 entitled to a copy of any complaint seeking an order of receivership  
2-14 with a finding of insolvency against a title insurance company at  
2-15 the time the complaint is filed with a court.

2-16 SECTION 5. Section 2602.107, Insurance Code, is amended by  
2-17 adding Subsection (d) to read as follows:

2-18 (d) The association shall pay from the guaranty fee account  
2-19 fees and reasonable and necessary expenses that the department  
2-20 incurs in an examination or audit of a title agent or direct  
2-21 operation under this chapter and Chapter 2651.

2-22 SECTION 6. Section 2602.110, Insurance Code, is amended to  
2-23 read as follows:

2-24 Sec. 2602.110. EXPENSES OF ADMINISTERING IMPAIRED INSURER  
2-25 OR IMPAIRED AGENT [RECEIVERSHIP OR CONSERVATORSHIP]. The  
2-26 association may advance money necessary to pay the expenses of  
2-27 administering the supervision, rehabilitation, receivership, [or]  
2-28 conservatorship, or, as determined by a court, other insolvency  
2-29 [estate] of an impaired title insurance company or impaired agent,  
2-30 on terms the association negotiates, if the company's or agent's  
2-31 assets are insufficient to pay those expenses.

2-32 SECTION 7. Section 2602.152, Insurance Code, is amended to  
2-33 read as follows:

2-34 Sec. 2602.152. AMOUNT OF FEE. Annually or more frequently,  
2-35 the board shall determine the amount of the guaranty fee [, not to  
2-36 exceed \$5], considering the amount of money to be maintained in the  
2-37 guaranty fee account that is reasonably necessary for efficient  
2-38 future operation under this chapter.

2-39 SECTION 8. Sections 2602.153(b) and (d), Insurance Code,  
2-40 are amended to read as follows:

2-41 (b) The following [covered] claims shall be paid from  
2-42 guaranty fees only and may not be paid from assessments:

- 2-43 (1) covered claims against trust funds or an escrow  
2-44 account of an impaired agent under Section 2602.252; [and]
- 2-45 (2) expenses incurred in complying with Subchapter J;
- 2-46 (3) conservator and receiver expenses under Section  
2-47 2602.254; and
- 2-48 (4) administrative expenses with respect to the estate  
2-49 of an impaired agent under Section 2602.110.

2-50 (d) Guaranty fees may be used only for payment of:

- 2-51 (1) [covered] claims described by Subsection (b) [or  
2-52 (c)]; and
- 2-53 (2) expenses related to:
  - 2-54 (A) an audit or an examination conducted by the  
2-55 department or the association under this chapter;
  - 2-56 (B) the supervision and coordination of such an  
2-57 audit; and
  - 2-58 (C) an action required under Section  
2-59 2602.452 [and review expenses under Section 2602.103(b)].

2-60 SECTION 9. Sections 2602.401(a) and (b), Insurance Code,  
2-61 are amended to read as follows:

2-62 (a) If an assessment has been made under this chapter for an  
2-63 impaired title insurance company or association funds have been  
2-64 provided for the company, the company, on release from the  
2-65 supervision, rehabilitation, conservatorship, [or] receivership,  
2-66 or other proceeding in which the company was found by a court of  
2-67 competent jurisdiction to be insolvent or otherwise unable to pay  
2-68 obligations as they come due, may not issue a new or renewal  
2-69 insurance policy until the company:

3-1 (1) has repaid pro rata in full to each holder of a  
3-2 participation receipt the assessment amount paid by the receipt  
3-3 holder or its assignee; and

3-4 (2) has repaid in full the amount of guaranty fees paid  
3-5 by the association.

3-6 (b) If an assessment has been made under this chapter for an  
3-7 impaired agent or guaranty fees have been provided for the agent,  
3-8 the agent, on release from the supervision, conservatorship,  
3-9 rehabilitation, [or] receivership, or other proceeding in which the  
3-10 agent was found by a court of competent jurisdiction to be insolvent  
3-11 or otherwise unable to pay obligations as they come due, subject to  
3-12 dischargeability, may not act as an agent [issue a new or renewal  
3-13 insurance policy] until the agent has repaid in full the amount of  
3-14 guaranty fees paid by the association.

3-15 SECTION 10. Chapter 2602, Insurance Code, is amended by  
3-16 adding Subchapter J to read as follows:

3-17 SUBCHAPTER J. ADDITIONAL DUTIES OF ASSOCIATION

3-18 Sec. 2602.451. APPLICABILITY. This subchapter applies, at  
3-19 the commissioner's discretion and regardless of whether there are  
3-20 covered claims against an agent, to any agent that is designated by  
3-21 the commissioner as an impaired agent.

3-22 Sec. 2602.452. ACTIONS FOR CERTAIN AGENTS. (a) The  
3-23 commissioner may require the association, at the association's  
3-24 expense and on behalf of an impaired agent, to:

3-25 (1) close real estate transactions;

3-26 (2) disburse escrow funds;

3-27 (3) record documents; and

3-28 (4) issue final title insurance policies.

3-29 (b) The association may employ or retain a person in  
3-30 accordance with Section 2602.103(a) to take the actions required by  
3-31 the commissioner under this section.

3-32 Sec. 2602.453. AUTHORITY OF ASSOCIATION; COOPERATION OF  
3-33 OFFICERS, OWNERS, AND EMPLOYEES. (a) On the direction of the  
3-34 commissioner under Section 2602.452, the association may implement  
3-35 any direction made by the commissioner and may access all books,  
3-36 records, accounts, networks, and electronic document storage and  
3-37 management systems as necessary to implement the commissioner's  
3-38 direction.

3-39 (b) Any present or former officer, manager, director,  
3-40 trustee, owner, employee, or agent of the agent, or any other person  
3-41 with authority over or in charge of any segment of the agent's  
3-42 affairs, shall cooperate with the association. For purposes of  
3-43 this subsection:

3-44 (1) "Person" includes a person who exercises control  
3-45 directly or indirectly over activities of the agent through a  
3-46 holding company or other affiliate of the agent.

3-47 (2) "Cooperate" means:

3-48 (A) replying promptly in writing to any request  
3-49 from the association within the period established in the request  
3-50 for the reply; and

3-51 (B) making available to the association any  
3-52 books, accounts, documents, or other records or information of, or  
3-53 relating to, the agent within the period set in the request for  
3-54 reply.

3-55 (c) A person who fails to cooperate as required under  
3-56 Subsection (b) is subject to sanctions under Chapter 82, in  
3-57 addition to all other sanctions available under law.

3-58 SECTION 11. Section 2651.002, Insurance Code, is amended by  
3-59 amending Subsection (c) and adding Subsection (d) to read as  
3-60 follows:

3-61 (c) The completed application must state that:

3-62 (1) the proposed agent is:

3-63 (A) an individual who is a bona fide resident of  
3-64 this state;

3-65 (B) an association or firm composed only of Texas  
3-66 residents; or

3-67 (C) a Texas corporation or a foreign corporation  
3-68 authorized to engage in business in this state;

3-69 (2) the proposed agent has unencumbered assets in

4-1 excess of liabilities, exclusive of the value of abstract plants,  
4-2 as required by Section 2651.012;

4-3 (3) [~~2~~] the proposed agent, including a  
4-4 corporation's managerial personnel, if applicable, has reasonable  
4-5 experience or instruction in the field of title insurance;

4-6 (4) [~~3~~] the title insurance company:  
4-7 (A) knows that the proposed agent has a good  
4-8 business reputation and is worthy of the public trust; and

4-9 (B) is unaware of any fact or condition that  
4-10 disqualifies the proposed agent from receiving a license; and

4-11 (5) [~~4~~] the proposed agent qualifies as a title  
4-12 insurance agent under this chapter.

4-13 (d) Except as provided by Section 2651.0021(e), an agent  
4-14 applying for an initial license under this subchapter must provide  
4-15 evidence that the agent and its management personnel have  
4-16 successfully completed a professional training program that  
4-17 complies with Section 2651.0021. The program must have been  
4-18 completed within one year preceding the date of application.

4-19 SECTION 12. Subchapter A, Chapter 2651, Insurance Code, is  
4-20 amended by adding Section 2651.0021 to read as follows:

4-21 Sec. 2651.0021. PROFESSIONAL TRAINING PROGRAM. (a) The  
4-22 commissioner shall adopt by rule a professional training program  
4-23 for a title insurance agent and the management personnel of the  
4-24 title insurance agent.

4-25 (b) The professional training program must be designed to  
4-26 provide information regarding:

4-27 (1) the basic principles and coverages related to  
4-28 title insurance;

4-29 (2) recent and prospective changes in those principles  
4-30 and coverages;

4-31 (3) applicable rules and laws;

4-32 (4) proper conduct of the license holder's title  
4-33 insurance business;

4-34 (5) accounting principles and practices and financial  
4-35 responsibilities and practices relevant to title insurance; and

4-36 (6) the duties and responsibilities of a title  
4-37 insurance agent.

4-38 (c) Professional training program hours may be used to  
4-39 satisfy the continuing education requirements established under  
4-40 Section 2651.204.

4-41 (d) A professional training program course must be offered  
4-42 by:

4-43 (1) a statewide title insurance association,  
4-44 statewide title agents' association or professional association,  
4-45 or local chapter of a statewide title insurance or title agents'  
4-46 association or professional association;

4-47 (2) an accredited college or university;

4-48 (3) a career school or college as defined by Section  
4-49 132.001, Education Code;

4-50 (4) the State Bar of Texas;

4-51 (5) an educational publisher;

4-52 (6) a title insurance company authorized to engage in  
4-53 business in this state;

4-54 (7) a company that owns one or more title insurance  
4-55 companies authorized to engage in business in this state;

4-56 (8) a public school system in this state; or

4-57 (9) an individual accredited as an instructor by an  
4-58 entity described by Subdivisions (1)-(8).

4-59 (e) An individual is exempt from the professional training  
4-60 requirement of this section if the individual has held in this state  
4-61 for at least five years a position as management personnel with a  
4-62 title insurance agent, or a comparable position, as determined  
4-63 under rules adopted by the commissioner.

4-64 SECTION 13. Section 2651.011, Insurance Code, is amended to  
4-65 read as follows:

4-66 Sec. 2651.011. PRIVILEGED COMMUNICATIONS; FINANCIAL  
4-67 INFORMATION. (a) Any information, including a document, record,  
4-68 or statement, and including information provided to or received  
4-69 from the commissioner under Subsection (b) or (c), or any other

5-1 information required or permitted to be made or disclosed to or by  
 5-2 the department under this subchapter, other than Section 2651.001,  
 5-3 is not public information subject to Chapter 552, Government Code,  
 5-4 except to the extent described by Subsection (b) [+

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

5-8 (b) A title insurance company may provide information to the  
 5-9 commissioner about a financial matter that would reasonably call  
 5-10 into question the solvency of a title agent that the title insurance  
 5-11 company appointed. Each title insurance company shall provide  
 5-12 annually to the department a list of officers authorized to provide  
 5-13 to the department the information under this subsection.  
 5-14 Information provided under this subsection is not subject to  
 5-15 Chapter 552, Government Code, except that the commissioner may  
 5-16 release information that the commissioner received under this  
 5-17 subsection to a title insurance company that has appointed, or that  
 5-18 is considering appointing, the title agent. The commissioner may  
 5-19 also release information that the commissioner received under this  
 5-20 subsection to a title agent under Section 2651.206, Insurance Code,  
 5-21 if the information is evidence on which an audit report or  
 5-22 examination report relies. A title insurance company that receives  
 5-23 information under this subsection may not release the information  
 5-24 except under a subpoena issued by a court of competent  
 5-25 jurisdiction.

5-26 (c) Each title insurance agent shall provide the  
 5-27 department, on a quarterly basis, with a copy of the agent's  
 5-28 quarterly withholding tax report furnished by the agent to the  
 5-29 United States Internal Revenue Service. The title insurance agent  
 5-30 must also provide to the department proof of the payment of the tax.  
 5-31 An agent that does not have employees shall certify to the  
 5-32 department on a quarterly basis that there has not been a material  
 5-33 change in the agent's financial condition.

5-34 (d) The commissioner by rule may prescribe the types of  
 5-35 information under Subsections (b) and (c) that are privileged under  
 5-36 Subsection (a).

5-37 SECTION 14. Subchapter A, Chapter 2651, Insurance Code, is  
 5-38 amended by adding Sections 2651.012 and 2651.013 to read as  
 5-39 follows:

5-40 Sec. 2651.012. UNENCUMBERED ASSETS. (a) In this section:

5-41 (1) "Principal office" means a principal office of the  
 5-42 corporation, unincorporated association, or partnership in this  
 5-43 state in which the decision makers for the organization conduct the  
 5-44 daily affairs of the organization. The presence of an agency or  
 5-45 representative does not establish a principal office.

5-46 (2) "Unencumbered assets" means:

5-47 (A) cash or cash equivalents;

5-48 (B) assets that do not have any lien against  
 5-49 them;

5-50 (C) real estate, in excess of any encumbrances;

5-51 (D) investments, such as mutual funds,  
 5-52 certificates of deposit, and stocks and bonds;

5-53 (E) a surety bond, the form and content of which  
 5-54 shall be prescribed by the commissioner in accordance with this  
 5-55 code;

5-56 (F) a deposit made in accordance with Section  
 5-57 2651.102; and

5-58 (G) a letter of credit that meets the  
 5-59 requirements of Section 493.104(b)(2)(C).

5-60 (b) The unencumbered assets required under this section are  
 5-61 reserves for contingencies. The reserves must be deducted from  
 5-62 premiums for purposes of proceedings conducted under Subchapter D,  
 5-63 Chapter 2703. The reserves may only be spent or released:

5-64 (1) as permitted by the commissioner if the agent is  
 5-65 declared impaired;

5-66 (2) if the agent merges or consolidates with another  
 5-67 agent who maintains the amount of unencumbered assets that would be  
 5-68 required for the survivor of the merger or consolidation;

5-69 (3) if the agent surrenders the agent's license under

6-1 Section 2651.201 and the rules adopted under that section; or  
 6-2 (4) if the agent is liquidated.  
 6-3 (c) Except as provided by Subsection (d), an agent must  
 6-4 maintain unencumbered assets with a market value in excess of  
 6-5 liabilities, exclusive of the value of abstract plants, in the  
 6-6 following amounts unless the commissioner establishes lesser  
 6-7 amounts by rule:  
 6-8 (1) if the agent maintains its principal office in a  
 6-9 county with a population of 10,000 or more but less than 50,000:  
 6-10 \$25,000;  
 6-11 (2) if the agent maintains its principal office in a  
 6-12 county with a population of 50,000 or more but less than 200,000:  
 6-13 \$50,000;  
 6-14 (3) if the agent maintains its principal office in a  
 6-15 county with a population of 200,000 or more but less than one  
 6-16 million: \$100,000; and  
 6-17 (4) if the agent maintains its principal office in a  
 6-18 county with a population of one million or more: \$150,000.  
 6-19 (d) Except as provided by the commissioner by rule, an agent  
 6-20 that maintains its principal office in a county with a population of  
 6-21 less than 10,000 is exempt from this section.  
 6-22 (e) An agent that maintains a principal office in more than  
 6-23 one county must meet the asset standards for the largest county for  
 6-24 which the agent will hold a license.  
 6-25 (f) An agent may elect to:  
 6-26 (1) maintain unencumbered assets as required by this  
 6-27 section; or  
 6-28 (2) place a deposit with the department as authorized  
 6-29 by Section 2652.102.  
 6-30 (g) An agent that holds a license on September 1, 2009, and  
 6-31 that has held the license for at least three years as of that date is  
 6-32 not required to comply with Subsection (c) on September 1, 2009, but  
 6-33 shall increase the unencumbered assets held by the agent, or make  
 6-34 and increase the required deposit, until the agent is in compliance  
 6-35 with the required capitalization amounts in accordance with the  
 6-36 schedule established under this subsection. The agent must hold  
 6-37 unencumbered assets, or make a deposit in an amount, such that:  
 6-38 (1) if the agent has been licensed at least three years  
 6-39 but less than four years:  
 6-40 (A) the agent has at least 33 percent of the  
 6-41 required capitalization amount on September 1, 2010;  
 6-42 (B) the agent has at least 66 percent of the  
 6-43 required capitalization amount on September 1, 2011; and  
 6-44 (C) the agent has at least 100 percent of the  
 6-45 required capitalization amount on September 1, 2012;  
 6-46 (2) if the agent has been licensed at least four years  
 6-47 but less than five years:  
 6-48 (A) the agent has at least 25 percent of the  
 6-49 required capitalization amount on September 1, 2010;  
 6-50 (B) the agent has at least 50 percent of the  
 6-51 required capitalization amount on September 1, 2011;  
 6-52 (C) the agent has at least 75 percent of the  
 6-53 required capitalization amount on September 1, 2012; and  
 6-54 (D) the agent has at least 100 percent of the  
 6-55 required capitalization amount on September 1, 2013;  
 6-56 (3) if the agent has been licensed at least five years  
 6-57 but less than six years:  
 6-58 (A) the agent has at least 20 percent of the  
 6-59 required capitalization amount on September 1, 2010;  
 6-60 (B) the agent has at least 40 percent of the  
 6-61 required capitalization amount on September 1, 2011;  
 6-62 (C) the agent has at least 60 percent of the  
 6-63 required capitalization amount on September 1, 2012;  
 6-64 (D) the agent has at least 80 percent of the  
 6-65 required capitalization amount on September 1, 2013; and  
 6-66 (E) the agent has at least 100 percent of the  
 6-67 required capitalization amount on September 1, 2014;  
 6-68 (4) if the agent has been licensed at least six years  
 6-69 but less than seven years:

7-1                   (A) the agent has at least 16.66 percent of the  
7-2 required capitalization amount on September 1, 2010;  
7-3                   (B) the agent has at least 33.32 percent of the  
7-4 required capitalization amount on September 1, 2011;  
7-5                   (C) the agent has at least 49.98 percent of the  
7-6 required capitalization amount on September 1, 2012;  
7-7                   (D) the agent has at least 66.64 percent of the  
7-8 required capitalization amount on September 1, 2013;  
7-9                   (E) the agent has at least 83.3 percent of the  
7-10 required capitalization amount on September 1, 2014; and  
7-11                   (F) the agent has at least 100 percent of the  
7-12 required capitalization amount on September 1, 2015;  
7-13                   (5) if the agent has been licensed at least seven years  
7-14 but less than eight years:  
7-15                   (A) the agent has at least 14.29 percent of the  
7-16 required capitalization amount on September 1, 2010;  
7-17                   (B) the agent has at least 28.58 percent of the  
7-18 required capitalization amount on September 1, 2011;  
7-19                   (C) the agent has at least 42.87 percent of the  
7-20 required capitalization amount on September 1, 2012;  
7-21                   (D) the agent has at least 57.16 percent of the  
7-22 required capitalization amount on September 1, 2013;  
7-23                   (E) the agent has at least 71.45 percent of the  
7-24 required capitalization amount on September 1, 2014;  
7-25                   (F) the agent has at least 85.74 percent of the  
7-26 required capitalization amount on September 1, 2015; and  
7-27                   (G) the agent has at least 100 percent of the  
7-28 required capitalization amount on September 1, 2016;  
7-29                   (6) if the agent has been licensed at least eight years  
7-30 but less than nine years:  
7-31                   (A) the agent has at least 12.5 percent of the  
7-32 required capitalization amount on September 1, 2010;  
7-33                   (B) the agent has at least 25 percent of the  
7-34 required capitalization amount on September 1, 2011;  
7-35                   (C) the agent has at least 37.5 percent of the  
7-36 required capitalization amount on September 1, 2012;  
7-37                   (D) the agent has at least 50 percent of the  
7-38 required capitalization amount on September 1, 2013;  
7-39                   (E) the agent has at least 62.5 percent of the  
7-40 required capitalization amount on September 1, 2014;  
7-41                   (F) the agent has at least 75 percent of the  
7-42 required capitalization amount on September 1, 2015;  
7-43                   (G) the agent has at least 87.5 percent of the  
7-44 required capitalization amount on September 1, 2016; and  
7-45                   (H) the agent has at least 100 percent of the  
7-46 required capitalization amount on September 1, 2017; and  
7-47                   (7) if the agent has been licensed at least nine years:  
7-48                   (A) the agent has at least 11.11 percent of the  
7-49 required capitalization amount on September 1, 2010;  
7-50                   (B) the agent has at least 22.22 percent of the  
7-51 required capitalization amount on September 1, 2011;  
7-52                   (C) the agent has at least 33.33 percent of the  
7-53 required capitalization amount on September 1, 2012;  
7-54                   (D) the agent has at least 44.44 percent of the  
7-55 required capitalization amount on September 1, 2013;  
7-56                   (E) the agent has at least 55.55 percent of the  
7-57 required capitalization amount on September 1, 2014;  
7-58                   (F) the agent has at least 66.66 percent of the  
7-59 required capitalization amount on September 1, 2015;  
7-60                   (G) the agent has at least 77.77 percent of the  
7-61 required capitalization amount on September 1, 2016;  
7-62                   (H) the agent has at least 88.88 percent of the  
7-63 required capitalization amount on September 1, 2017; and  
7-64                   (I) the agent has at least 100 percent of the  
7-65 required capitalization amount on September 1, 2018.  
7-66                   (h) If the agent has been licensed less than three years as  
7-67 of September 1, 2009, the agent must have:  
7-68                   (1) at least 50 percent of the required capitalization  
7-69 amount required under Subsection (c) on September 1, 2010; and

8-1 (2) 100 percent of that required capitalization amount  
 8-2 on September 1, 2011.

8-3 (i) This subsection and Subsection (g) expire September 2,  
 8-4 2018.

8-5 (j) Notwithstanding any other provision of this section,  
 8-6 this section takes effect only after the commissioner adopts the  
 8-7 form, content, and procedures for use of the surety bond authorized  
 8-8 under Subsection (a). The commissioner by rule shall establish the  
 8-9 procedures for making, filing, using, and paying for the surety  
 8-10 bond. Notwithstanding Subsections (g) and (h), the commissioner by  
 8-11 rule may extend the dates established under those subsections as  
 8-12 necessary to comply with this subsection.

8-13 Sec. 2651.013. DIVISION OF PREMIUM HELD IN TRUST; RULES.

8-14 (a) The funds held by a title insurance agent that are owed to a  
 8-15 title insurance company, another title insurance agent, or a direct  
 8-16 operation arising from a division of premium, whether as determined  
 8-17 under rules adopted by the commissioner or by agreement among the  
 8-18 parties, are considered to be held in trust for the title insurance  
 8-19 company, other title insurance agent, or direct operation.

8-20 (b) This section does not require, and the commissioner may  
 8-21 not require by rule, that funds described by Subsection (a) be held  
 8-22 in a separate account subject to an external audit. This section  
 8-23 does not affect the department's or association's authority to  
 8-24 examine or audit a title agent or direct operation.

8-25 SECTION 15. Subchapter D, Chapter 2651, Insurance Code, is  
 8-26 amended by adding Section 2651.158 to read as follows:

8-27 Sec. 2651.158. CERTIFICATION OF UNENCUMBERED ASSETS. (a)  
 8-28 Unless the agent has elected to make a deposit with the department  
 8-29 under Section 2651.012(f), the annual audit of escrow accounts must  
 8-30 be accompanied by a certification by a certified public accountant  
 8-31 that the title insurance agent has the appropriate unencumbered  
 8-32 assets in excess of liabilities, exclusive of the value of its  
 8-33 abstract plants, as required by Section 2651.012.

8-34 (b) The commissioner by rule shall establish:

8-35 (1) a procedure to be used to determine the value of  
 8-36 categories of assets; and

8-37 (2) the method by which the certification required by  
 8-38 this section must be made which shall not include an audit of  
 8-39 operating accounts.

8-40 SECTION 16. Subchapter E, Chapter 2651, Insurance Code, is  
 8-41 amended by adding Sections 2651.205 and 2651.206 to read as  
 8-42 follows:

8-43 Sec. 2651.205. TITLE AGENT RECORDS. (a) A landlord or  
 8-44 storage facility, including an electronic storage facility, that  
 8-45 accepts possession of an agent's guaranty file or other records  
 8-46 takes possession subject to:

8-47 (1) the right of access of the title insurance company  
 8-48 involved in the transaction that the file documents, during  
 8-49 customary business hours, for the purpose of copying the guaranty  
 8-50 file; and

8-51 (2) the obligation to maintain the confidentiality of  
 8-52 nonpublic information in the title insurance agent's records  
 8-53 according to state and federal laws that govern the title insurance  
 8-54 agent.

8-55 (b) If the title insurance agent is impaired, the Texas  
 8-56 Title Insurance Guaranty Association has the right to access the  
 8-57 guaranty files and other records of the title insurance agent,  
 8-58 including electronic records, for 60 days from the date of  
 8-59 impairment, during customary business hours, for purposes of  
 8-60 copying those records.

8-61 (c) Except for the right of access granted under Subsections  
 8-62 (a) and (b), a lien created in favor of the landlord by contract or  
 8-63 otherwise is not impaired.

8-64 (d) For purposes of this section, "title insurance agent"  
 8-65 includes an agent owned wholly or partly by a title insurance  
 8-66 company and a direct operation.

8-67 Sec. 2651.206. EXAMINATION REPORTS. (a) An audit, review,  
 8-68 or examination conducted under this chapter or Chapter 2602 must be  
 8-69 conducted in accordance with rules adopted by the commissioner.



9-1 The rules must provide:  
 9-2 (1) that before a report from an examination, review,  
 9-3 or audit becomes final, the department will furnish to the title  
 9-4 agent or direct operation a copy of the report and any evidence on  
 9-5 which the report relies;  
 9-6 (2) a reasonable period of not less than 10 days after  
 9-7 the title agent or direct operation receives the report and  
 9-8 evidence from the department for the title agent or direct  
 9-9 operation to respond;  
 9-10 (3) an opportunity for an appeal of the examination  
 9-11 report under a process similar to the process under Title 28, Part  
 9-12 1, Chapter 7, Subchapter A, Texas Administrative Code; and  
 9-13 (4) procedures to ensure that the report and any  
 9-14 evidence regarding the report remain confidential and are  
 9-15 transmitted only to designated representatives of the title agent  
 9-16 or direct operation.

9-17 (b) The commissioner shall furnish the title agent or direct  
 9-18 operation with a draft of the examination report and a copy of any  
 9-19 evidence not later than the 10th day before the scheduled date of a  
 9-20 meeting requested by the department regarding a report.

9-21 (c) This section does not require the department to turn  
 9-22 over work papers. For purposes of this subsection, work papers are  
 9-23 the records of an auditor or examiner of the procedures followed,  
 9-24 the tests performed, the information obtained, and the conclusions  
 9-25 reached that are pertinent to the audit or examination. Work papers  
 9-26 include work programs, analyses, memoranda, letters of  
 9-27 confirmation and representation, abstracts of company documents  
 9-28 and schedules, and commentaries prepared or obtained by the auditor  
 9-29 or examiner that support the opinions of the auditor or examiner.

9-30 SECTION 17. Section 2703.202, Insurance Code, is amended by  
 9-31 adding Subsections (c), (d), (e), and (f) to read as follows:

9-32 (c) Except as provided by Subsection (d), a public hearing  
 9-33 held under Subsection (a) or under Section 2703.206 shall be  
 9-34 conducted by the commissioner as a rulemaking hearing under  
 9-35 Subchapter B, Chapter 2001, Government Code.

9-36 (d) Notwithstanding Subsection (c), at the request of a  
 9-37 title insurance company or the public insurance counsel, a public  
 9-38 hearing held under Subsection (a) or under Section 2703.206 must be  
 9-39 conducted by the commissioner as a contested case hearing under  
 9-40 Subchapters C through H and Subchapter Z, Chapter 2001, Government  
 9-41 Code. Nothing in this section prohibits a party from conducting  
 9-42 discovery in a ratemaking or other proceeding or producing other  
 9-43 information requested by the department.

9-44 (e) Information received or requested by the commissioner  
 9-45 as part of an audit or examination under Chapters 2602 and 2651 may  
 9-46 not be used for rate setting under Subchapter D, Chapter 2703.

9-47 (f) Subsections (c) through (e) apply only to a public  
 9-48 hearing held on or after January 1, 2009.

9-49 SECTION 18. Section 2602.056 and Section 2602.153(c),  
 9-50 Insurance Code, are repealed.

9-51 SECTION 19. An abstract plant that exists on September 1,  
 9-52 2009, but that does not, on that date, cover a period beginning not  
 9-53 later than January 1, 1979, as required by Section 2501.004,  
 9-54 Insurance Code, as amended by this Act, is not required to comply  
 9-55 with that section before January 1, 2014.

9-56 SECTION 20. Section 2651.158, Insurance Code, as added by  
 9-57 this Act, applies beginning with annual audits conducted under  
 9-58 Subchapter D, Chapter 2651, Insurance Code, for the 2011 calendar  
 9-59 year.

9-60 SECTION 21. The commissioner of insurance shall hold a  
 9-61 hearing not later than the 120th day after the effective date of  
 9-62 this Act. Not later than the 90th day after the date of that  
 9-63 hearing, the commissioner shall issue an order prescribing the  
 9-64 rules and forms to be used in connection with Section 2651.206,  
 9-65 Insurance Code, as added by this Act.

9-66 SECTION 22. This Act takes effect September 1, 2009.

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