

AN ACT

relating to unencumbered assets held by title agents.

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

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:

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 one percent of the agent's portion of the retained premium received  
7 by the agent rounded to the 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) shall 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 adopted  
8 under Subsection (h), the commissioner shall enter an order  
9 authorizing the financial institution in which the solvency account  
10 is held to release all or part of the account balance to the agent or  
11 the agent's principal office. If the commissioner does not enter  
12 the order within that 60-day period, the application is denied.

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

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

25 (m) In a home office issue transaction in which a title  
26 insurance company issues a policy of title insurance, an agent who  
27 closes the transaction and remits premium to the title insurance

1 company shall make the deposit required by this section. An agent  
2 who otherwise participates in a home office issue transaction but  
3 does not close the transaction is not required to make a deposit  
4 under this section.

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

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

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

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

27 SECTION 6. This Act takes effect immediately if it receives

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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.

H.B. No. 2604

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President of the Senate

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Speaker of the House

I certify that H.B. No. 2604 was passed by the House on May 5, 2011, by the following vote: Yeas 144, Nays 2, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 2604 on May 24, 2011, by the following vote: Yeas 142, Nays 0, 2 present, not voting.

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Chief Clerk of the House

I certify that H.B. No. 2604 was passed by the Senate, with amendments, on May 21, 2011, by the following vote: Yeas 31, Nays 0.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

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Governor