



Sen. Michael E. Hastings

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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 17 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 an indemnification or
14 undertaking given by a title insurance company or an
15 independent escrowee setting forth in writing the extent of the
16 title insurance company's or independent escrowee's
17 responsibility to a party to a real property transaction which
18 indemnifies the party against the intentional misconduct or
19 errors in closing the real property transaction on the part of
20 the title insurance company or independent escrowee and
21 includes protection afforded pursuant to subsections (f), (g),
22 and (h) of Section 16, ~~and~~ Section 16.1, subsection (h) of
23 Section 17, and Section 17.1 of this Act even if such
24 protection is afforded by contract.

25 (14) "Residential real property" means a building or
26 buildings consisting of one to 4 residential units or a

1 residential condominium unit where at least one of the
2 residential units or condominium units is occupied or intended
3 to be occupied as a residence by the purchaser or borrower, or
4 in the event that the purchaser or borrower is the trustee of a
5 trust, by a beneficiary of that trust.

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

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

15 (215 ILCS 155/17) (from Ch. 73, par. 1417)

16 Sec. 17. Independent escrowees.

17 (a) Every independent escrowee shall be subject to the same
18 certification and deposit requirements to which title
19 insurance companies are subject under Section 4 of this Act.

20 (b) No person, firm, corporation or other legal entity
21 shall hold itself out to be an independent escrowee unless it
22 has been issued a certificate of authority by the Secretary.

23 (c) Every applicant for a certificate of authority, except
24 a firm, partnership, association or corporation, must be 18
25 years or more of age.

1 (d) Every certificate of authority shall remain in effect
2 one year unless revoked or suspended by the Secretary or
3 voluntarily surrendered by the holder.

4 (e) An independent escrowee may engage in the escrow,
5 settlement, or closing business, or any combination of such
6 business, and operate as an escrow, settlement, or closing
7 agent, provided that:

8 (1) Funds deposited in connection with any escrow,
9 settlement, or closing shall be deposited in a separate
10 fiduciary trust account or accounts in a bank or other
11 financial institution insured by an agency of the federal
12 government unless the instructions provide otherwise. Such
13 funds shall be the property of the person or persons
14 entitled thereto under the provisions of the escrow,
15 settlement, or closing and shall be segregated by escrow,
16 settlement or closing in the records of the independent
17 escrowee. Such funds shall not be subject to any debts of
18 the escrowee and shall be used only in accordance with the
19 terms of the individual escrow, settlement or closing under
20 which the funds were accepted.

21 (2) Interest received on funds deposited with the
22 independent escrowee in connection with any escrow,
23 settlement or closing shall be paid to the depositing party
24 unless the instructions provide otherwise.

25 (3) The independent escrowee shall maintain separate
26 records of all receipt and disbursement of escrow,

1 settlement or closing funds.

2 (4) The independent escrowee shall comply with any
3 rules or regulations promulgated by the Secretary
4 pertaining to escrow, settlement or closing transactions.

5 (f) The Secretary or his authorized representative shall
6 have the power and authority to visit and examine at any time
7 any independent escrowee certified under this Act and to verify
8 and compel compliance with the provisions of this Act.

9 (g) A title insurance company or title insurance agent, not
10 qualified as an independent escrowee, may act in the capacity
11 of an escrow agent when it is supplying an abstract of title,
12 grantor-grantee search, tract search, lien search, tax
13 assessment search, or other limited purpose search to the
14 parties to the transaction even if it is not issuing a title
15 insurance commitment or title insurance policy. A title
16 insurance agent may act as an escrow agent only when
17 specifically authorized in writing on forms prescribed by the
18 Secretary by a title insurance company that has duly registered
19 the agent with the Secretary and only when notice of the
20 authorization is provided to and receipt thereof is
21 acknowledged by the Secretary. The authority granted to a title
22 insurance agent may be limited or revoked at any time by the
23 title insurance company.

24 (h) An independent escrowee may, pursuant to Section 17.1
25 of this Act, issue an insured closing letter if, in addition to
26 complying with the same certification and deposit requirements

1 that title insurance companies are subject to under Section 4
2 of this Act, the independent escrowee:

3 (1) Satisfies the Secretary that it has a minimum
4 capital and surplus of \$2,000,000. The Secretary may
5 provide the forms and standards for this purpose by rule.
6 This paragraph applies only to independent escrowees
7 licensed under this Act for the first time on or after the
8 effective date of this amendatory Act of the 100th General
9 Assembly.

10 (2) Files with and has approved by the Secretary proof
11 of a fidelity bond in the minimum amount of \$2,000,000 per
12 occurrence.

13 (3) Establishes and maintains a statutory closing
14 protection letter reserve for the protection of parties
15 named in warranties of services consisting of a sum of 25%
16 of the closing protection letter revenue received by the
17 independent escrowee on or after the effective date of this
18 amendatory Act of the 100th General Assembly. The reserve
19 shall be reported as a liability of the independent
20 escrowee in its financial statements. Amounts placed in the
21 statutory closing protection letter reserve shall be
22 deducted in determining the net profit of the independent
23 escrowee for the year. Except as provided in this
24 subsection, assets in value equal to the statutory closing
25 protection letter reserve are not subject to distribution
26 among creditors, stockholders, or other owners of the

1 independent escrowee until all claims of parties named in
2 warranties of services have been paid in full and
3 discharged.

4 (4) Releases from the statutory closing protection
5 letter reserve a sum equal to 10% of the amount added to
6 the reserve during a calendar year on July 1 of each of the
7 5 years following the year in which the sum was added and
8 releases from the statutory closing protection letter
9 reserve a sum equal to 3 1/3% of the amount added to the
10 reserve during that year on each succeeding July 1 until
11 the entire amount for that year has been released.

12 The Secretary shall adopt and amend rules as may be
13 required for the proper administration and enforcement of this
14 subsection (h) consistent with the federal Real Estate
15 Settlement and Procedures Act and Section 24 of this Act.

16 (Source: P.A. 94-893, eff. 6-20-06.)

17 (215 ILCS 155/17.1 new)

18 Sec. 17.1. Closing or settlement protection; independent
19 escrowees.

20 (a) Notwithstanding the provisions of item (iii) of
21 paragraph (B) of subsection (1) and subsection (9) of Section 3
22 of this Act, an independent escrowee is not authorized to act
23 pursuant to subsection (9) of Section 3 of this Act in a
24 nonresidential real property transaction where the amount of
25 settlement funds on deposit with the escrow agent is less than

1 \$2,000,000 or in a residential real property transaction
2 unless, as part of the same transaction, closing protection
3 letters protecting the buyer's or borrower's, lender's, and
4 seller's interests have been issued by the independent
5 escrowee.

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

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

1 (2) fraud, dishonesty, or negligence of the
2 independent escrowee in handling funds or documents in
3 connection with closings to the extent that the fraud,
4 dishonesty, or negligence relates to the status of the
5 title to the interest in land or to the validity,
6 enforceability, and priority of the lien of a mortgage on
7 an interest in land or, in the case of a seller, to the
8 extent that the fraud, dishonesty, or negligence relates to
9 funds paid to or on behalf of, or which should have been
10 paid to or on behalf of, the seller.

11 (c) The indemnification under a closing protection letter
12 may include limitations on the liability of the independent
13 escrowee for any of the following:

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

22 (2) Loss or impairment of funds in the course of
23 collection or while on deposit with a bank due to bank
24 failure, insolvency, or suspension, except such as shall
25 result from failure of the independent escrowee closer to
26 comply with written closing instructions to deposit the

1 funds in a bank that is designated by name by a party to
2 the real property transaction.

3 (3) Mechanics' and materialmen's liens in connection
4 with sale, purchase, lease, or construction loan
5 transactions, except to the extent that protection against
6 such liens is afforded by a title insurance commitment or
7 policy issued by the title insurance agent or title
8 insurance company.

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

15 (5) Fraud, dishonesty, or negligence of an employee,
16 agent, attorney, or broker, who is not also the independent
17 escrowee or an independent contract closer of the
18 independent escrowee, of the indemnified party to the real
19 property transaction.

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

23 (7) Any matters created, suffered, assumed, or agreed
24 to by, or known to, the indemnified party to the real
25 property transaction without the written consent of the
26 independent escrowee.

1 The closing protection letter may also include reasonable
2 additional provisions concerning the dollar amount of
3 protection, provided the limit is no less than the amount
4 deposited with the independent escrowee, arbitration,
5 subrogation, claim notices, and other conditions and
6 limitations that do not materially impair the protection
7 required by this Section.

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

12 Section 99. Effective date. This Act takes effect upon
13 becoming law.".