

1-1 By: Taylor of Galveston (Senate Sponsor - Harris) H.B. No. 2604
1-2 (In the Senate - Received from the House May 6, 2011;
1-3 May 9, 2011, read first time and referred to Committee on Business
1-4 and Commerce; May 19, 2011, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 8, Nays 0;
1-6 May 19, 2011, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 2604 By: Harris

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

1-10 relating to unencumbered assets held by title agents.
1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
1-12 SECTION 1. Section 2651.012(a)(2), Insurance Code, is
1-13 amended to read as follows:

1-14 (2) "Unencumbered assets" means:
1-15 (A) cash or cash equivalents;
1-16 (B) liquid assets that have a readily
1-17 determinable market value and that do not have any lien against
1-18 them;
1-19 (C) real estate, in excess of any encumbrances;
1-20 (D) investments, such as mutual funds,
1-21 certificates of deposit, and stocks and bonds;
1-22 (E) a surety bond, the form and content of which
1-23 shall be prescribed by the commissioner in accordance with this
1-24 code;
1-25 (F) a deposit made in accordance with Section
1-26 2651.102; ~~and~~
1-27 (G) a letter of credit that meets the
1-28 requirements of Section 493.104(b)(2)(C); and
1-29 (H) a solvency account that meets the
1-30 requirements of Section 2651.0121.

1-31 SECTION 2. Section 2651.012(b), Insurance Code, is amended
1-32 to read as follows as follows:

1-33 (b) The unencumbered assets required under this section are
1-34 reserves for contingencies. The reserves must be deducted from
1-35 premiums for purposes of proceedings conducted under Subchapter D,
1-36 Chapter 2703. The reserves may only be spent or released:

1-37 (1) as permitted by the commissioner if the agent is
1-38 declared impaired;
1-39 (2) if the agent merges or consolidates with another
1-40 agent who maintains the amount of unencumbered assets that would be
1-41 required for the survivor of the merger or consolidation;
1-42 (3) if the agent surrenders the agent's license under
1-43 Section 2651.201 ~~[and the rules adopted under that section];~~ ~~[or]~~
1-44 (4) if the agent is liquidated; or
1-45 (5) if the agent's license is revoked.

1-46 SECTION 3. Subchapter A, Chapter 2651, Insurance Code, is
1-47 amended by adding Section 2651.0121 to read as follows:

1-48 Sec. 2651.0121. SOLVENCY ACCOUNT. (a) An agent may
1-49 maintain a solvency account to accrue and hold unencumbered assets
1-50 as provided by this section.

1-51 (b) An account under this section must be:

1-52 (1) in a financial institution in this state that is
1-53 insured by an agency of the United States;

1-54 (2) accessible only to the department, on order of the
1-55 commissioner; and

1-56 (3) audited in the same manner provided for trust
1-57 funds by Section 2651.151.

1-58 (c) Subject to Subsection (d), an account under this section
1-59 may be established by an initial deposit in an amount less than the
1-60 amount provided by Section 2651.012(c).

1-61 (d) An account established by an initial deposit of an
1-62 amount less than the amount provided by Section 2651.012(c) must be
1-63 funded with a minimum deposit in the amount for each policy of title

2-1 insurance issued by the agent that is equal to the greater of \$5 or
 2-2 one percent of the agent's portion of the retained premium received
 2-3 by the agent rounded to the nearest whole dollar.

2-4 (e) Deposits to the account must be made at least quarterly
 2-5 and must be made from and based on the agent's portion of retained
 2-6 premiums collected during the calendar quarter during which
 2-7 premiums were collected.

2-8 (f) Interest that accrues in an account the principal
 2-9 balance of which is less than the amount provided by Section
 2-10 2651.012(c) must be retained in the account. Interest that accrues
 2-11 in an account the principal balance of which is greater than the
 2-12 amount provided by Section 2651.012(c) shall be paid to the agent
 2-13 maintaining the account.

2-14 (g) The commissioner may issue an order to access or release
 2-15 funds held in an account under this section if any of the events
 2-16 described by Section 2651.012(b) occur.

2-17 (h) The commissioner by rule shall adopt procedures and
 2-18 requirements for the release, transfer, or expenditure of the funds
 2-19 held in an account. The rules must establish the procedures and
 2-20 requirements by which the department shall account for any
 2-21 expenditures that the department makes from an account or funds
 2-22 transferred by the department to a third party.

2-23 (i) If an agent or an agent's principal office voluntarily
 2-24 ceases to engage in business, surrenders the agent's license, and
 2-25 liquidates the agent's assets, the agent may apply to the
 2-26 department in a form prescribed by the commissioner by rule for the
 2-27 release of the agent's solvency account.

2-28 (j) Not later than the 60th day after the date the
 2-29 department receives an application under Subsection (i), provided
 2-30 that the title agent complied with all applicable rules adopted
 2-31 under Subsection (h), the commissioner shall enter an order
 2-32 authorizing the financial institution in which the solvency account
 2-33 is held to release all or part of the account balance to the agent or
 2-34 the agent's principal office. If the commissioner does not enter
 2-35 the order within that 60-day period, the application is denied.

2-36 (k) An agent may appeal an order of the commissioner or
 2-37 denial of an application without an order by filing a petition in a
 2-38 district court of Travis County to seek injunctive or other relief
 2-39 against the commissioner.

2-40 (l) An account established, funded, and maintained as
 2-41 provided by this section complies with the requirement for
 2-42 maintenance of unencumbered assets under Section 2651.012(c),
 2-43 regardless of whether the amount required by that section is fully
 2-44 accrued. The amount required by Section 2651.012(c) may be accrued
 2-45 in an account as provided by this section according to the schedule
 2-46 established by Section 2651.012(g) or as provided by the
 2-47 commissioner by rule under Section 2651.012(j).

2-48 (m) In a home office issue transaction in which a title
 2-49 insurance company issues a policy of title insurance, an agent who
 2-50 closes the transaction and remits premium to the title insurance
 2-51 company shall make the deposit required by this section. An agent
 2-52 who otherwise participates in a home office issue transaction but
 2-53 does not close the transaction is not required to make a deposit
 2-54 under this section.

2-55 SECTION 4. Section 2651.158, Insurance Code, is amended to
 2-56 read as follows:

2-57 Sec. 2651.158. CERTIFICATION OF UNENCUMBERED ASSETS. (a)
 2-58 Unless the agent has elected to make a deposit with the department
 2-59 under Section 2651.012(f), the annual audit of escrow accounts must
 2-60 be accompanied by a certification by the title insurance agent or
 2-61 direct operation [a certified public accountant] that the title
 2-62 insurance agent has the appropriate unencumbered assets in excess
 2-63 of liabilities, exclusive of the value of its abstract plants, as
 2-64 required by Section 2651.012.

2-65 (b) The commissioner by rule shall establish[+]
 2-66 [(-1) a procedure to be used to determine the value of
 2-67 categories of assets, and
 2-68 [(-2)] the method by which the certification required
 2-69 by this section must be made, which shall not include an audit of

3-1 operating accounts or a certification by a certified public
3-2 accountant.

3-3 SECTION 5. As soon as practicable after the effective date
3-4 of this Act, but not later than January 1, 2012, the commissioner of
3-5 insurance shall promulgate rules and forms governing the operation
3-6 of a solvency account under Section 2651.0121, Insurance Code, as
3-7 added by this Act.

3-8 SECTION 6. This Act takes effect immediately if it receives
3-9 a vote of two-thirds of all the members elected to each house, as
3-10 provided by Section 39, Article III, Texas Constitution. If this
3-11 Act does not receive the vote necessary for immediate effect, this
3-12 Act takes effect September 1, 2011.

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