

SENATE AMENDMENTS

2nd Printing

By: Smithee

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
8 agent owned in whole or in part by a title insurance company and
9 includes 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.

ADOPTED

MAY 25 2009

Atty. Gen.
Secretary of the Senate

By: FRASER

H.B. No. 4338

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

By: [Signature]

C.S. ___ B. No. ___

A BILL TO BE ENTITLED

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 4 [~~(ii)~~ conservatorship after the
 5 commissioner determines that the agent is insolvent; and
 6 [~~(B)~~] designated by the commissioner as an
 7 impaired agent and 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
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16 impaired title agent or direct operation. The association is
17 entitled to a copy of any complaint seeking an order of receivership
18 with a finding of insolvency against a title insurance company at
19 the time the complaint is filed with a court.

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

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

26 SECTION 6. Section 2602.110, Insurance Code, is amended to
27 read as follows:

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

9 SECTION 7. Section 2602.152, Insurance Code, is amended to
10 read as follows:

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

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

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

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

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

23 (3) conservator and receiver expenses under Section
24 2602.254; and

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

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

1 (1) ~~covered~~ claims described by Subsection (b) ~~or~~
2 ~~(e)~~; and

3 (2) expenses related to:

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

6 (B) the supervision and coordination of such an
7 audit; and

8 (C) an action required under Section
9 2602.452 ~~[and review expenses under Section 2602.103(b)].~~

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

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

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

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

25 (b) If an assessment has been made under this chapter for an
26 impaired agent or guaranty fees have been provided for the agent,
27 the agent, on release from the supervision, conservatorship,

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

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

9 SUBCHAPTER J. ADDITIONAL DUTIES OF ASSOCIATION

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

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

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

21 (b) The association may employ or retain a person in
22 accordance with Section 2602.103(a) to take the actions required by
23 the commissioner under this section.

24 Sec. 2602.453. AUTHORITY OF ASSOCIATION; COOPERATION OF
25 OFFICERS, OWNERS, AND EMPLOYEES. (a) On the direction of the
26 commissioner under Section 2602.452, the association may implement
27 any direction made by the commissioner and may access all books,

1 records, accounts, networks, and electronic document storage and
2 management systems as necessary to implement the commissioner's
3 direction.

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

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

12 (2) "Cooperate" means:

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

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

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) [+]

27 ~~[(1) a privileged communication, and~~

1 ~~[(2) not admissible in evidence in a court action or~~
2 ~~proceeding except under a subpoena issued by a court of record].~~

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

21 (c) Each title insurance agent shall provide the
22 department, on a quarterly basis, with a copy of the agent's
23 quarterly withholding tax report furnished by the agent to the
24 United States Internal Revenue Service. The title insurance agent
25 must also provide to the department proof of the payment of the tax.
26 An agent that does not have employees shall certify to the
27 department on a quarterly basis that there has not been a material

1 change in the agent's financial condition.

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

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

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

9 (1) "Principal office" means a principal office of the
10 corporation, unincorporated association, or partnership in this
11 state in which the decision makers for the organization conduct the
12 daily affairs of the organization. The presence of an agency or
13 representative does not establish a principal office.

14 (2) "Unencumbered assets" means:

15 (A) cash or cash equivalents;

16 (B) assets that do not have any lien against
17 them;

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

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

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

24 (F) a deposit made in accordance with Section
25 2651.102; and

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

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

5 (1) as permitted by the commissioner if the agent is
6 declared impaired;

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

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

12 (4) if the agent is liquidated.

13 (c) Except as provided by Subsection (d), an agent must
14 maintain unencumbered assets with a market value in excess of
15 liabilities, exclusive of the value of abstract plants, in the
16 following amounts unless the commissioner establishes lesser
17 amounts by rule:

18 (1) if the agent maintains its principal office in a
19 county with a population of 10,000 or more but less than 50,000:
20 \$25,000;

21 (2) if the agent maintains its principal office in a
22 county with a population of 50,000 or more but less than 200,000:
23 \$50,000;

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

27 (4) if the agent maintains its principal office in a

1 county with a population of one million or more: \$150,000.

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

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

8 (f) An agent may elect to:

9 (1) maintain unencumbered assets as required by this
10 section; or

11 (2) place a deposit with the department as authorized
12 by Section 2652.102.

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

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

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

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

27 (C) the agent has at least 100 percent of the

1 required capitalization amount on September 1, 2012;

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 (B) the agent has at least 33.32 percent of the
2 required capitalization amount on September 1, 2011;
- 3 (C) the agent has at least 49.98 percent of the
4 required capitalization amount on September 1, 2012;
- 5 (D) the agent has at least 66.64 percent of the
6 required capitalization amount on September 1, 2013;
- 7 (E) the agent has at least 83.3 percent of the
8 required capitalization amount on September 1, 2014; and
- 9 (F) the agent has at least 100 percent of the
10 required capitalization amount on September 1, 2015;
- 11 (5) if the agent has been licensed at least seven years
12 but less than eight years:
- 13 (A) the agent has at least 14.29 percent of the
14 required capitalization amount on September 1, 2010;
- 15 (B) the agent has at least 28.58 percent of the
16 required capitalization amount on September 1, 2011;
- 17 (C) the agent has at least 42.87 percent of the
18 required capitalization amount on September 1, 2012;
- 19 (D) the agent has at least 57.16 percent of the
20 required capitalization amount on September 1, 2013;
- 21 (E) the agent has at least 71.45 percent of the
22 required capitalization amount on September 1, 2014;
- 23 (F) the agent has at least 85.74 percent of the
24 required capitalization amount on September 1, 2015; and
- 25 (G) the agent has at least 100 percent of the
26 required capitalization amount on September 1, 2016;
- 27 (6) if the agent has been licensed at least eight years

1 but less than nine years:

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (E) the agent has at least 55.55 percent of the

1 required capitalization amount on September 1, 2014;

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

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

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

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

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

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

14 (2) 100 percent of that required capitalization amount
15 on September 1, 2011.

16 (i) This subsection and Subsection (g) expire September 2,
17 2018.

18 (j) Notwithstanding any other provision of this section,
19 this section takes effect only after the commissioner adopts the
20 form, content, and procedures for use of the surety bond authorized
21 under Subsection (a). The commissioner by rule shall establish the
22 procedures for making, filing, using, and paying for the surety
23 bond. Notwithstanding Subsections (g) and (h), the commissioner by
24 rule may extend the dates established under those subsections as
25 necessary to comply with this subsection.

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 subject to an external audit. This section
9 does not affect the department's or association's authority to
10 examine or audit a title agent or direct operation.

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

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

20 (b) The commissioner by rule shall establish:

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

23 (2) the method by which the certification required by
24 this section must be made which shall not include an audit of
25 operating accounts.

26 SECTION 16. Subchapter E, Chapter 2651, Insurance Code, is
27 amended by adding Sections 2651.205 and 2651.206 to read as

1 follows:

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

6 (1) the right of access of the title insurance company
7 involved in the transaction that the file documents, during
8 customary business hours, for the purpose of copying the guaranty
9 file; and

10 (2) the obligation to maintain the confidentiality of
11 nonpublic information in the title insurance agent's records
12 according to state and federal laws that govern the title insurance
13 agent.

14 (b) If the title insurance agent is impaired, the Texas
15 Title Insurance Guaranty Association has the right to access the
16 guaranty files and other records of the title insurance agent,
17 including electronic records, for 60 days from the date of
18 impairment, during customary business hours, for purposes of
19 copying those records.

20 (c) Except for the right of access granted under Subsections
21 (a) and (b), a lien created in favor of the landlord by contract or
22 otherwise is not impaired.

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

26 Sec. 2651.206. EXAMINATION REPORTS. (a) An audit, review,
27 or examination conducted under this chapter or Chapter 2602 must be

1 conducted in accordance with rules adopted by the commissioner.

2 The rules must provide:

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

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

11 (3) an opportunity for an appeal of the examination
12 report under a process similar to the process under Title 28, Part
13 1, Chapter 7, Subchapter A, Texas Administrative Code; and

14 (4) procedures to ensure that the report and any
15 evidence regarding the report remain confidential and are
16 transmitted only to designated representatives of the title agent
17 or direct operation.

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

22 (c) This section does not require the department to turn
23 over work papers. For purposes of this subsection, work papers are
24 the records of an auditor or examiner of the procedures followed,
25 the tests performed, the information obtained, and the conclusions
26 reached that are pertinent to the audit or examination. Work papers
27 include work programs, analyses, memoranda, letters of

1 confirmation and representation, abstracts of company documents
2 and schedules, and commentaries prepared or obtained by the auditor
3 or examiner that support the opinions of the auditor or examiner.

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

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

10 (d) Notwithstanding Subsection (c), at the request of a
11 title insurance company or the public insurance counsel, a public
12 hearing held under Subsection (a) or under Section 2703.206 must be
13 conducted by the commissioner as a contested case hearing under
14 Subchapters C through H and Subchapter Z, Chapter 2001, Government
15 Code. Nothing in this section prohibits a party from conducting
16 discovery in a ratemaking or other proceeding or producing other
17 information requested by the department.

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

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

23 SECTION 18. Section 2602.056 and Section 2602.153(c),
24 Insurance Code, are repealed.

25 SECTION 19. An abstract plant that exists on September 1,
26 2009, but that does not, on that date, cover a period beginning not
27 later than January 1, 1979, as required by Section 2501.004,

1 Insurance Code, as amended by this Act, is not required to comply
2 with that section before January 1, 2014.

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

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

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

ADOPTED

FLOOR AMENDMENT NO. 1

MAY 25 2009

BY:

Fraser

Antony Spaw
Secretary of the Senate

1 Amend H.B. No. 4338 (senate committee printing) by striking
2 all below the enacting clause and substituting the following:

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

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

8 (1) be geographically arranged;

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

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

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

15 (a) This chapter is for:

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

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

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

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

23 (5) "Impaired agent" means a title ~~[an]~~ agent or
24 direct operation that is~~+~~

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

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

28 ~~[(ii) conservatorship after the~~
29 ~~commissioner determines that the agent is insolvent; and~~

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

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

6 (B) placed under an order of supervision or
7 conservatorship under Chapter 441;

8 (C) placed under an order of rehabilitation or
9 liquidation under Chapter 443; or

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

13 (6) "Impaired title insurance company" means a title
14 insurance company that is[+]

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

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

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

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

22 (A) placed by a court in this state or another
23 state under an order of supervision, conservatorship,
24 rehabilitation, or liquidation;

25 (B) placed under an order of supervision or
26 conservatorship under Chapter 441;

27 (C) placed under an order of rehabilitation or
28 liquidation under Chapter 443; or

29 (D) otherwise found by a court of competent
30 jurisdiction to be insolvent or otherwise unable to pay
31 obligations as they come due.

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

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

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

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

18 SECTION 6. Section 2602.110, Insurance Code, is amended to
19 read as follows:

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

29 SECTION 7. Section 2602.152, Insurance Code, is amended to
30 read as follows:

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

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

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

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

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

12 (3) conservator and receiver expenses under Section
13 2602.254; and

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

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

17 (1) [~~covered~~] claims described by Subsection (b) [~~or~~
18 ~~(e)~~]; and

19 (2) expenses related to:

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

22 (B) the supervision and coordination of such an
23 audit or examination; and

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

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

28 (a) If an assessment has been made under this chapter for
29 an impaired title insurance company or association funds have
30 been provided for the company, the company, on release from the
31 supervision, rehabilitation, conservatorship, [~~or~~] receivership,

1 or other proceeding in which the company was found by a court of
2 competent jurisdiction to be insolvent or otherwise unable to
3 pay obligations as they come due, may not issue a new or renewal
4 insurance policy until the company:

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

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

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

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

22 SUBCHAPTER J. ADDITIONAL DUTIES OF ASSOCIATION

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

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

30 (1) close real estate transactions;

31 (2) disburse escrow funds;

1 (3) record documents; and

2 (4) issue final title insurance policies.

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

5 Sec. 2602.453. AUTHORITY OF ASSOCIATION; COOPERATION OF
6 OFFICERS, OWNERS, AND EMPLOYEES. (a) On the direction of the
7 commissioner under Section 2602.452, the association may
8 implement any direction made by the commissioner and may access
9 all books, records, accounts, networks, and electronic document
10 storage and management systems as necessary to implement the
11 commissioner's direction.

12 (b) Any present or former officer, manager, director,
13 trustee, owner, employee, or agent of the agent, or any other
14 person with authority over or in charge of any segment of the
15 agent's affairs, shall cooperate with the association. For
16 purposes of this subsection:

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

20 (2) "Cooperate" means:

21 (A) replying promptly in writing to any request
22 for information from the association within the period
23 established in the request; and

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

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

30 SECTION 11. Section 2651.002, Insurance Code, is amended
31 by amending Subsection (c) and adding Subsection (d) to read as

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1 follows:

2 (c) The completed application must state that:

3 (1) the proposed agent is:

4 (A) an individual who is a bona fide resident of
5 this state;

6 (B) an association or firm composed only of
7 Texas residents; or

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

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

13 (3) [~~2~~] the proposed agent, including a
14 corporation's managerial personnel, if applicable, has
15 reasonable experience or instruction in the field of title
16 insurance;

17 (4) [~~3~~] the title insurance company:

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

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

22 (5) [~~4~~] the proposed agent qualifies as a title
23 insurance agent under this chapter.

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

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

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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
10 principles 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;

28 (3) a career school or college as defined by Section
29 132.001, Education Code;

30 (4) the State Bar of Texas;

31 (5) an educational publisher;

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

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

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

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

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

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

15 Sec. 2651.011. PRIVILEGED COMMUNICATIONS; FINANCIAL
16 INFORMATION. (a) Any information, including a document, record,
17 or statement, and including information provided to or received
18 from the commissioner under Subsection (b) or (c), or any other
19 information required or permitted to be made or disclosed to or
20 by the department under this subchapter, other than Section
21 2651.001, is not public information subject to Chapter 552,
22 Government Code, except to the extent described by Subsection
23 (b), and is a privileged communication and may not be disclosed
24 to the public except as evidence in an administrative hearing or
25 proceeding. This subsection does not apply to a document,
26 record, or statement required to be made or disclosed to the
27 department under Chapter 36[+]

28 ~~[(1) a privileged communication; and~~

29 ~~[(2) not admissible in evidence in a court action or~~
30 ~~proceeding except under a subpoena issued by a court of record].~~

31 (b) A title insurance company may provide information to

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

18 (c) Each title insurance agent shall provide the
19 department, on a quarterly basis, with a copy of the agent's
20 quarterly withholding tax report furnished by the agent to the
21 United States Internal Revenue Service. The title insurance
22 agent must also provide to the department proof of the payment
23 of the tax. An agent that does not have employees shall certify
24 to the department on a quarterly basis that there has not been a
25 material change in the agent's financial condition.

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

29 SECTION 14. Subchapter A, Chapter 2651, Insurance Code, is
30 amended by adding Sections 2651.012 and 2651.013 to read as
31 follows:

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

2 (1) "Principal office" means a principal office of
3 the business organization, unincorporated association, sole
4 proprietorship, or partnership in this state in which the
5 decision makers for the organization conduct the daily affairs
6 of the organization. The presence of an agency or
7 representative does not establish a principal office.

8 (2) "Unencumbered assets" means:

9 (A) cash or cash equivalents;

10 (B) liquid assets that have a readily
11 determinable market value and that do not have any lien against
12 them;

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

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

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

19 (F) a deposit made in accordance with Section
20 2651.102; and

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

23 (b) The unencumbered assets required under this section
24 are reserves for contingencies. The reserves must be deducted
25 from premiums for purposes of proceedings conducted under
26 Subchapter D, Chapter 2703. The reserves may only be spent or
27 released:

28 (1) as permitted by the commissioner if the agent is
29 declared impaired;

30 (2) if the agent merges or consolidates with another
31 agent who maintains the amount of unencumbered assets that would

1 be required for the survivor of the merger or consolidation;

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

4 (4) if the agent is liquidated.

5 (c) Except as provided by Subsection (d), an agent must
6 maintain unencumbered assets with a market value in excess of
7 liabilities, exclusive of the value of abstract plants, in the
8 following amounts unless the commissioner establishes lesser
9 amounts by rule:

10 (1) if the agent maintains its principal office in a
11 county with a population of 10,000 or more but less than 50,000:
12 \$25,000;

13 (2) if the agent maintains its principal office in a
14 county with a population of 50,000 or more but less than
15 200,000: \$50,000;

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

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

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

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

27 (f) An agent may elect to:

28 (1) maintain unencumbered assets as required by this
29 section; or

30 (2) place a deposit with the department as authorized
31 by Section 2652.102.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (D) the agent has at least 57.16 percent of the

1 required capitalization amount on September 1, 2013;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (2) 100 percent of that required capitalization
21 amount on September 1, 2011.

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

24 (j) Notwithstanding any other provision of this section,
25 this section takes effect only after the commissioner adopts the
26 form, content, and procedures for use of the surety bond
27 authorized under Subsection (a). The commissioner by rule shall
28 establish the procedures for making, filing, using, and paying
29 for the surety bond. Notwithstanding Subsections (g) and (h),
30 the commissioner by rule may extend the dates established under
31 those subsections as necessary to comply with this subsection.

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

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

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

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

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

24 (b) The commissioner by rule shall establish:

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

27 (2) the method by which the certification required by
28 this section must be made which shall not include an audit of
29 operating accounts.

30 SECTION 16. Subchapter E, Chapter 2651, Insurance Code, is
31 amended by adding Sections 2651.205 and 2651.206 to read as

1 follows:

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

6 (1) the right of access of the title insurance
7 company involved in the transaction that the file documents,
8 during customary business hours, for the purpose of copying the
9 guaranty file; and

10 (2) the obligation to maintain the confidentiality of
11 nonpublic information in the title insurance agent's records
12 according to state and federal laws that govern the title
13 insurance agent.

14 (b) If the title insurance agent has been designated
15 impaired, the Texas Title Insurance Guaranty Association has the
16 right to access the guaranty files and other records of the
17 title insurance agent, including electronic records, for 60 days
18 from the date of impairment, during customary business hours,
19 for purposes of copying those records.

20 (c) Except for the right of access granted under
21 Subsections (a) and (b), a lien created in favor of the landlord
22 by contract or otherwise is not impaired.

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

26 Sec. 2651.206. EXAMINATION REPORTS. (a) An audit,
27 review, or examination conducted under this chapter or Chapter
28 2602 must be conducted in accordance with rules adopted by the
29 commissioner. The rules must provide:

30 (1) that before a report from an examination, review,
31 or audit becomes final, the department will furnish to the title

1 agent or direct operation a copy of the report and any evidence
2 on which the report relies;

3 (2) a reasonable period of not less than 10 days
4 after the title agent or direct operation receives the report
5 and evidence from the department for the title agent or direct
6 operation to respond;

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

10 (4) procedures to ensure that the report and any
11 evidence regarding the report remain confidential and are
12 transmitted only to designated representatives of the title
13 agent or direct operation.

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

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

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

30 (c) Except as provided by Subsection (d), a public hearing
31 held under Subsection (a) or under Section 2703.206 shall be

1 conducted by the commissioner as a rulemaking hearing under
2 Subchapter B, Chapter 2001, Government Code.

3 (d) Notwithstanding Subsection (c), at the request of a
4 title insurance company or the public insurance counsel, a
5 public hearing held under Subsection (a) or under Section
6 2703.206 must be conducted by the commissioner as a contested
7 case hearing under Subchapters C through H and Subchapter Z,
8 Chapter 2001, Government Code.

9 (e) Information received or requested by the commissioner
10 as part of an individual audit or examination under Chapters
11 2602 and 2651 may not be used for rate setting under Subchapter
12 D, Chapter 2703. Nothing in this section prohibits a party from
13 conducting discovery in a ratemaking or other proceeding or
14 producing other information requested by the department, or
15 verifying the data reported under a statistical plan or report
16 promulgated by the commissioner.

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

19 SECTION 18. Section 2602.056 and Section 2602.153(c),
20 Insurance Code, are repealed.

21 SECTION 19. An abstract plant that exists on September 1,
22 2009, but that does not, on that date, cover a period beginning
23 not later than January 1, 1979, as required by Section 2501.004,
24 Insurance Code, as amended by this Act, is not required to
25 comply with that section before January 1, 2014.

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

30 SECTION 21. The commissioner of insurance shall hold a
31 hearing not later than the 120th day after the effective date of

1 this Act. Not later than the 90th day after the date of that
2 hearing, the commissioner shall issue an order prescribing the
3 rules to be used in connection with Section 2651.206, Insurance
4 Code, as added by this Act.

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

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 28, 2009

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB4338 by Smithee (Relating to title insurance agents and title insurance companies.), **As Passed 2nd House**

No significant fiscal implication to the State is anticipated.

The bill would amend the Insurance Code relating to title insurance agents and the confidentiality of title insurance files. The bill would require the Texas Department of Insurance (TDI) to adopt rules to implement the provisions of the bill. TDI indicates that any costs associated with the bill could be absorbed within existing resources.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 454 Department of Insurance

LBB Staff: JOB, JRO, KJG, CH

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 21, 2009

TO: Honorable Troy Fraser, Chair, Senate Committee on Business & Commerce

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB4338 by Smithee (Relating to title insurance agents and title insurance companies.),
Committee Report 2nd House, Substituted

No significant fiscal implication to the State is anticipated.

The bill would amend the Insurance Code relating to title insurance agents and the confidentiality of title insurance files. The bill would require the Texas Department of Insurance (TDI) to adopt rules to implement the provisions of the bill. TDI indicates that any costs associated with the bill could be absorbed within existing resources.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 454 Department of Insurance

LBB Staff: JOB, JRO, KJG, CH

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 18, 2009

TO: Honorable Troy Fraser, Chair, Senate Committee on Business & Commerce

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB4338 by Smithee (Relating to title insurance agents and title insurance companies.), As
Engrossed

No significant fiscal implication to the State is anticipated.

The bill would amend the Insurance Code relating to title insurance agents and the confidentiality of title insurance files. The bill would require the Texas Department of Insurance (TDI) to adopt rules to implement the provisions of the bill. TDI indicates that any costs associated with the bill could be absorbed within existing resources.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 454 Department of Insurance

LBB Staff: JOB, JRO, KJG, CH

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

April 24, 2009

TO: Honorable John T. Smithee, Chair, House Committee on Insurance

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB4338 by Smithee (Relating to title insurance agents and title insurance companies.),
Committee Report 1st House, Substituted

No significant fiscal implication to the State is anticipated.

The bill would amend the Insurance Code relating to title insurance agents and the confidentiality of title insurance files. The bill would require the Texas Department of Insurance (TDI) to adopt rules to implement the provisions of the bill. TDI indicates that any costs associated with the bill could be absorbed within existing resources.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 454 Department of Insurance

LBB Staff: JOB, KJG, CH

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

April 13, 2009

TO: Honorable John T. Smithee, Chair, House Committee on Insurance

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB4338 by Smithee (Relating to insolvency requirements regarding title insurance agents.),
As Introduced

No significant fiscal implication to the State is anticipated.

The bill would amend the Insurance Code relating to insolvency requirements regarding title insurance agents and the confidentiality of title insurance files. The bill would require the Texas Department of Insurance (TDI) to adopt rules to implement the provisions of the bill. TDI indicates that any costs associated with the bill could be absorbed within existing resources.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 454 Department of Insurance

LBB Staff: JOB, KJG, CH

