



Rep. Jay Hoffman

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1 AMENDMENT TO HOUSE BILL 2702

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 2702 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Title Insurance Act is amended by changing  
5 Sections 3 and by adding Section 17.1 as follows:

6 (215 ILCS 155/3) (from Ch. 73, par. 1403)

7 Sec. 3. As used in this Act, the words and phrases  
8 following shall have the following meanings unless the context  
9 requires otherwise:

10 (1) "Title insurance business" or "business of title  
11 insurance" means:

12 (A) Issuing as insurer or offering to issue as insurer  
13 title insurance; and

14 (B) Transacting or proposing to transact one or more of  
15 the following activities when conducted or performed in  
16 contemplation of or in conjunction with the issuance of

1 title insurance;

2 (i) soliciting or negotiating the issuance of  
3 title insurance;

4 (ii) guaranteeing, warranting, or otherwise  
5 insuring the correctness of title searches for all  
6 instruments affecting titles to real property, any  
7 interest in real property, cooperative units and  
8 proprietary leases, and for all liens or charges  
9 affecting the same;

10 (iii) handling of escrows, settlements, or  
11 closings;

12 (iv) executing title insurance policies;

13 (v) effecting contracts of reinsurance;

14 (vi) abstracting, searching, or examining titles;

15 or

16 (vii) issuing insured closing letters or closing  
17 protection letters;

18 (C) Guaranteeing, warranting, or insuring searches or  
19 examinations of title to real property or any interest in  
20 real property, with the exception of preparing an  
21 attorney's opinion of title; or

22 (D) Guaranteeing or warranting the status of title as  
23 to ownership of or liens on real property and personal  
24 property by any person other than the principals to the  
25 transaction; or

26 (E) Doing or proposing to do any business substantially

1 equivalent to any of the activities listed in this  
2 subsection, provided that the preparation of an attorney's  
3 opinion of title pursuant to paragraph (1)(C) is not  
4 intended to be within the definition of "title insurance  
5 business" or "business of title insurance".

6 (1.5) "Title insurance" means insuring, guaranteeing,  
7 warranting, or indemnifying owners of real or personal property  
8 or the holders of liens or encumbrances thereon or others  
9 interested therein against loss or damage suffered by reason of  
10 liens, encumbrances upon, defects in, or the unmarketability of  
11 the title to the property; the invalidity or unenforceability  
12 of any liens or encumbrances thereon; or doing any business in  
13 substance equivalent to any of the foregoing. "Warranting" for  
14 purpose of this provision shall not include any warranty  
15 contained in instruments of encumbrance or conveyance. Title  
16 insurance is a single line form of insurance, also known as  
17 monoline. An attorney's opinion of title pursuant to paragraph  
18 (1)(C) is not intended to be within the definition of "title  
19 insurance".

20 (2) "Title insurance company" means any domestic company  
21 organized under the laws of this State for the purpose of  
22 conducting the business of title insurance and any title  
23 insurance company organized under the laws of another State,  
24 the District of Columbia or foreign government and authorized  
25 to transact the business of title insurance in this State.

26 (3) "Title insurance agent" means a person, firm,

1 partnership, association, corporation or other legal entity  
2 registered by a title insurance company and authorized by such  
3 company to determine insurability of title in accordance with  
4 generally acceptable underwriting rules and standards in  
5 reliance on either the public records or a search package  
6 prepared from a title plant, or both, and authorized by such  
7 title insurance company in addition to do any of the following:  
8 act as an escrow agent pursuant to subsections (f), (g), and  
9 (h) of Section 16 of this Act, solicit title insurance, collect  
10 premiums, or issue title insurance commitments, policies, and  
11 endorsements of the title insurance company; provided,  
12 however, the term "title insurance agent" shall not include  
13 officers and salaried employees of any title insurance company.

14 (4) "Producer of title business" is any person, firm,  
15 partnership, association, corporation or other legal entity  
16 engaged in this State in the trade, business, occupation or  
17 profession of (i) buying or selling interests in real property,  
18 (ii) making loans secured by interests in real property, or  
19 (iii) acting as broker, agent, attorney, or representative of  
20 natural persons or other legal entities that buy or sell  
21 interests in real property or that lend money with such  
22 interests as security.

23 (5) "Associate" is any firm, association, partnership,  
24 corporation or other legal entity organized for profit in which  
25 a producer of title business is a director, officer, or partner  
26 thereof, or owner of a financial interest, as defined herein,

1 in such entity; any legal entity that controls, is controlled  
2 by, or is under common control with a producer of title  
3 business; and any natural person or legal entity with whom a  
4 producer of title business has any agreement, arrangement, or  
5 understanding or pursues any course of conduct the purpose of  
6 which is to evade the provisions of this Act.

7 (6) "Financial interest" is any ownership interest, legal  
8 or beneficial, except ownership of publicly traded stock.

9 (7) "Refer" means to place or cause to be placed, or to  
10 exercise any power or influence over the placing of title  
11 business, whether or not the consent or approval of any other  
12 person is sought or obtained with respect to the referral.

13 (8) "Escrow Agent" means any title insurance company or any  
14 title insurance agent, including independent contractors of  
15 either, acting on behalf of a title insurance company, which  
16 receives deposits, in trust, of funds or documents, or both,  
17 for the purpose of effecting the sale, transfer, encumbrance or  
18 lease of real property to be held by such escrow agent until  
19 title to the real property that is the subject of the escrow is  
20 in a prescribed condition. An escrow agent conducting closings  
21 shall be subject to the provisions of paragraphs (1) through  
22 (4) of subsection (e) of Section 16 of this Act.

23 (9) "Independent Escrowee" means any firm, person,  
24 partnership, association, corporation or other legal entity,  
25 other than a title insurance company or a title insurance  
26 agent, which receives deposits, in trust, of funds or

1 documents, or both, for the purpose of effecting the sale,  
2 transfer, encumbrance or lease of real property to be held by  
3 such escrowee until title to the real property that is the  
4 subject of the escrow is in a prescribed condition. Federal and  
5 State chartered banks, savings and loan associations, credit  
6 unions, mortgage bankers, banks or trust companies authorized  
7 to do business under the Illinois Corporate Fiduciary Act,  
8 licensees under the Consumer Installment Loan Act, real estate  
9 brokers licensed pursuant to the Real Estate License Act of  
10 2000, as such Acts are now or hereafter amended, and licensed  
11 attorneys when engaged in the attorney-client relationship are  
12 exempt from the escrow provisions of this Act. "Independent  
13 Escrowee" does not include employees or independent  
14 contractors of a title insurance company or title insurance  
15 agent authorized by a title insurance company to perform  
16 closing, escrow, or settlement services.

17 (10) "Single risk" means the insured amount of any title  
18 insurance policy, except that where 2 or more title insurance  
19 policies are issued simultaneously covering different estates  
20 in the same real property, "single risk" means the sum of the  
21 insured amounts of all such title insurance policies. Any title  
22 insurance policy insuring a mortgage interest, a claim payment  
23 under which reduces the insured amount of a fee or leasehold  
24 title insurance policy, shall be excluded in computing the  
25 amount of a single risk to the extent that the insured amount  
26 of the mortgage title insurance policy does not exceed the

1 insured amount of the fee or leasehold title insurance policy.

2 (11) "Department" means the Department of Financial and  
3 Professional Regulation.

4 (12) "Secretary" means the Secretary of Financial and  
5 Professional Regulation.

6 (13) "Insured closing letter" or "closing protection  
7 letter" means an indemnification or undertaking to a party to a  
8 real property transaction, from a principal such as a title  
9 insurance company, setting forth in writing the extent of the  
10 principal's responsibility for intentional misconduct or  
11 errors in closing the real property transaction on the part of  
12 a settlement agent, such as a title insurance agent or other  
13 settlement service provider, or a similar undertaking given by  
14 a title insurance company or an independent escrowee to a party  
15 to a real property transaction which indemnifies the party  
16 against the intentional misconduct or errors in closing the  
17 real property transaction on the part of the title insurance  
18 company or independent escrowee and includes protection  
19 afforded pursuant to subsections (f), (g), and (h) of Section  
20 16, ~~and~~ Section 16.1, and Section 17.1 of this Act even if such  
21 protection is afforded by contract.

22 (14) "Residential real property" means a building or  
23 buildings consisting of one to 4 residential units or a  
24 residential condominium unit where at least one of the  
25 residential units or condominium units is occupied or intended  
26 to be occupied as a residence by the purchaser or borrower, or

1 in the event that the purchaser or borrower is the trustee of a  
2 trust, by a beneficiary of that trust.

3 (15) "Financial institution" means any bank subject to the  
4 Illinois Banking Act, any savings and loan association subject  
5 to the Illinois Savings and Loan Act of 1985, any savings bank  
6 subject to the Savings Bank Act, any credit union subject to  
7 the Illinois Credit Union Act, and any federally chartered  
8 commercial bank, savings and loan association, savings bank, or  
9 credit union organized and operated in this State pursuant to  
10 the laws of the United States.

11 (Source: P.A. 98-387, eff. 8-16-13.)

12 (215 ILCS 155/17.1 new)

13 Sec. 17.1. Independent escrowee prohibitions;  
14 indemnification under a closing protection letter.

15 (a) Notwithstanding the provisions of item (iii) of  
16 paragraph (B) of subsection (1) and subsection (9) of Section 3  
17 of this Act, an independent escrowee is not authorized to act  
18 pursuant to subsection (9) of Section 3 of this Act in a  
19 nonresidential real property transaction where the amount of  
20 settlement funds on deposit with the escrow agent is less than  
21 \$2,000,000 or in a residential real property transaction  
22 unless, as part of the same transaction, closing protection  
23 letters protecting the buyer's or borrower's, lender's, and  
24 seller's interests have been issued by the independent  
25 escrowee.



1       (b) Unless otherwise agreed to between an independent  
2 escrowee and a protected person or entity, a closing protection  
3 letter under this Section shall indemnify all parties to a real  
4 property transaction against actual loss, not to exceed the  
5 amount of the settlement funds deposited with the independent  
6 escrowee. The closing protection letter shall in any event  
7 indemnify all parties to a real property transaction when such  
8 losses arise out of:

9           (1) failure of the independent escrowee to comply with  
10 written closing instructions to the extent that they relate  
11 to (A) the status of the title to an interest in land or  
12 the validity, enforceability, and priority of the lien of a  
13 mortgage on an interest in land, including the obtaining of  
14 documents and the disbursement of funds necessary to  
15 establish the status of title or lien or (B) the obtaining  
16 of any other document specifically required by a party to  
17 the real property transaction, but only to the extent that  
18 the failure to obtain such other document affects the  
19 status of the title to an interest in land or the validity,  
20 enforceability, and priority of the lien of a mortgage on  
21 an interest in land; or

22           (2) fraud, dishonesty, or negligence of the  
23 independent escrowee in handling funds or documents in  
24 connection with closings to the extent that the fraud,  
25 dishonesty, or negligence relates to the status of the  
26 title to the interest in land or to the validity,

1       enforceability, and priority of the lien of a mortgage on  
2       an interest in land or, in the case of a seller, to the  
3       extent that the fraud, dishonesty, or negligence relates to  
4       funds paid to or on behalf of, or which should have been  
5       paid to or on behalf of, the seller.

6       (c) The indemnification under a closing protection letter  
7       may include limitations on the liability of the independent  
8       escrowee for any of the following:

9           (1) Failure of the independent escrowee to comply with  
10          closing instructions that require title insurance  
11          protection inconsistent with that set forth in the title  
12          insurance commitment for the real property transaction.  
13          Instructions that require the removal of specific  
14          exceptions to title or compliance with the requirements  
15          contained in the title insurance commitment shall not be  
16          deemed to be inconsistent.

17          (2) Loss or impairment of funds in the course of  
18          collection or while on deposit with a bank due to bank  
19          failure, insolvency, or suspension, except such as shall  
20          result from failure of the independent escrowee closer to  
21          comply with written closing instructions to deposit the  
22          funds in a bank that is designated by name by a party to  
23          the real property transaction.

24          (3) Mechanics' and materialmen's liens in connection  
25          with sale, purchase, lease, or construction loan  
26          transactions, except to the extent that protection against

1 such liens is afforded by a title insurance commitment or  
2 policy issued by the title insurance agent or title  
3 insurance company.

4 (4) Failure of the independent escrowee to comply with  
5 written closing instructions to the extent that such  
6 instructions require a determination by the independent  
7 escrowee of the validity, enforceability, or effectiveness  
8 of any document described in item (B) of paragraph (1) of  
9 subsection (b) of this Section.

10 (5) Fraud, dishonesty, or negligence of an employee,  
11 agent, attorney, or broker, who is not also the independent  
12 escrowee or an independent contract closer of the  
13 independent escrowee, of the indemnified party to the real  
14 property transaction.

15 (6) The settlement or release of any claim by the  
16 indemnified party to the real property transaction without  
17 the written consent of the independent escrowee.

18 (7) Any matters created, suffered, assumed, or agreed  
19 to by, or known to, the indemnified party to the real  
20 property transaction without the written consent of the  
21 independent escrowee.

22 The closing protection letter may also include reasonable  
23 additional provisions concerning the dollar amount of  
24 protection, provided the limit is no less than the amount  
25 deposited with the independent escrowee, arbitration,  
26 subrogation, claim notices, and other conditions and

1 limitations that do not materially impair the protection  
2 required by this Section.

3 (d) The Secretary shall adopt and amend rules as may be  
4 required for the proper administration and enforcement of this  
5 Section consistent with the federal Real Estate Settlement  
6 Procedures Act and Section 24 of this Act.

7 Section 99. Effective date. This Act takes effect upon  
8 becoming law.".