

## BILL ANALYSIS

Senate Research Center  
82R29175 TJS-F

C.S.H.B. 2604  
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Business & Commerce  
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Committee Report (Substituted)

### AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, the Texas Department of Insurance is authorized to require minimum capitalization amounts for title agents. C.S.H.B. 2604 establishes a method for title agents to reach the minimum capitalization amounts by maintaining a solvency account for holding unencumbered assets.

C.S.H.B. 2604 amends current law relating to unencumbered assets held by title agents.

### RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the commissioner of insurance in SECTION 3 (Section 2651.0121, Insurance Code) of this bill.

Rulemaking authority previously granted to the commissioner of insurance is modified in SECTION 4 (Section 2651.158, Insurance Code) of this bill.

### SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 2651.012(a)(2), Insurance Code, to redefine "unencumbered assets."

SECTION 2. Amends Section 2651.012(b), Insurance Code, as follows:

(b) Provides that the unencumbered assets required under this section are reserves for contingencies. Requires that the reserves be deducted from premiums for purposes of proceedings conducted under Subchapter D (Fixing and Promulgating Premium Rates), Chapter 2703 (Policy Forms and Premium Rates). Authorizes the reserves to only be spent or released under certain circumstances, including if the agent's license is revoked.

Deletes existing text relating to authorizing the reserves to only be spent or released under certain circumstances, including if the agent surrenders the agent's license under Section 2651.201 (License Surrender or Forfeiture) and the rules adopted under that section.

SECTION 3. Amends Subchapter A, Chapter 2651, Insurance Code, by adding Section 2651.0121, as follows:

Sec. 2651.0121. SOLVENCY ACCOUNT. (a) Authorizes a title insurance agent (agent) to maintain a solvency account to accrue and hold unencumbered assets as provided by this section.

(b) Requires that an account under this section be:

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

(2) accessible only to the Texas Department of Insurance (TDI), on order of the commissioner of insurance (commissioner); and

(3) audited in the same manner provided for trust funds by Section 2651.151 (Annual Audit of Trust Fund Accounts: Title Insurance Agents and Direct Operations).

(c) Authorizes an account under this section, subject to Subsection (d), to be established by an initial deposit in an amount less than the amount provided by Section 2651.012(c) (relating to requiring an agent to maintain unencumbered assets with a market value in excess of liabilities, exclusive of the value of abstract plants).

(d) Requires that an account established by an initial deposit of an amount less than the amount provided by Section 2651.012(c) 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) Requires that deposits to the account be made at least quarterly and be made from and based on the agent's portion of retained premiums collected during the calendar quarter during which premiums were collected.

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

(g) Authorizes the commissioner to 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) Requires the commissioner by rule to adopt procedures and requirements for the release, transfer, or expenditure of the funds held in an account. Requires that the rules establish the procedures and requirements by which TDI is required to account for any expenditures that TDI makes from an account or funds transferred by TDI to a third party.

(i) Authorizes the agent, if the agent or an agent's principal office voluntarily ceases to engage in business, surrenders the agent's license, and liquidates the agent's assets, to apply to TDI in a form prescribed by the commissioner by rule for the release of the agent's solvency account.

(j) Requires the commissioner, not later than the 60th day after the date TDI receives an application under Subsection (i), provided that the title agent complied with all applicable rules adopted under Subsection (h), to 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. Provides that if the commissioner does not enter the order within that 60-day period, the application is denied.

(k) Authorizes an agent to 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 relief against the commissioner.

(l) Provides that 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) (requiring an agent to maintain unencumbered assets with a market value in excess of liabilities, exclusive of the value of abstract plants), regardless of whether the amount required by that section is fully accrued. Authorizes the amount required by Section 2651.012(c) to be accrued in

an account as provided by this section according to the schedule established by Section 2651.012(g) (requiring an agent that holds a license on September 1, 2009, and that has held the license for at least three years as of that date is not required to comply with Subsection (c) on September 1, 2009, but is required to increase the unencumbered assets held by the agent, or make and increase the required deposit, until the agent is in compliance with the required capitalization amounts in accordance with the schedule established under this subsection) or as provided by the commissioner by rule under Section 2651.012(j) (requiring the commissioner by rule to establish the procedures for making, filing, using, and paying for the surety bond).

(m) Requires an agent who closes the transaction and remits premium to the title insurance company, in a home office transaction in which a title insurance company issues a policy of title insurance, to make the deposit required by this section. Provides that 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. Amends Section 2651.158, Insurance Code, as follows:

Sec. 2651.158. CERTIFICATION OF UNENCUMBERED ASSETS. (a) Requires that the annual audit of escrow accounts, unless the agent has elected to make a deposit with the department under Section 2651.012(f), be accompanied by a certification by the title insurance agent or direct operation, rather than 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 (Unencumbered Assets).

(b) Requires the commissioner by rule to establish the method by which the certification required by this section must be made, which is prohibited from including an audit of operating accounts or a certification by a certified public accountant. Deletes existing text requiring the commissioner by rule to establish a procedure to be used to determine the value of categories of assets.

SECTION 5. Requires the commissioner, as soon as practicable after the effective date of this Act, but not later than January 1, 2012, to promulgate rules and forms governing the operation of a solvency account under Section 2651.0121, Insurance Code, as added by this Act.

SECTION 6. Effective date: upon passage or September 1, 2011.