

**House Bill 2604**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

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

(2) "Unencumbered assets" means:

(A) cash or cash equivalents;

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

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

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

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

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

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

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

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

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

(1) as permitted by the commissioner if the agent is declared impaired;

(2) if the agent merges or consolidates with another agent who maintains the amount of unencumbered assets that would be required for the survivor of the merger or consolidation;

(3) if the agent surrenders the agent's license under Section

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SECTION 1. Same as House version.

SECTION 2. Same as House version.

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2651.201 [~~and the rules adopted under that section~~]; [~~or~~]  
(4) if the agent is liquidated; or  
(5) if the agent's license is revoked.

SECTION 3. Subchapter A, Chapter 2651, Insurance Code, is amended by adding Section 2651.0121 to read as follows:  
Sec. 2651.0121. SOLVENCY ACCOUNT. (a) An agent may maintain a solvency account to accrue and hold unencumbered assets as provided by this section.

(b) An account under this section must be:

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

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

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

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

(d) An account established by an initial deposit of an amount less than the amount provided by Section 2651.012(c) must 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.

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

(f) Interest that accrues in an account the principal balance of

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SECTION 3. Subchapter A, Chapter 2651, Insurance Code, is amended by adding Section 2651.0121 to read as follows:  
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(b) An account under this section must be:

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

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

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

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

(d) An account established by an initial deposit of an amount less than the amount provided by Section 2651.012(c) must 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 one percent of the agent's portion of the retained premium received by the agent rounded to the nearest whole dollar.

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

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

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

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

(i) 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, the agent may apply to the department in a form prescribed by the commissioner by rule for the release of the agent's solvency account.

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

(k) An agent may 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

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which is less than the amount provided by Section 2651.012(c) must be retained in the account. Interest that accrues in an account the principal balance of which is greater than the amount provided by Section 2651.012(c) **shall** be paid to the agent maintaining the account.

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(i) 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, the agent may apply to the department in a form prescribed by the commissioner by rule for the release of the agent's solvency account.

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

(k) An agent may 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

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relief against the commissioner.

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

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

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

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

(b) The commissioner by rule shall establish[  
~~[(1) a procedure to be used to determine the value of~~

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relief against the commissioner.

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

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

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

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

(b) The commissioner by rule shall establish[  
~~[(1) a procedure to be used to determine the value of~~

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<p><del>categories of assets; and</del> [(2)] the method by which the certification required by this section must be made, which <b>may</b> <del>[shall]</del> not include an audit of operating accounts <u>or a certification by a certified public accountant.</u></p>	<p><del>categories of assets; and</del> [(2)] the method by which the certification required by this section must be made, which <b>shall</b> not include an audit of operating accounts <u>or a certification by a certified public accountant.</u></p>	
<p>SECTION 5. As soon as practicable after the effective date of this Act, but not later than January 1, 2012, the commissioner of insurance shall promulgate rules and forms governing the operation of a solvency account under Section 2651.0121, Insurance Code, as added by this Act.</p>	<p>SECTION 5. Same as House version.</p>	
<p>SECTION 6. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2011.</p>	<p>SECTION 6. Same as House version.</p>	