

By: Deuell

S.B. No. 416

A BILL TO BE ENTITLED

AN ACT

relating to the amount of outstanding total liability of a mortgage guaranty insurer.

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

SECTION 1. Section 3502.156, Insurance Code, is amended by amending Subsections (a) and (c) and adding Subsections (d) through (j) to read as follows:

(a) Except as provided by Subsection (d), a [A] mortgage guaranty insurer may not at any time have outstanding under the insurer's aggregate mortgage guaranty insurance policies a total liability, net of reinsurance, that exceeds the sum of the insurer's capital, surplus, and contingency reserve, multiplied by 25.

(c) Except as provided by Subsection (d), a [A] mortgage guaranty insurer that has outstanding total liability that exceeds the amount computed under Subsection (a) may not write new mortgage guaranty insurance business until the insurer's total liability no longer exceeds that amount.

(d) The commissioner may waive the limit imposed by Subsection (a) at the written request of a mortgage guaranty insurer on a finding by the commissioner that the sum of the insurer's capital, surplus, and contingency reserve is reasonable in relationship to the insurer's aggregate insured risk and adequate to the insurer's financial needs. The request must be made

1 in writing on or before the 90th day before the date the insurer
2 expects to exceed the limit imposed by Subsection (a) and shall, at
3 a minimum, address the factors listed in Subsection (e).

4 (e) In determining whether a mortgage guaranty insurer's
5 capital, surplus, and contingency reserve is reasonable in relation
6 to the insurer's aggregate insured risk and adequate to the
7 insurer's financial needs, the commissioner, in the commissioner's
8 sole discretion, may consider relevant factors including:

9 (1) the insurer's size as measured by the insurer's
10 assets, capital and surplus, reserves, premium writings, insurance
11 in force, and other appropriate criteria;

12 (2) the extent to which the insurer's business is
13 diversified across time, geography, credit quality, origination,
14 and distribution channels;

15 (3) the nature and extent of the insurer's reinsurance
16 program;

17 (4) the quality, diversification, and liquidity of the
18 insurer's investment portfolio;

19 (5) the historical and forecasted trend in the size of
20 the insurer's capital, surplus, and contingency reserve;

21 (6) the capital, surplus, and contingency reserve
22 maintained by other comparable mortgage guaranty insurers in
23 relation to the nature of the insurers' respective insured risks;

24 (7) the reasonableness of the insurer's reserves;

25 (8) the quality and liquidity of the insurer's
26 investments in affiliates; and

27 (9) the quality of the insurer's earnings and the

extent to which the insurer's reported earnings include extraordinary items.

(f) With respect to the factors listed in Subsection (e)(8), the commissioner may treat an investment in an affiliate as a nonadmitted asset for purposes of determining the adequacy of surplus as regards policyholders.

(g) The commissioner may retain accountants, actuaries, or other experts to assist the commissioner in the review of a request made by a mortgage guaranty insurer under Subsection (d). The insurer shall pay the commissioner's cost of retaining those persons.

(h) A waiver granted under Subsection (d) must be for a specified period that does not exceed two years and is subject to any terms and conditions the commissioner considers best suited to restoring the mortgage guaranty insurer's capital, surplus, and contingency reserve to the level required by Subsection (a). The mortgage guaranty insurer may apply to extend the waiver on or before the 90th day before the date the waiver period expires.

(i) The commissioner may not under any circumstances allow the mortgage guaranty insurer to have outstanding under the insurer's aggregate mortgage guaranty insurance policies a total liability, net of reinsurance, that exceeds the sum of the insurer's capital, surplus, and contingency reserve, multiplied by 50.

(j) An insurer may not be allowed a waiver under Subsections (d) and (h) for a continuous period of more than six years.

SECTION 2. This Act takes effect immediately if it receives

S.B. No. 416

1 a vote of two-thirds of all the members elected to each house, as
2 provided by Section 39, Article III, Texas Constitution. If this
3 Act does not receive the vote necessary for immediate effect, this
4 Act takes effect September 1, 2011.