

1-1 By: Deuell S.B. No. 416
1-2 (In the Senate - Filed January 26, 2011; February 2, 2011,
1-3 read first time and referred to Committee on Business and Commerce;
1-4 March 7, 2011, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 7, Nays 0; March 7, 2011,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 416 By: Jackson

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

1-10 relating to the amount of outstanding total liability of a mortgage
1-11 guaranty insurer.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Section 3502.156, Insurance Code, is amended by
1-14 amending Subsections (a) and (c) and adding Subsections (d) through
1-15 (j) to read as follows:

1-16 (a) Except as provided by Subsection (d), a [A] mortgage
1-17 guaranty insurer may not at any time have outstanding under the
1-18 insurer's aggregate mortgage guaranty insurance policies a total
1-19 liability, net of reinsurance, that exceeds the sum of the
1-20 insurer's capital, surplus, and contingency reserve, multiplied by
1-21 25.

1-22 (c) Except as provided by Subsection (d), a [A] mortgage
1-23 guaranty insurer that has outstanding total liability that exceeds
1-24 the amount computed under Subsection (a) may not write new mortgage
1-25 guaranty insurance business until the insurer's total liability no
1-26 longer exceeds that amount.

1-27 (d) The commissioner may waive the limit imposed by
1-28 Subsection (a) at the written request of a mortgage guaranty
1-29 insurer on a finding by the commissioner that the sum of the
1-30 insurer's capital, surplus, and contingency reserve is reasonable
1-31 in relationship to the insurer's aggregate insured risk and
1-32 adequate to the insurer's financial needs. The request must be made
1-33 in writing on or before the 90th day before the date the insurer
1-34 expects to exceed the limit imposed by Subsection (a) and shall, at
1-35 a minimum, address the factors listed in Subsection (e).

1-36 (e) In determining whether a mortgage guaranty insurer's
1-37 capital, surplus, and contingency reserve is reasonable in relation
1-38 to the insurer's aggregate insured risk and adequate to the
1-39 insurer's financial needs, the commissioner, in the commissioner's
1-40 sole discretion, may consider relevant factors including:

1-41 (1) the insurer's size as measured by the insurer's
1-42 assets, capital and surplus, reserves, premium writings, insurance
1-43 in force, and other appropriate criteria;

1-44 (2) the extent to which the insurer's business is
1-45 diversified across time, geography, credit quality, origination,
1-46 and distribution channels;

1-47 (3) the nature and extent of the insurer's reinsurance
1-48 program;

1-49 (4) the quality, diversification, and liquidity of the
1-50 insurer's investment portfolio;

1-51 (5) the historical and forecasted trend in the size of
1-52 the insurer's capital, surplus, and contingency reserve;

1-53 (6) the capital, surplus, and contingency reserve
1-54 maintained by other comparable mortgage guaranty insurers in
1-55 relation to the nature of the insurers' respective insured risks;

1-56 (7) the reasonableness of the insurer's reserves;

1-57 (8) the quality and liquidity of the insurer's
1-58 investments in affiliates; and

1-59 (9) the quality of the insurer's earnings and the
1-60 extent to which the insurer's reported earnings include
1-61 extraordinary items.

1-62 (f) With respect to the factors listed in Subsection (e)(8),
1-63 the commissioner may treat an investment in an affiliate as a

2-1 nonadmitted asset for purposes of determining the adequacy of
2-2 surplus as regards policyholders.

2-3 (g) The commissioner may retain accountants, actuaries, or
2-4 other experts to assist the commissioner in the review of a request
2-5 made by a mortgage guaranty insurer under Subsection (d). The
2-6 insurer shall pay the commissioner's cost of retaining those
2-7 persons.

2-8 (h) A waiver granted under Subsection (d) must be for a
2-9 specified period that does not exceed two years and is subject to
2-10 any terms and conditions the commissioner considers best suited to
2-11 restoring the mortgage guaranty insurer's capital, surplus, and
2-12 contingency reserve to the level required by Subsection (a). The
2-13 mortgage guaranty insurer may apply to extend the waiver on or
2-14 before the 90th day before the date the waiver period expires.

2-15 (i) The commissioner may not under any circumstances allow
2-16 the mortgage guaranty insurer to have outstanding under the
2-17 insurer's aggregate mortgage guaranty insurance policies a total
2-18 liability, net of reinsurance, that exceeds the sum of the
2-19 insurer's capital, surplus, and contingency reserve, multiplied by
2-20 50.

2-21 (j) An insurer may not be allowed a waiver under Subsections
2-22 (d) and (h) for a continuous period of more than six years.

2-23 SECTION 2. This Act takes effect immediately if it receives
2-24 a vote of two-thirds of all the members elected to each house, as
2-25 provided by Section 39, Article III, Texas Constitution. If this
2-26 Act does not receive the vote necessary for immediate effect, this
2-27 Act takes effect September 1, 2011.

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