BILL ANALYSIS

C.S.H.B. 2604
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Insurance
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Currently, the Department of Insurance is authorized to require minimum capitalization amounts for title agents. The purpose of this legislation is to establish a method for title agents to reach the minimum capitalization amounts by maintaining a solvency account for holding unencumbered assets.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the commissioner of insurance in SECTIONS 3 and 5 of this bill.

ANALYSIS

C.S.H.B. 2604 amends the Insurance Code to include the revocation of the agent's license among the circumstances under which reserves for contingencies consisting of the unencumbered assets held by a title insurance agent may be spent or released and makes a technical correction in the circumstance involving the agent's surrender of the agent's license. The bill authorizes a title insurance agent to maintain a solvency account to accrue and hold unencumbered assets. The bill requires such an account to be in a financial institution in Texas that is insured by an agency of the United States; accessible only to the Texas Department of Insurance (TDI), on order of the commissioner of insurance; and audited annually in the same manner provided for trust funds.

C.S.H.B. 2604 authorizes a solvency account to be established by an initial deposit in an amount less than the amount required under provisions of law establishing the value of unencumbered assets an agent must maintain. The bill requires an account established by such initial deposit to be funded with a minimum deposit in the amount for each policy of title insurance issued by the agent that is equal to the greater of $5 or two percent of the commission received by the agent rounded to the nearest whole dollar. The bill requires deposits to the account to be made at least quarterly and made from and based on the agent's portion of retained premiums collected during the calendar quarter during which premiums were collected.

C.S.H.B. 2604 requires interest that accrues in a solvency account the principal balance of which is less than the amount required under provisions of law for unencumbered assets to be retained in the account. The bill authorizes interest that accrues in an account the principal balance of which is greater than the required amount for unencumbered assets to be paid to the agent maintaining the account. The bill authorizes the commissioner to issue an order to access or release funds held in a solvency account if any of the circumstances under which a title agent's reserves for contingencies may be spent or released occurs. The bill requires the commissioner by rule to adopt procedures and requirements for the release, transfer, or expenditure of the funds held in an account. The bill requires the rules to establish the procedures and requirements by which TDI shall account for any expenditures that TDI makes from an account or funds transferred by TDI to a third party.

C.S.H.B. 2604 authorizes an agent, if an agent or an agent's principal office voluntarily ceases to engage in business, surrenders the agent's license, and liquidates the agent's assets, to apply to TDI in a form prescribed by the commissioner by rule for the release of the agent's solvency account. The bill requires the commissioner, not later than the 60th day after the date TDI receives an application for the release of the account and provided that the title agent complied with all applicable rules regarding a title agent ceasing operations, to enter an order authorizing the financial institution in which the account is held to release all or part of the account balance to the agent or the agent's principal office. The bill establishes that the application is denied if the commissioner does not enter the order within that 60-day period. The bill authorizes an agent to appeal an order of the commissioner or denial of an application without an order by filing a petition in a district court of Travis County to seek injunctive or other relief against the commissioner. The bill establishes that an account established, funded, and maintained as provided by the bill's provisions complies with the requirement for maintenance of unencumbered assets under provisions of law establishing the value of unencumbered assets an agent must retain, regardless of whether the amount required by those provisions of law is fully accrued. The bill requires an agent who closes a home office transaction in which a title insurance company issues a policy of title insurance and who remits premium to the title insurance company to make the deposit required by the bill's provisions. The bill establishes that an agent who otherwise participates in a home office transaction but does not close the transaction is not required to make such deposit.

C.S.H.B. 2604 requires an annual audit of escrow accounts, for purposes of the certification of unencumbered assets, unless the title insurance agent has elected to make a deposit with TDI under provisions of law relating to unencumbered assets, to be accompanied by a certification by the agent or direct operation that the agent has the appropriate unencumbered assets in excess of liabilities, rather than accompanied by that certification made by a certified public accountant. The bill prohibits the method established by the commissioner for making such a certification of unencumbered assets from including a certification by a certified public accountant. The bill removes a requirement that the commissioner by rule establish a procedure to be used to determine the value of categories of assets for purposes of the certification. The bill requires the commissioner of insurance, as soon as practicable after the bill's effective date and not later than January 1, 2012, to promulgate rules and forms governing the operation of a solvency account under the bill's provisions.

C.S.H.B. 2604 includes in the definition of "unencumbered assets" a solvency account that meets the requirements of the bill's provisions.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 2604 contains provisions not included in the original including the revocation of a title insurance agent's license among the circumstances under which reserves for contingencies consisting of unencumbered assets held by the agent may be spent or released and making a technical correction in the circumstance involving the agent's surrender of the agent's license.

C.S.H.B. 2604 differs from the original by requiring a solvency account, established by an initial deposit of an amount less than the amount lawfully established as the value of unencumbered assets an agent must maintain, to be funded with a minimum deposit in the amount for each policy of title insurance issued by the agent that is equal to the greater of $5 or two percent of the commission received by the agent rounded to the nearest whole dollar, whereas the original requires such an account to be funded with a minimum deposit in the amount that is equal to $5 for each policy of title insurance issued by the agent.

C.S.H.B. 2604 differs from the original, in the provision requiring deposits to the account to be made from and based on retained premiums collected during the calendar quarter during which premiums were collected, by specifying that those deposits are made from and based on the agent's portion of retained premiums, whereas the original includes no such specification.

C.S.H.B. 2604 differs from the original by authorizing the commissioner of insurance to issue an order to access or release funds held in a solvency account if any of the circumstances under which a title agent's reserves for contingencies may be spent or released occurs, whereas the original authorizes the commissioner to issue an order to access such funds if the agent is an impaired agent or the commissioner determines that the agent must be involuntarily liquidated as the result of license surrender or revocation.

C.S.H.B. 2604 contains provisions not included in the original requiring the commissioner by rule to adopt procedures and requirements for the release, transfer, or expenditure of the funds held in an account and setting out requirements for those rules.

C.S.H.B. 2604 differs from the original by making the requirement that the commissioner enter an order authorizing the financial institution in which a solvency account is held to release all or part of the account balance to the title agent or the agent's principal office contingent upon the agent's compliance with all applicable rules regarding a title agent ceasing operations, whereas the original does not include such contingency.

C.S.H.B. 2604 contains a provision not included in the original establishing that an agent's application for release of the agent's solvency account is denied if the commissioner does not enter the order within the 60-day period for entering such an order. The substitute contains a provision not included in the original authorizing an agent to appeal an order of the commissioner or denial of an application without an order by filing a petition in a district court of Travis County to seek injunctive or other relief against the commissioner.

C.S.H.B. 2604 contains provisions not included in the original relating to the requirement to make a deposit under the bill's provisions and an exemption from that requirement for certain agents who close or who do not close but participate in a home office transaction in which a title insurance company issues a policy of title insurance .

C.S.H.B. 2604 includes a provision not included in the original requiring the annual audit of escrow accounts to be accompanied by a certification by the title insurance agent or direct operation that the agent has the appropriate unencumbered assets as required by and prohibiting such certification by a certified public accountant

C.S.H.B. 2604 differs from the original by providing an immediate effective date or, if the bill does not receive the necessary vote, September 1, 2011, whereas the original provides an effective date of September 1, 2011.