

By: Taylor of Galveston

H.B. No. 2604

Substitute the following for H.B. No. 2604:

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C.S.H.B. No. 2604

A BILL TO BE ENTITLED

1 AN ACT

2 relating to unencumbered assets held by title agents.

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

4 SECTION 1. Section 2651.012(a)(2), Insurance Code, is
5 amended to read as follows:

6 (2) "Unencumbered assets" means:

7 (A) cash or cash equivalents;

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

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

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

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

17 (F) a deposit made in accordance with Section
18 2651.102; ~~and~~

19 (G) a letter of credit that meets the
20 requirements of Section 493.104(b)(2)(C); and

21 (H) a solvency account that meets the
22 requirements of Section 2651.0121.

23 SECTION 2. Section 2651.012(b), Insurance Code, is amended
24 to read as follows as follows:

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; or

13 (5) if the agent's license is revoked.

14 SECTION 3. Subchapter A, Chapter 2651, Insurance Code, is
15 amended by adding Section 2651.0121 to read as follows:

16 Sec. 2651.0121. SOLVENCY ACCOUNT. (a) An agent may
17 maintain a solvency account to accrue and hold unencumbered assets
18 as provided by this section.

19 (b) An account under this section must be:

20 (1) in a financial institution in this state that is
21 insured by an agency of the United States;

22 (2) accessible only to the department, on order of the
23 commissioner; and

24 (3) audited in the same manner provided for trust
25 funds by Section 2651.151.

26 (c) Subject to Subsection (d), an account under this section
27 may be established by an initial deposit in an amount less than the

1 amount provided by Section 2651.012(c).

2 (d) An account established by an initial deposit of an
3 amount less than the amount provided by Section 2651.012(c) must be
4 funded with a minimum deposit in the amount for each policy of title
5 insurance issued by the agent that is equal to the greater of \$5 or
6 two percent of the commission received by the agent rounded to the
7 nearest whole dollar.

8 (e) Deposits to the account must be made at least quarterly
9 and must be made from and based on the agent's portion of retained
10 premiums collected during the calendar quarter during which
11 premiums were collected.

12 (f) Interest that accrues in an account the principal
13 balance of which is less than the amount provided by Section
14 2651.012(c) must be retained in the account. Interest that accrues
15 in an account the principal balance of which is greater than the
16 amount provided by Section 2651.012(c) may be paid to the agent
17 maintaining the account.

18 (g) The commissioner may issue an order to access or release
19 funds held in an account under this section if any of the events
20 described by Section 2651.012(b) occur.

21 (h) The commissioner by rule shall adopt procedures and
22 requirements for the release, transfer, or expenditure of the funds
23 held in an account. The rules must establish the procedures and
24 requirements by which the department shall account for any
25 expenditures that the department makes from an account or funds
26 transferred by the department to a third party.

27 (i) If an agent or an agent's principal office voluntarily

1 ceases to engage in business, surrenders the agent's license, and
2 liquidates the agent's assets, the agent may apply to the
3 department in a form prescribed by the commissioner by rule for the
4 release of the agent's solvency account.

5 (j) Not later than the 60th day after the date the
6 department receives an application under Subsection (i), provided
7 that the title agent complied with all applicable rules regarding a
8 title agent ceasing operations, the commissioner shall enter an
9 order authorizing the financial institution in which the solvency
10 account is held to release all or part of the account balance to the
11 agent or the agent's principal office. If the commissioner does not
12 enter the order within that 60-day period, the application is
13 denied.

14 (k) An agent may appeal an order of the commissioner or
15 denial of an application without an order by filing a petition in a
16 district court of Travis County to seek injunctive or other relief
17 against the commissioner.

18 (l) An account established, funded, and maintained as
19 provided by this section complies with the requirement for
20 maintenance of unencumbered assets under Section 2651.012(c),
21 regardless of whether the amount required by that section is fully
22 accrued.

23 (m) In a home office transaction in which a title insurance
24 company issues a policy of title insurance, an agent who closes the
25 transaction and remits premium to the title insurance company shall
26 make the deposit required by this subsection. An agent who
27 otherwise participates in a home office transaction but does not

1 close the transaction is not required to make a deposit under this
2 section.

3 SECTION 4. Section 2651.158, Insurance Code, is amended to
4 read as follows:

5 Sec. 2651.158. CERTIFICATION OF UNENCUMBERED ASSETS. (a)
6 Unless the agent has elected to make a deposit with the department
7 under Section 2651.012(f), the annual audit of escrow accounts must
8 be accompanied by a certification by the title insurance agent or
9 direct operation [~~a certified public accountant~~] that the title
10 insurance agent has the appropriate unencumbered assets in excess
11 of liabilities, exclusive of the value of its abstract plants, as
12 required by Section 2651.012.

13 (b) The commissioner by rule shall establish[+
14 [~~(1) a procedure to be used to determine the value of~~
15 ~~categories of assets, and~~
16 [~~(2)~~] the method by which the certification required
17 by this section must be made, which may [~~shall~~] not include an audit
18 of operating accounts or a certification by a certified public
19 accountant.

20 SECTION 5. As soon as practicable after the effective date
21 of this Act, but not later than January 1, 2012, the commissioner of
22 insurance shall promulgate rules and forms governing the operation
23 of a solvency account under Section 2651.0121, Insurance Code, as
24 added by this Act.

25 SECTION 6. This Act takes effect immediately if it receives
26 a vote of two-thirds of all the members elected to each house, as
27 provided by Section 39, Article III, Texas Constitution. If this

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1 Act does not receive the vote necessary for immediate effect, this

2 Act takes effect September 1, 2011.