

House Bill 4338
Senate Amendments
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SECTION 1. Section 2501.004(b), Insurance Code, is amended to read as follows:

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

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

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

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

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

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Same as House version.

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

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

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

- (5) **"Impaired agent" means a title ~~[an]~~ agent or direct operation that is[=**
- ~~[(A) placed in:~~
- ~~[(i) temporary or permanent receivership under a court order based on a finding of insolvency; or~~
- ~~[(ii) conservatorship after the commissioner determines~~

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(6) "Impaired title insurance company" means a title insurance company that is[
[~~(A)~~ placed in:
[~~(i)~~ temporary or permanent receivership under a court order based on a finding of insolvency; or
[~~(ii)~~ conservatorship after the commissioner determines that the company is insolvent; and
[~~(B)~~] designated by the commissioner as an impaired title insurance company **or is:**
(A) placed by a court in this state or another state under an order of supervision, conservatorship, rehabilitation, or liquidation;
(B) placed under an order of supervision or conservatorship under Chapter 441;
(C) placed under an order of rehabilitation or liquidation under Chapter 443; or
(D) otherwise found by a court of competent jurisdiction

~~that the agent is insolvent; and~~
[~~(B)~~] designated by the commissioner as an impaired agent and is:
(A) placed by a court in this state or another state under an order of supervision, conservatorship, rehabilitation, or liquidation;
(B) placed under an order of supervision or conservatorship under Chapter 441;
(C) placed under an order of rehabilitation or liquidation under Chapter 443; or
(D) otherwise found by a court of competent jurisdiction to be insolvent or otherwise unable to pay obligations as they come due.

(6) "Impaired title insurance company" means a title insurance company that is[
[~~(A)~~ placed in:
[~~(i)~~ temporary or permanent receivership under a court order based on a finding of insolvency; or
[~~(ii)~~ conservatorship after the commissioner determines that the company is insolvent; and
[~~(B)~~] designated by the commissioner as an impaired title insurance company **and is:**
(A) placed by a court in this state or another state under an order of supervision, conservatorship, rehabilitation, or liquidation;
(B) placed under an order of supervision or conservatorship under Chapter 441;
(C) placed under an order of rehabilitation or liquidation under Chapter 443; or
(D) otherwise found by a court of competent jurisdiction

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to be insolvent or otherwise unable to pay obligations as they come due.

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

(a) The commissioner shall notify the association of the existence of an impaired title insurance company not later than the third day after the date on which the commissioner gives notice of the designation of impairment or learns the title insurance company is impaired as described by Sections 2602.003(6)(A)-(D).

The association is entitled to a copy of any complaint seeking an order of receivership with a finding of insolvency against a title insurance company at the time the complaint is filed with a court.

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

No equivalent provision.

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to be insolvent or otherwise unable to pay obligations as they come due.

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

(a) The commissioner shall notify the association of the existence of an impaired title insurance company or impaired agent not later than the third day after the date on which the commissioner gives notice of the designation of impairment to the impaired agent or impaired title insurance company.

The association is entitled to a copy of any complaint seeking an order of receivership with a finding of insolvency against a title insurance company at the time the complaint is filed with a court.

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

(d) The association shall pay from the guaranty fee account fees and reasonable and necessary expenses that the department incurs in an examination or audit of a title

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agent or direct operation under this chapter and Chapter 2651.

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

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

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

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

SECTION 7. Sections 2602.153(b) and (d), Insurance

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

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

SECTION 7. Same as House version.

SECTION 8. Sections 2602.153(b) and (d), Insurance

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Code, are amended to read as follows:

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

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

(2) expenses incurred in complying with Subchapter J;

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

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

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

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

(2) expenses related to an audit or an examination conducted by the department or the association

~~[and review expenses under Section 2602.103(b)].~~

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

Sec. 2602.251. COVERED CLAIMS IN GENERAL.

An unpaid claim is a covered claim if:

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

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Code, are amended to read as follows:

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

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

(2) expenses incurred in complying with Subchapter J;

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

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

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

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

(2) expenses related to:

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

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

(C) an action under Section 2602.452

~~[and review expenses under Section 2602.103(b)].~~

No equivalent provision.

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- (2) the claim arises out of the policy and is within the coverage and applicable limits of the policy;
- (3) the title insurance company that issued the policy or assumed the policy under an assumption certificate is an impaired title insurance company that has been placed in receivership or conservatorship; and
- (4) the insured real property or a lien on the property is located in this state.

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

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

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

(b) If an assessment has been made under this chapter for an **impaired** agent or guaranty fees have been provided for the agent, the agent, on release from the supervision, conservatorship, rehabilitation, [ø]

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

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

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

(b) If an assessment has been made under this chapter for an **impaired** agent or guaranty fees have been provided for the **impaired** agent, the agent, on release from the supervision, conservatorship, rehabilitation, [ø]

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

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

SUBCHAPTER J. ADDITIONAL DUTIES OF ASSOCIATION

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

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

- (1) close real estate transactions;
- (2) disburse escrow funds;
- (3) pay existing liens against real property;
- (4) record documents; and

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

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

SUBCHAPTER J. ADDITIONAL DUTIES OF ASSOCIATION

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

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

- (1) close real estate transactions;
- (2) disburse escrow funds;
- (3) record documents; and

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(5) issue final title insurance policies.

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(4) issue final title insurance policies.

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

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

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

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

(2) "Cooperate" means:

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

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

(c) A person who fails to cooperate as required under

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Subsection (b) is subject to sanctions under Chapter 82, in addition to all other sanctions available under law.

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

(c) The completed application must state that:

(1) the proposed agent is:

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

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

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

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

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

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

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

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

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

(d) Except as provided by Section 2651.0021(d), an agent applying for an initial license under this subchapter

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

(c) The completed application must state that:

(1) the proposed agent is:

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

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

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

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

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

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

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

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

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

(d) Except as provided by Section 2651.0021(e), an agent applying for an initial license under this subchapter

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must provide evidence that the agent and its management personnel have successfully completed a professional training program that complies with Section 2651.0021. The program must have been completed within one year preceding the date of application.

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

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

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

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

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

(3) applicable rules and laws;

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

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

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

(c) Professional training program hours may be used to

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must provide evidence that the agent and its management personnel have successfully completed a professional training program that complies with Section 2651.0021. The program must have been completed within one year preceding the date of application.

Same as House version.

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satisfy the continuing education requirements established under Section 2651.204.

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

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

(2) an accredited college or university;

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

(4) the State Bar of Texas;

(5) an educational publisher;

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

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

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

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

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

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

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

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Sec. 2651.011. PRIVILEGED COMMUNICATIONS; FINANCIAL INFORMATION. (a) Any information, including a document, record, or statement, and including information provided to or received from the commissioner under Subsection (b) or (c), required to be made or disclosed to the department under this subchapter, other than Section 2651.001,

is not public information subject to Chapter 552, Government Code, is [:

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

This subsection does not apply to a document, record, or statement required to be made or disclosed to the department under Chapter 36.

(b) A title insurance company may provide information to, or receive information from, the commissioner about a financial matter that would reasonably call into question the solvency of an agent that the company appointed.

An entity, other than the title insurance company appointing the agent, may not request or receive the information described by this subsection from the

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Sec. 2651.011. PRIVILEGED COMMUNICATIONS; FINANCIAL INFORMATION. (a) Any information, including a document, record, or statement, and including information provided to or received from the commissioner under Subsection (b) or (c), or any other information required or permitted to be made or disclosed to or by the department under this subchapter, other than Section 2651.001,

is not public information subject to Chapter 552, Government Code, except to the extent described by Subsection (b), and is a privileged communication and may not be disclosed to the public except as evidence in an administrative hearing or proceeding.

This subsection does not apply to a document, record, or statement required to be made or disclosed to the department under Chapter 36[:

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

(b) A title insurance company may provide information to the commissioner about a financial matter that would reasonably call into question the solvency of a title agent that the title insurance company appointed.

Each title insurance company shall provide annually to the department a list of officers authorized to provide to the department the information under this subsection.

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commissioner.

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

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

SECTION 14. Subchapter A, Chapter 2651, Insurance Code, is amended by adding Sections 2651.012 and

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Information provided under this subsection is not subject to Chapter 552, Government Code, except that the commissioner may release information that the commissioner received under this subsection to a title insurance company that has appointed, or that is considering appointing, the title agent. The commissioner may also release information that the commissioner received under this subsection to a title agent under Section 2651.206, Insurance Code, if the information is evidence on which an audit report or examination report relies. A title insurance company that receives information under this subsection may not release the information except under a subpoena issued by a court of competent jurisdiction.

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

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

SECTION 14. Subchapter A, Chapter 2651, Insurance Code, is amended by adding Sections 2651.012 and

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2651.013 to read as follows:

Sec. 2651.012. UNENCUMBERED ASSETS. (a) In this section,

"unencumbered assets" means:

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

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2651.013 to read as follows:

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

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

(2) "Unencumbered assets" means:

- (A) cash or cash equivalents;
- (B) liquid assets that have a readily determinable market value and that do not have any lien against them;
- (C) real estate, in excess of any encumbrances;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) if the agent is liquidated.

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

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

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

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

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

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

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

(e) An agent may elect to:

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

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

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

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

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

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

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

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

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

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

(f) An agent may elect to:

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

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

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

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

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

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

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

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

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

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(B) the agent has at least 50 percent of the required capitalization amount on September 1, 2011;
(C) the agent has at least 75 percent of the required capitalization amount on September 1, 2012; and
(D) the agent has at least 100 percent of the required capitalization amount on September 1, 2013;
(3) if the agent has been licensed at least five years but less than six years:
(A) the agent has at least 20 percent of the required capitalization amount on September 1, 2010;
(B) the agent has at least 40 percent of the required capitalization amount on September 1, 2011;
(C) the agent has at least 60 percent of the required capitalization amount on September 1, 2012;
(D) the agent has at least 80 percent of the required capitalization amount on September 1, 2013; and
(E) the agent has at least 100 percent of the required capitalization amount on September 1, 2014;
(4) if the agent has been licensed at least six years but less than seven years:
(A) the agent has at least 16.66 percent of the required capitalization amount on September 1, 2010;
(B) the agent has at least 33.32 percent of the required capitalization amount on September 1, 2011;
(C) the agent has at least 49.98 percent of the required capitalization amount on September 1, 2012;
(D) the agent has at least 66.64 percent of the required capitalization amount on September 1, 2013;
(E) the agent has at least 83.3 percent of the required capitalization amount on September 1, 2014; and

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(B) the agent has at least 50 percent of the required capitalization amount on September 1, 2011;
(C) the agent has at least 75 percent of the required capitalization amount on September 1, 2012; and
(D) the agent has at least 100 percent of the required capitalization amount on September 1, 2013;
(3) if the agent has been licensed at least five years but less than six years:
(A) the agent has at least 20 percent of the required capitalization amount on September 1, 2010;
(B) the agent has at least 40 percent of the required capitalization amount on September 1, 2011;
(C) the agent has at least 60 percent of the required capitalization amount on September 1, 2012;
(D) the agent has at least 80 percent of the required capitalization amount on September 1, 2013; and
(E) the agent has at least 100 percent of the required capitalization amount on September 1, 2014;
(4) if the agent has been licensed at least six years but less than seven years:
(A) the agent has at least 16.66 percent of the required capitalization amount on September 1, 2010;
(B) the agent has at least 33.32 percent of the required capitalization amount on September 1, 2011;
(C) the agent has at least 49.98 percent of the required capitalization amount on September 1, 2012;
(D) the agent has at least 66.64 percent of the required capitalization amount on September 1, 2013;
(E) the agent has at least 83.3 percent of the required capitalization amount on September 1, 2014; and

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(F) the agent has at least 100 percent of the required capitalization amount on September 1, 2015;
(5) if the agent has been licensed at least seven years but less than eight years:
(A) the agent has at least 14.29 percent of the required capitalization amount on September 1, 2010;
(B) the agent has at least 28.58 percent of the required capitalization amount on September 1, 2011;
(C) the agent has at least 42.87 percent of the required capitalization amount on September 1, 2012;
(D) the agent has at least 57.16 percent of the required capitalization amount on September 1, 2013;
(E) the agent has at least 71.45 percent of the required capitalization amount on September 1, 2014;
(F) the agent has at least 85.74 percent of the required capitalization amount on September 1, 2015; and
(G) the agent has at least 100 percent of the required capitalization amount on September 1, 2016;
(6) if the agent has been licensed at least eight years but less than nine years:
(A) the agent has at least 12.5 percent of the required capitalization amount on September 1, 2010;
(B) the agent has at least 25 percent of the required capitalization amount on September 1, 2011;
(C) the agent has at least 37.5 percent of the required capitalization amount on September 1, 2012;
(D) the agent has at least 50 percent of the required capitalization amount on September 1, 2013;
(E) the agent has at least 62.5 percent of the required capitalization amount on September 1, 2014;

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(F) the agent has at least 100 percent of the required capitalization amount on September 1, 2015;
(5) if the agent has been licensed at least seven years but less than eight years:
(A) the agent has at least 14.29 percent of the required capitalization amount on September 1, 2010;
(B) the agent has at least 28.58 percent of the required capitalization amount on September 1, 2011;
(C) the agent has at least 42.87 percent of the required capitalization amount on September 1, 2012;
(D) the agent has at least 57.16 percent of the required capitalization amount on September 1, 2013;
(E) the agent has at least 71.45 percent of the required capitalization amount on September 1, 2014;
(F) the agent has at least 85.74 percent of the required capitalization amount on September 1, 2015; and
(G) the agent has at least 100 percent of the required capitalization amount on September 1, 2016;
(6) if the agent has been licensed at least eight years but less than nine years:
(A) the agent has at least 12.5 percent of the required capitalization amount on September 1, 2010;
(B) the agent has at least 25 percent of the required capitalization amount on September 1, 2011;
(C) the agent has at least 37.5 percent of the required capitalization amount on September 1, 2012;
(D) the agent has at least 50 percent of the required capitalization amount on September 1, 2013;
(E) the agent has at least 62.5 percent of the required capitalization amount on September 1, 2014;

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(F) the agent has at least 75 percent of the required capitalization amount on September 1, 2015;
(G) the agent has at least 87.5 percent of the required capitalization amount on September 1, 2016; and
(H) the agent has at least 100 percent of the required capitalization amount on September 1, 2017; and
(7) if the agent has been licensed at least nine years:
(A) the agent has at least 11.11 percent of the required capitalization amount on September 1, 2010;
(B) the agent has at least 22.22 percent of the required capitalization amount on September 1, 2011;
(C) the agent has at least 33.33 percent of the required capitalization amount on September 1, 2012;
(D) the agent has at least 44.44 percent of the required capitalization amount on September 1, 2013;
(E) the agent has at least 55.55 percent of the required capitalization amount on September 1, 2014;
(F) the agent has at least 66.66 percent of the required capitalization amount on September 1, 2015;
(G) the agent has at least 77.77 percent of the required capitalization amount on September 1, 2016;
(H) the agent has at least 88.88 percent of the required capitalization amount on September 1, 2017; and
(I) the agent has at least 100 percent of the required capitalization amount on September 1, 2018.

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(F) the agent has at least 75 percent of the required capitalization amount on September 1, 2015;
(G) the agent has at least 87.5 percent of the required capitalization amount on September 1, 2016; and
(H) the agent has at least 100 percent of the required capitalization amount on September 1, 2017; and
(7) if the agent has been licensed at least nine years:
(A) the agent has at least 11.11 percent of the required capitalization amount on September 1, 2010;
(B) the agent has at least 22.22 percent of the required capitalization amount on September 1, 2011;
(C) the agent has at least 33.33 percent of the required capitalization amount on September 1, 2012;
(D) the agent has at least 44.44 percent of the required capitalization amount on September 1, 2013;
(E) the agent has at least 55.55 percent of the required capitalization amount on September 1, 2014;
(F) the agent has at least 66.66 percent of the required capitalization amount on September 1, 2015;
(G) the agent has at least 77.77 percent of the required capitalization amount on September 1, 2016;
(H) the agent has at least 88.88 percent of the required capitalization amount on September 1, 2017; and
(I) the agent has at least 100 percent of the required capitalization amount on September 1, 2018.
(h) If the agent has been licensed less than three years as of September 1, 2009, the agent must have:
(1) at least 50 percent of the required capitalization amount required under Subsection (c) on September 1, 2010; and

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

Sec. 2651.013. DIVISION OF PREMIUM HELD IN TRUST; RULES. (a) The funds held by a title insurance agent that are owed to a title insurance company, another title insurance agent, or a direct operation arising from a division of premium, whether as determined under rules adopted by the commissioner or by agreement among the parties, are considered to be held in trust for the title insurance company, other title insurance agent, or direct operation.

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

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

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

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

Sec. 2651.013. DIVISION OF PREMIUM HELD IN TRUST; RULES. (a) The funds held by a title insurance agent that are owed to a title insurance company, another title insurance agent, or a direct operation arising from a division of premium, whether as determined under rules adopted by the commissioner or by agreement among the parties, are considered to be held in trust for the title insurance company, other title insurance agent, or direct operation.

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

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

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

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

(b) The commissioner by rule shall establish:

- (1) a procedure to be used by an agent and the agent's certified public accountant to determine the value of categories of assets; and
- (2) the method by which the certification required by this section must be made.

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

Sec. 2651.205. POSSESSION OF GUARANTY FILE. (a) A title insurance agent may not give possession of the agent's guaranty file to any third party, including a landlord or storage facility, unless the third party:

- (1) accepts possession of the file subject to the right of

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

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

(b) The commissioner by rule shall establish:

- (1) a procedure to be used to determine the value of categories of assets; and
- (2) the method by which the certification required by this section must be made which shall not include an audit of operating accounts.

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

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

- (1) the right of access of the title insurance company

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access of the title insurance company involved in the transaction that the file documents, whether the right of access exists by contract or other statutory basis; and

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

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

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

"The (landlord or other party entering into the agreement) acknowledges that Section 2651.205 of the Texas Insurance Code guarantees access to title insurance files to the Texas Title Insurance Guaranty Association and certain title insurance companies that the tenant represents and the right of access supersedes any landlord's lien on any other property or the right to deny the association or a title insurance company access to the

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involved in the transaction that the file documents, during customary business hours, for the purpose of copying the guaranty file; and

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

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

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premises. The (landlord or other party entering into the agreement) agrees to maintain the confidentiality of nonpublic information in the title insurance agent's file according to state and federal laws that govern the title insurance agent."

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

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

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

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

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

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

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

(4) procedures to ensure that the report and any evidence regarding the report remain confidential and are transmitted only to designated representatives of the title

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agent or direct operation.

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

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

No equivalent provision.

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

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

(d) Notwithstanding Subsection (c), at the request of a title insurance company or the public insurance counsel, a public hearing held under Subsection (a) or under

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Section 2703.206 must be conducted by the commissioner as a contested case hearing under Subchapters C through H and Subchapter Z, Chapter 2001, Government Code.

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

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

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

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

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

SECTION 19. Same as House version.

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

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

(b) Section 2651.205, Insurance Code, as added by this Act, applies only to the conduct of a title insurance agent, and a contract or agreement executed or renewed by a title insurance agent, on or after:

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

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

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

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SECTION 20. Same as House version.

No equivalent provision.

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No equivalent provision.

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

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

SECTION 22. Same as House version.

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