



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

HB3464

Introduced 02/23/05, by Rep. John A. Fritchey

SYNOPSIS AS INTRODUCED:

See Index

Amends the Title Insurance Act. Adds a definition of "monoline insurance". Makes changes in provisions concerning deposits, the requirement of a certificate of authority, reinsurance, impairment of capital, discontinuance of issuance of new policies, reserves, the statutory premium reserve, examinations, annual statements, fees, independent escrowees, referral payments and kickbacks, regulatory actions, and violations and penalties. Provides that title insurance agents acting as escrow agents must deposit funds in separate fiduciary accounts unless instructed otherwise. Provides that the funds will not be subject to any debts of the escrowee and can be used only in accordance with the terms of acceptance. Provides that a title insurance agent not qualified as an independent escrowee may act in the capacity of an escrow agent in certain circumstances. Provides standards for receivers and involuntary liquidation. Requires the Secretary of Financial and Professional Regulation to provide notice for any action. Provides that the notice must be made personally or by registered or certified mail, and by telephone facsimile or electronic mail, or regular mail. Requires title insurance companies to retain certain records. Effective immediately.

LRB094 10972 LJB 41571 b

FISCAL NOTE ACT
MAY APPLY

1 AN ACT concerning title insurance.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Title Insurance Act is amended by changing
5 Sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 14.1, 15,
6 16, 17, 18, 19, 20, 21, 22, 23, 24, and 25 and by adding
7 Sections 4.1, 21.1, 21.2, and 21.3 as follows:

8 (215 ILCS 155/2) (from Ch. 73, par. 1402)

9 Sec. 2. Any corporation which has been or shall be
10 incorporated or qualified to do business under the Business
11 Corporation Act of 1983, as now or hereafter amended, or any
12 predecessor law for the purpose, in whole or part, of doing the
13 business of title insurance ~~guaranteeing or insuring titles to~~
14 ~~real estate~~, may transact such business during the time for
15 which it may be incorporated or qualified to do business in
16 this State, subject to the requirements of this Act.

17 (Source: P.A. 86-239.)

18 (215 ILCS 155/3) (from Ch. 73, par. 1403)

19 Sec. 3. As used in this Act, the words and phrases
20 following shall have the following meanings unless the context
21 requires otherwise:

22 (1) "Title insurance business" or "business of title
23 insurance" means:

24 (A) Issuing as insurer or offering to issue as insurer
25 title insurance; and

26 (B) Transacting or proposing to transact one or more of
27 the following activities when conducted or performed in
28 contemplation of or in conjunction with the issuance of
29 title insurance;

30 (i) soliciting or negotiating the issuance of
31 title insurance;

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

7 (iii) handling of escrows, settlements, or
8 closings;

9 (iv) executing title insurance policies;

10 (v) effecting contracts of reinsurance;

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

12 or

13 (vii) issuing insured closing letters or closing
14 protection letters;

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

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

23 (E) Doing or proposing to do any business substantially
24 equivalent to any of the activities listed in this
25 subsection, provided that the preparation of an attorney's
26 opinion of title pursuant to paragraph (1)(C) is not
27 intended to be within the definition of "title insurance
28 business" or "business of title insurance".

29 (1.5) "Title insurance" means insuring, guaranteeing,
30 warranting, or indemnifying owners of real or personal property
31 or the holders of liens or encumbrances thereon or others
32 interested therein against loss or damage suffered by reason of
33 liens, encumbrances upon, defects in, or the unmarketability of
34 the title to the property; the invalidity or unenforceability
35 of any liens or encumbrances thereon; or doing any business in
36 substance equivalent to any of the foregoing. "Warranting" for

1 purpose of this provision shall not include any warranty
2 contained in instruments of encumbrance or conveyance. An
3 attorney's opinion of title pursuant to paragraph (1) (C) is not
4 intended to be within the definition of "title insurance".

5 (2) "Title insurance company" means any domestic company
6 organized under the laws of this State for the purpose of
7 conducting the business of title insurance ~~guaranteeing or~~
8 ~~insuring titles to real estate~~ and any title insurance company
9 organized under the laws of another State, the District of
10 Columbia or foreign government and authorized to transact the
11 business of title insurance ~~guaranteeing or insuring titles to~~
12 ~~real estate~~ in this State.

13 (3) "Title insurance agent" means a person, firm,
14 partnership, association, corporation or other legal entity
15 registered by a title insurance company and authorized by such
16 company to determine insurability of title in accordance with
17 generally acceptable underwriting rules and standards in
18 reliance on either the public records or a search package
19 prepared from a title plant, or both, and authorized in
20 addition to do any of the following: act as an escrow agent,
21 solicit title insurance, collect premiums, issue title
22 reports, binders or commitments to insure and policies in its
23 behalf, provided, however, the term "title insurance agent"
24 shall not include officers and salaried employees of any title
25 insurance company.

26 (4) "Producer of title business" is any person, firm,
27 partnership, association, corporation or other legal entity
28 engaged in this State in the trade, business, occupation or
29 profession of (i) buying or selling interests in real property,
30 (ii) making loans secured by interests in real property, or
31 (iii) acting as broker, agent, attorney, or representative of
32 natural persons or other legal entities that buy or sell
33 interests in real property or that lend money with such
34 interests as security.

35 (5) "Associate" is any firm, association, partnership,
36 corporation or other legal entity organized for profit in which

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

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

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

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

25 (9) "Independent Escrowee" means any firm, person,
26 partnership, association, corporation or other legal entity,
27 other than a title insurance company or a title insurance
28 agent, which receives deposits, in trust, of funds or
29 documents, or both, for the purpose of effecting the sale,
30 transfer, encumbrance or lease of real property to be held by
31 such escrowee until title to the real property that is the
32 subject of the escrow is in a prescribed condition. Federal and
33 State chartered banks, savings and loan associations, credit
34 unions, mortgage bankers, banks or trust companies authorized
35 to do business under the Illinois Corporate Fiduciary Act,
36 licensees under the Consumer Installment Loan Act, real estate

1 brokers licensed pursuant to the Real Estate License Act of
2 2000, as such Acts are now or hereafter amended, when acting
3 pursuant to a listing or sale agreement, and licensed attorneys
4 when engaged in the attorney-client relationship are exempt
5 from the escrow provisions of this Act. "Independent Escrowee"
6 does not include employees or independent contractors of a
7 title insurance company or title insurance agent authorized by
8 an Independent Escrowee to perform closing, escrow, or
9 settlement services.

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

21 (11) "Department" means the Department of Financial
22 Institutions.

23 (12) "Director" means the Director of Financial
24 Institutions.

25 (13) "Insured closing letter" or "closing protection
26 letter" means an indemnification or undertaking to a party to a
27 real estate transaction, from a principal such as a title
28 insurance company or similar entity, setting forth in writing
29 the extent of the principal's responsibility for intentional
30 misconduct or errors in closing the real estate transaction on
31 the part of a settlement agent, such as a title insurance agent
32 or other settlement service provider.

33 (14) "Monoline insurance" means title insurance that is a
34 single line of insurance. Because of the unique risks assumed,
35 a title insurance company must maintain its reserves for losses
36 independent of any other form of insurance and therefore may

1 not issue other lines of insurance.

2 (Source: P.A. 91-159, eff. 1-1-00; 91-245, eff. 12-31-99;
3 92-16, eff. 6-28-01.)

4 (215 ILCS 155/4) (from Ch. 73, par. 1404)

5 Sec. 4. Deposits.

6 (a) Before doing business in the State of Illinois, a ~~Every~~
7 title insurance company must file with and have approved by the
8 Secretary cash or licensed or qualified to do business in this
9 State shall, within 30 days after the effective date of this
10 Act or within 30 days after incorporated or licensed to do
11 business, whichever is later, deposit with the Department, for
12 the benefit of the creditors of the company by reason of any
13 policy issued by it, bonds of the United States, this State or
14 any body politic of this State in amounts as specified in
15 subsection (b). The deposit is not to be otherwise pledged or
16 subject to distribution among creditors or stockholders until
17 all claims of escrow depositors, claims of policyholders, and
18 claims under reinsurance contracts have been paid in full or
19 discharged, reinsured, or otherwise assumed by a title
20 insurance company authorized to do business under this Act. The
21 cash, bonds, and securities so deposited may be exchanged for
22 other such securities. No such cash, bond, or security shall be
23 sold or transferred by the Director except on order of the
24 circuit court or as provided in subsection (d). As long as the
25 company depositing such securities remains solvent, the
26 company shall be permitted to receive from the Director the
27 interest on such deposit.

28 (b) The deposit required under subsection (a) must have a
29 then current value of \$1,000,000. Every title insurance company
30 shall deposit bonds or securities in the sum of \$50,000 plus
31 \$5,000 for each county, more than one, in which the real
32 estate, upon which such policies are issued, is located, to
33 maximum deposit of \$500,000. Every title insurance company
34 guaranteeing or insuring titles to real estate in counties
35 having 500,000 or more inhabitants shall deposit securities

1 ~~with the Department in the sum of \$500,000. Any title insurance~~
2 ~~company having deposited \$500,000 in securities with the~~
3 ~~Department shall be entitled to guarantee or insure titles in~~
4 ~~any or all counties of the State. All deposits shall be held~~
5 ~~for the benefit of any insured under a policy the title~~
6 ~~insurance company issued or named party to a written escrow it~~
7 ~~accepted. The deposit is not to be otherwise pledged or subject~~
8 ~~to distribution among creditors or stockholders.~~

9 (c) The Director may provide for custody of the deposits
10 ~~such securities~~ by any trust company or bank located in this
11 State and qualified to do business under the Corporate
12 Fiduciary Act, as now or hereafter amended. The compensation,
13 if any, of such custodian shall be paid by the depositing
14 company. When the required deposits ~~deposit~~ have ~~has~~ been made
15 by a title insurance company, the Director shall certify that
16 the company ~~it~~ has complied with the provisions of this Section
17 and is authorized to transact the business of insuring and
18 guaranteeing titles to real estate.

19 (d) If, at any time, a title insurance company causes ~~shall~~
20 ~~at any time cause~~ all of its unexpired policies, escrow
21 deposits, and reinsurance obligations in Illinois to be paid in
22 full, cancelled, discharged, or ~~reinsured,~~ or otherwise
23 assumed by another title insurance company ~~and all of its~~
24 ~~liabilities under such policies thereby to be extinguished, or~~
25 ~~to be assumed by some surety or other responsible company~~
26 authorized to do business under this Act ~~in this State,~~ the
27 Director shall, upon ~~on~~ application of the ~~such~~ company,
28 verified by the oath of its president or secretary and on being
29 satisfied by an examination of its books and its officers under
30 oath that all of its policies are ~~so~~ paid in full, cancelled,
31 discharged, extinguished or reinsured, or otherwise assumed,
32 authorize the release of any bond or deposit posted under this
33 Section. ~~deliver up to it such securities.~~

34 (e) The Secretary may revoke the certificate of authority
35 of a company that fails to maintain the deposit required by
36 this Section. The Secretary shall give notice of that

1 revocation to the company as provided by this Act, and during
2 the time of the revocation, the company may not conduct a title
3 insurance business. A company may complete contractual
4 obligations, such as issuing a policy where the obligations
5 have already been assumed. However, it may not solicit new
6 business, complete new searches or examinations, or close
7 transactions. A revocation shall not be set aside until a good
8 and sufficient deposit has been filed with the Secretary and
9 the company is otherwise in compliance with this Act

10 (Source: P.A. 86-239.)

11 (215 ILCS 155/4.1 new)

12 Sec. 4.1. Minimum capital and surplus. Before doing
13 business in the State of Illinois, a title insurance company
14 must satisfy the Secretary that it has a minimum capital and
15 surplus of \$2,000,000. The Secretary may provide the forms and
16 standards for this purpose by rule.

17 (215 ILCS 155/5) (from Ch. 73, par. 1405)

18 Sec. 5. Certificate of authority required. It is unlawful
19 ~~shall not be lawful~~ for any company to engage or to continue in
20 the business of title insurance ~~guaranteeing or insuring titles~~
21 ~~to real estate,~~ without first procuring from the Director a
22 certificate of authority stating that the ~~such a~~ company has
23 complied with the requirements of Section 4 of this Act. An
24 insurer that transacts any class of insurance other than title
25 insurance anywhere in the United States is not eligible for the
26 issuance of a certificate of authority to transact title
27 insurance in this State nor for a renewal of a certificate of
28 authority. If any company shall fail to maintain a deposit as
29 ~~required by this Act, the Director may revoke the certificate~~
30 ~~of authority granted on behalf of such company. The Director~~
31 ~~shall mail a copy of that revocation to the company and during~~
32 ~~the time of such revocation the company shall not conduct such~~
33 ~~business. A revocation shall not be set aside until a good and~~
34 ~~sufficient deposit shall have been made with the Department,~~

1 ~~fulfilling all the requirements of this Act.~~

2 (Source: P.A. 86-239.)

3 (215 ILCS 155/6) (from Ch. 73, par. 1406)

4 Sec. 6. Reinsurance.

5 (a) A title insurance company may obtain reinsurance for
6 all or any part of its liability under one or more of its title
7 insurance policies or reinsurance agreements and may also
8 reinsure title insurance policies issued by other title
9 insurance companies on risks located in this State or
10 elsewhere.

11 (b) A title insurance company licensed to do business in
12 this State shall retain at least \$25,000 of primary liability
13 for policies it issues for the first 5 years after the date of
14 policy, unless a lesser sum is authorized by the Secretary. A
15 lesser sum may be retained at the request of the insured.

16 (Source: P.A. 86-239.)

17 (215 ILCS 155/7) (from Ch. 73, par. 1407)

18 Sec. 7. Investments.

19 (a) Subject to the specific provisions of this Section, the
20 Director may, after a notice and hearing, order a domestic
21 title insurance company to limit or withdraw from certain
22 investments, or discontinue certain investment practices, to
23 the extent the Director finds that such investments or
24 investment practices endanger the solvency of the company. The
25 Director may consider the general investment provisions of the
26 Illinois Insurance Code, as now or hereafter amended, in
27 exercising the authority granted under this subsection (a).

28 (b) A domestic title insurance company may invest in title
29 plants. For determination of the financial condition of such
30 title insurance company, a title plant shall be treated as an
31 asset valued at actual cost except that the combined value of
32 all title plants owned shall be limited for asset valuation
33 purposes to 50% of the surplus as regards policyholders as
34 shown on the most recent annual statement of the title

1 insurance company.

2 (c) Any investment of a domestic title insurance company
3 acquired before the effective date of this Act and which, under
4 this Section, would be considered ineligible as an investment
5 on that date shall be disposed of within 2 years of the
6 effective date of this Act. The Director, upon application and
7 proof that forced sale of any such investment would be contrary
8 to the best interests of the title insurer or its
9 policyholders, may extend the period for disposal of the
10 investment for a reasonable time.

11 (Source: P.A. 86-239.)

12 (215 ILCS 155/8) (from Ch. 73, par. 1408)

13 Sec. 8. Retained liability.

14 (a) The net retained liability of a title insurance company
15 for a single risk on property located in this State, whether
16 assumed directly or as reinsurance, may not exceed 50% of the
17 total surplus to policyholders as shown in the most recent
18 annual statement of the title insurance company on file with
19 the Department.

20 (b) The Director may waive the limitation of this Section
21 for a particular risk upon application of the title insurance
22 company and for good cause shown.

23 (Source: P.A. 86-239.)

24 (215 ILCS 155/9) (from Ch. 73, par. 1409)

25 Sec. 9. Impairment of capital; discontinuance of issuance
26 of new policies; penalty.

27 (a) Whenever the capital of any title insurance company
28 authorized to do business under this Act ~~is shall be~~ determined
29 by the circuit court, upon the application of the Director, to
30 ~~be have become~~ impaired to the extent of 25% of the capital
31 ~~same~~, or to have otherwise become unsafe, ~~it shall be the duty~~
32 ~~of~~ the Director may to cancel the authority of the such company
33 to do business.

34 (b) The Director shall give notice as provided by this Act

1 to ~~the such~~ company to discontinue doing business ~~issuing new~~
2 ~~policies~~ until its such capital has been made good.

3 (c) Any officer or management employee who continues to
4 take orders for title insurance or close transactions ~~issues a~~
5 ~~new policy of title insurance~~ on behalf of a such company after
6 the such notice to discontinue doing business, and before its
7 ~~until such~~ capital has been made good, may shall, for each
8 offense, be fined as provided by this Act ~~forfeit a sum not~~
9 ~~exceeding \$1,000~~.

10 (Source: P.A. 86-239.)

11 (215 ILCS 155/10) (from Ch. 73, par. 1410)

12 Sec. 10. Reserves.

13 (a) All title insurance companies authorized to do business
14 under this Act shall establish and maintain reserves against
15 unpaid losses and loss expenses. Upon receiving notice from or
16 on behalf of the insured of a title defect, lien or adverse
17 claim against the title of the insured that may result in a
18 loss or cause expense to be incurred in the proper disposition
19 of the claim, the title insurance company shall determine the
20 amount to be added to the reserve, which amount shall reflect a
21 careful estimate of the loss or loss expense likely to result
22 by reason of the claim. Reserves required under this Section
23 may be revised from time to time and shall be redetermined at
24 least once each year.

25 (b) Title insurance is a monoline insurance and the
26 reserves for losses may not be pledged or utilized for any
27 other form of insurance.

28 (Source: P.A. 86-239.)

29 (215 ILCS 155/11) (from Ch. 73, par. 1411)

30 Sec. 11. Statutory premium reserve.

31 (a) A domestic title insurance company shall establish and
32 maintain a statutory premium reserve computed in accordance
33 with this Section. The reserve shall be reported as a liability
34 of the title insurance company in its financial statements. The

1 statutory premium reserve shall be maintained by the title
2 insurance company for the protection of holders of title
3 insurance policies. Except as provided in this Section, assets
4 equal in value to the statutory premium reserve are not subject
5 to distribution among creditors or stockholders of the title
6 insurance company until all claims of policyholders or claims
7 under reinsurance contracts have been paid in full, ~~and all~~
8 ~~liability on the policies or reinsurance contracts has been~~
9 ~~paid in full~~ and discharged, ~~or~~ lawfully reinsured, or
10 otherwise assumed by another title insurance company
11 authorized to do business under this Act.

12 (b) A foreign or alien title insurance company authorized
13 to do business under this Act shall maintain at least the same
14 reserves on title insurance policies issued on properties
15 located in this State as are required of domestic title
16 insurance companies.

17 (c) The statutory premium reserve shall consist of:

18 (1) the amount of the statutory premium reserve on
19 January 1, 1990; and

20 (2) a sum equal to 12 1/2 cents for each \$1,000 of net
21 retained liability under each title insurance policy on a
22 single risk written on properties located in this State
23 after January 1, 1990.

24 (d) Amounts placed in the statutory premium reserve in any
25 year in accordance with this Section shall be deducted in
26 determining the net profit of the title insurance company for
27 that year.

28 (e) A title insurance company shall release from the
29 statutory premium reserve a sum equal to 10% of the amount
30 added to the reserve during a calendar year on July 1 of each
31 of the 5 years following the year in which the sum was added,
32 and shall release from the statutory premium reserve a sum
33 equal to 3 1/3% of the amount added to the reserve during that
34 year on each succeeding July 1 until the entire amount for that
35 year has been released. The amount of the statutory premium
36 reserve or similar premium reserve maintained before January 1,

1 1990, shall be released in accordance with the law in effect
2 before January 1, 1990.

3 (f) This reserve is not subject to the requirements of
4 Section 4 of this Act.

5 (Source: P.A. 86-239; 87-1151.)

6 (215 ILCS 155/12) (from Ch. 73, par. 1412)

7 Sec. 12. Examinations; compliance.

8 (a) The Director or his authorized representative shall
9 have the power and authority, and it shall be his duty, to
10 cause to be visited and examined annually any title insurance
11 company doing business under this Act, and to verify and compel
12 ~~a~~ compliance with the provisions of law governing it ~~as he may~~
13 ~~by law exercise in relation to trust companies.~~

14 (b) The Director or his authorized agent shall have power
15 and authority to compel compliance with the provisions of this
16 Act and shall, only upon the showing of good cause, require any
17 title insurance company to make reasonable efforts to obtain
18 the appropriate records of its registered agents and make them
19 available for examination ~~audit~~ at a time and place designated
20 by the Director. Expenses incurred in the course of such
21 examinations ~~audits~~ will be the responsibility of the title
22 insurance company. In the event that a present or former
23 registered agent or its successor refuses or is unable to
24 cooperate with a title insurance company in furnishing the
25 records requested by the Secretary or his or her authorized
26 agent, then the Secretary or his or her authorized agent shall
27 have the power and authority to obtain those records directly.

28 (Source: P.A. 86-239.)

29 (215 ILCS 155/13) (from Ch. 73, par. 1413)

30 Sec. 13. Annual statement.

31 (a) A ~~Each~~ title insurance company shall file with the
32 Department during the month of March of each year, a statement
33 under oath, of the condition of such company on the
34 thirty-first day of December next preceding disclosing the

1 assets, liabilities, earnings and expenses of the company. The
2 report shall be in such form and shall contain such additional
3 statements and information as to the affairs, business, and
4 conditions of the company as the Director may from time to time
5 prescribe or require.

6 (b) By June 1 of each year, a title insurance company must
7 file with the Department a copy of its most recent audited
8 financial statements.

9 (Source: P.A. 86-239.)

10 (215 ILCS 155/14) (from Ch. 73, par. 1414)

11 Sec. 14. Fees.

12 (a) A ~~Every~~ title insurance company and an ~~every~~
13 independent escrowee subject to this Act shall pay the
14 following fees:

15 (1) for filing the original application for a
16 certificate of authority and receiving the deposit
17 required under this Act, \$500;

18 (2) for the certificate of authority, \$10;

19 (3) for every copy of a paper filed in the Department
20 under this Act, \$1 per folio;

21 (4) for affixing the seal of the Department and
22 certifying a copy, \$2;

23 (5) for filing the annual statement, \$50; and ~~+~~

24 (6) for each examination, \$500 per examiner per day or
25 part of a day and actual travel costs incurred.

26 (b) Each title insurance company shall pay, for all of its
27 title insurance agents subject to this Act for filing an annual
28 registration of its agents, an amount equal to \$3 for each
29 policy issued by all of its agents in the immediately preceding
30 calendar year.

31 (Source: P.A. 93-32, eff. 7-1-03.)

32 (215 ILCS 155/14.1)

33 Sec. 14.1. Financial Institutions Fund. All moneys
34 received by the Department of Financial Institutions under this

1 Act shall be deposited in the Financial Institutions Fund
2 created under Section 6z-26 of the State Finance Act.

3 (Source: P.A. 88-13.)

4 (215 ILCS 155/15) (from Ch. 73, par. 1415)

5 Sec. 15. Retaliatory provisions; fees. Whenever the
6 existing or future laws of any State or country shall require
7 of title insurance companies incorporated or organized under
8 the laws of this State, as a condition precedent to their
9 transacting in such other State or country the business of
10 guaranteeing or insuring titles to real estate, compliance with
11 laws, rules, regulations or prohibitions more onerous or
12 burdensome than those imposed under this Act by this State on
13 foreign title insurance companies transacting such business in
14 this State, or shall require any deposit of securities or other
15 obligations in such State or country for the protection of
16 policyholders, or otherwise, in excess of the amounts required
17 of foreign title insurance companies by this Act, or shall
18 require of Illinois title insurance companies doing such
19 business in such State or country, the payment of penalties,
20 fees, charges or taxes greater than the aggregate for like
21 purposes imposed by the laws of this State upon such foreign
22 title insurance companies, then such laws, rules, regulations,
23 and prohibitions of said other State or country shall apply to
24 title insurance companies incorporated or organized under the
25 laws of such State or country doing business in this State, and
26 all such companies, doing business in this State, shall be
27 required to make deposits with the Department, and to pay to
28 the Department penalties, fees, charges, and taxes at least in
29 amounts equal to those required in the aggregate for like
30 purpose of Illinois companies doing such business in such State
31 or country.

32 (Source: P.A. 86-239.)

33 (215 ILCS 155/16) (from Ch. 73, par. 1416)

34 Sec. 16. Title insurance agents.

1 (a) No person, firm, partnership, association, corporation
2 or other legal entity shall act as or hold itself out to be a
3 title insurance agent unless duly registered by a title
4 insurance company with the Director.

5 (b) Each application for registration shall be made on a
6 form specified by the Director and prepared in duplicate by
7 each title insurance company which the agent represents. The
8 title insurance company shall retain the copy of the
9 application and forward the original to the Director with the
10 appropriate fee.

11 (c) Every applicant for registration, except a firm,
12 partnership, association or corporation, must be 18 years or
13 more of age.

14 (d) Registration shall be made ~~annually~~ by a filing with
15 the Director; ~~supplemental registrations for new title~~
16 ~~insurance agents to be added between annual filings shall be~~
17 ~~made from time to time in the manner provided by the Director;~~
18 registrations shall remain in effect unless revoked or
19 suspended by the Director or ~~are~~ voluntarily withdrawn by the
20 registrant or the title insurance company.

21 (e) Funds deposited in connection with any escrows,
22 settlements, or closings shall be deposited in a separate
23 fiduciary trust account or accounts in a bank or other
24 financial institution insured by an agency of the federal
25 government unless the instructions provide otherwise. The
26 funds shall be the property of the person or persons entitled
27 thereto under the provisions of the escrow, settlement, or
28 closing and shall be segregated by escrow, settlement, or
29 closing in the records of the escrow agent. The funds shall not
30 be subject to any debts of the escrowee and shall be used only
31 in accordance with the terms of the individual escrow,
32 settlement, or closing under which the funds were accepted.

33 Interest received on funds deposited with the escrow agent
34 in connection with any escrow, settlement, or closing shall be
35 paid to the depositing party unless the instructions provide
36 otherwise.

1 The escrow agent shall maintain separate records of all
2 receipts and disbursements of escrow, settlement, or closing
3 funds.

4 The escrow agent shall comply with any rules adopted by the
5 Secretary pertaining to escrow, settlement, or closing
6 transactions.

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

21 Where a title insurance agent has been authorized by more
22 than one title insurance company to act under this subsection
23 (f), and where that title insurance agent is unable to pay a
24 claim or loss arising from that business, then the balance of
25 liability and expense shall become the shared liability of each
26 title insurance company in the proportion of title insurance
27 premiums reported by the title insurance agent for each of them
28 in the 12 months prior to the act or omission causing the
29 liability.

30 (Source: P.A. 86-239.)

31 (215 ILCS 155/17) (from Ch. 73, par. 1417)

32 Sec. 17. Independent escrowees.

33 (a) An ~~Every~~ independent escrowee shall be subject to the
34 same certification and deposit requirements to which title
35 insurance companies are subject under Section 4 of this Act.

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

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

7 (d) Every certificate of authority shall remain in effect
8 one year unless revoked or suspended by the Director or
9 voluntarily surrendered by the holder.

10 (e) An independent escrowee may engage in the escrow,
11 settlement, or closing business, or any combination of such
12 business, and operate as an escrow, settlement, or closing
13 agent, provided that:

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

27 (2) Interest received on funds deposited with the
28 independent escrowee in connection with any escrow,
29 settlement or closing shall be paid to the depositing party
30 unless the instructions provide otherwise.

31 (3) The independent escrowee shall maintain separate
32 records of all receipt and disbursement of escrow,
33 settlement or closing funds.

34 (4) The independent escrowee shall comply with any
35 rules or regulations promulgated by the Director
36 pertaining to escrow, settlement or closing transactions.

1 (f) The Director or his authorized representative shall
2 have the power and authority to visit and examine at any time
3 any independent escrowee certified under this Act and to verify
4 and compel compliance with the provisions of this Act.

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

20 (Source: P.A. 91-159, eff. 1-1-00.)

21 (215 ILCS 155/18) (from Ch. 73, par. 1418)

22 Sec. 18. No referral payments; kickbacks.

23 (a) Application of this Section is limited to residential
24 properties of 4 or fewer units, at least one of which units is
25 occupied or to be occupied by an owner, legal or beneficial.

26 (b) No title insurance company, independent escrowee, or
27 title insurance agent may issue a title insurance policy to, or
28 provide services to an applicant if it knows or has reason to
29 believe that the applicant was referred to it by any producer
30 of title business or by any associate of such producer, where
31 the producer, the associate, or both, have a financial interest
32 in the title insurance company, independent escrowee, or title
33 insurance agent to which business is referred unless the
34 producer has disclosed to any party paying for the products or
35 services, or his representative, the financial interest of the

1 producer of title business or associate referring the title
2 business and a disclosure of an estimate of those charges to be
3 paid as described in Section 19. Such disclosure must be made
4 in writing on forms prescribed by the Director prior to the
5 time that the commitment for title insurance is issued. The
6 title insurance company, independent escrowee, or title
7 insurance agent shall maintain the disclosure forms for a
8 period of 3 years.

9 (c) A ~~Each~~ title insurance company, independent escrowee,
10 and title insurance agent shall file with the Director, on
11 forms prescribed by the Director, reports setting forth the
12 names and addresses of those persons, if any, who have had a
13 financial interest in the title insurance company, independent
14 escrowee, or title insurance agent during the calendar year,
15 who are known or reasonably believed by the title insurance
16 company, independent escrowee, or title insurance agent to be
17 producers of title business or associates of producers.

18 (1) A ~~Each~~ title insurance company and independent
19 escrowee shall file the report required under this
20 subsection with its application for a certificate of
21 authority and at any time there is a change in the
22 information provided in the last report.

23 (2) A ~~Each~~ title insurance agent shall file the report
24 required under this subsection with its title insurance
25 company for inclusion with its application for
26 registration and at any time there is a change in the
27 information provided in its last report.

28 (3) A ~~Each~~ title insurance company, independent
29 escrowee, or title insurance agent doing business on the
30 effective date of this Act shall file the report required
31 under this subsection within 90 days after such effective
32 date.

33 (Source: P.A. 86-239.)

34 (215 ILCS 155/19) (from Ch. 73, par. 1419)

35 Sec. 19. Secretary powers; pricing. Nothing contained in

1 this Act shall be construed as giving any authority to the
2 Director to set or otherwise adjust the fees charged to the
3 parties to the transaction for:

4 (1) issuing a title insurance policy, including any
5 service charge or administration fee for the issuance of a
6 title insurance policy;

7 (2) abstracting, searching and examining title;

8 (3) preparing or issuing preliminary reports, property
9 profiles, commitments, binders, or like product;

10 (4) closing fees, escrow fees, settlement fees, and
11 like charges.

12 (Source: P.A. 86-239.)

13 (215 ILCS 155/20) (from Ch. 73, par. 1420)

14 Sec. 20. Rules and regulations. The Director shall rely
15 upon federal regulations and opinion letters and may adopt
16 rules and regulations as needed to implement and interpret the
17 provisions of this Act.

18 (Source: P.A. 86-239.)

19 (215 ILCS 155/21) (from Ch. 73, par. 1421)

20 Sec. 21. Regulatory action.

21 (a) The Director may refuse to grant, and may suspend or
22 revoke, any certificate of authority, registration or license
23 issued pursuant to this Act if he determines that the holder of
24 or applicant for such certificate, registration or license:

25 (1) has intentionally made a material misstatement or
26 fraudulent misrepresentation in relation to a matter
27 covered by this Act;

28 (2) has misappropriated or tortiously converted to its
29 own use, or illegally withheld, monies held in a fiduciary
30 capacity;

31 (3) has demonstrated untrustworthiness or incompetency
32 in transacting the business of guaranteeing titles to real
33 estate in such a manner as to endanger the public;

34 (4) has materially misrepresented the terms or

1 conditions of contracts or agreements to which it is a
2 party;

3 (5) has paid any commissions, discounts or any part of
4 its premiums, fees or other charges to any person in
5 violation of any State or federal law or regulations or
6 opinion letters issued under the federal Real Estate
7 Settlement Procedures Act of 1974; or

8 (6) has failed to comply with the deposit and reserve
9 requirements of this Act or any other requirements of this
10 Act.

11 (b) In every case where a registration or certificate is
12 suspended or revoked, or an application for a registration or
13 certificate or renewal thereof is refused, the Director shall
14 serve notice of his action, including a statement of the
15 reasons for his action, as provided by this Act. When a notice
16 of suspension or revocation of a certificate of authority is
17 given to a title insurance company, the Secretary shall also
18 notify all the registered agents of that title insurance
19 company of the Secretary's action. ~~either personally or by~~
20 ~~registered or certified mail. Service by mail shall be deemed~~
21 ~~completed if such notice is deposited in the post office,~~
22 ~~postage paid, addressed to the last known address specified in~~
23 ~~the application for the certificate or registration of such~~
24 ~~holder or registrant.~~

25 (c) In the case of a refusal to issue or renew a
26 certificate or accept a registration, the applicant or
27 registrant may request in writing, within 30 days after the
28 date of service, a hearing. In the case of a refusal to renew,
29 the expiring registration or certificate shall be deemed to
30 continue in force until 30 days after the service of the notice
31 of refusal to renew, or if a hearing is requested during that
32 period, until a final order is entered pursuant to such
33 hearing.

34 (d) The suspension or revocation of a registration or
35 certificate shall take effect upon service of notice thereof.
36 The holder of any such suspended registration or certificate

1 may request in writing, within 30 days of such service, a
2 hearing.

3 (e) In cases of suspension or revocation of registration
4 pursuant to subsection (a), the Director may, in the public
5 interest, issue an order of suspension or revocation which
6 shall take effect upon service of notification thereof. Such
7 order shall become final 60 days from the date of service
8 unless the registrant requests in writing, within such 60 days,
9 a formal hearing thereon. In the event a hearing is requested,
10 the order shall remain temporary until a final order is entered
11 pursuant to such hearing.

12 (f) Hearing shall be held at such time and place as may be
13 designated by the Director either in the City of Springfield,
14 the City of Chicago, or in the county in which the principal
15 business office of the affected registrant or certificate
16 holder is located.

17 (g) The suspension or revocation of a registration or
18 certificate or the refusal to issue or renew a registration or
19 certificate shall not in any way limit or terminate the
20 responsibilities of any registrant or certificate holder
21 arising under any policy or contract of title insurance to
22 which it is a party. No new contract or policy of title
23 insurance may be issued, nor may any existing policy or
24 contract to title insurance be renewed by any registrant or
25 certificate holder during any period of suspension or
26 revocation of a registration or certificate.

27 (h) The Director may issue a cease and desist order to a
28 title insurance company, agent, or other entity doing business
29 without the required license or registration, when in the
30 opinion of the Director, the company, agent, or other entity is
31 violating or is about to violate any provision of this Act or
32 any law or of any rule or condition imposed in writing by the
33 Department.

34 The Director may issue the cease and desist order without
35 notice and before a hearing.

36 The Director shall have the authority to prescribe rules

1 for the administration of this Section.

2 If it is determined that the Director had the authority to
3 issue the cease and desist order, he may issue such orders as
4 may be reasonably necessary to correct, eliminate or remedy
5 such conduct.

6 Any person or company subject to an order pursuant to this
7 Section is entitled to judicial review of the order in
8 accordance with the provisions of the Administrative Review
9 Law.

10 The powers vested in the Director by this Section are
11 additional to any and all other powers and remedies vested in
12 the Director by law, and nothing in this Section shall be
13 construed as requiring that the Director shall employ the
14 powers conferred in this Section instead of or as a condition
15 precedent to the exercise of any other power or remedy vested
16 in the Director.

17 (Source: P.A. 89-601, eff. 8-2-96.)

18 (215 ILCS 155/21.1 new)

19 Sec. 21.1. Receiver and involuntary liquidation.

20 (a) The proceedings under this Section shall be the
21 exclusive remedy and the only proceedings commenced in any
22 court for the dissolution of, the winding up of the affairs of,
23 or the appointment of a receiver for a title insurance company.

24 (b) If the Secretary, with respect to a title insurance
25 company, finds that (i) its capital is impaired or it is
26 otherwise in an unsound condition, (ii) its business is being
27 conducted in an unlawful, fraudulent, or unsafe manner, (iii)
28 it is unable to continue operations, or (iv) its examination
29 has been obstructed or impeded, the Secretary may give notice
30 to the board of directors of the title insurance company of his
31 or her finding or findings. If the Secretary's findings are not
32 corrected to his or her satisfaction within 60 days after the
33 company receives the notice, the Secretary shall take
34 possession and control of the title insurance company, its
35 assets, and assets held by it for any person for the purpose of

1 examination, reorganization, or liquidation through
2 receivership.

3 If, in addition to making a finding as provided in this
4 subsection (b), the Secretary is of the opinion and finds that
5 an emergency that may result in serious losses to any person
6 exists, the Secretary may, in his or her discretion, without
7 having given the notice provided for in this subsection, and
8 whether or not proceedings under subsection (a) of this Section
9 have been instituted or are then pending, take possession and
10 control of the title insurance company and its assets for the
11 purpose of examination, reorganization, or liquidation through
12 receivership.

13 (c) The Secretary may take possession and control of a
14 title insurance company, its assets, and assets held by it for
15 any person by posting upon the premises of each office located
16 in the State of Illinois at which it transacts its business as
17 a title insurance company a notice reciting that the Secretary
18 is assuming possession pursuant to this Act and the time when
19 the possession shall be deemed to commence.

20 (d) Promptly after taking possession and control of a title
21 insurance company the Secretary, represented by the Attorney
22 General, shall file a copy of the notice posted upon the
23 premises in the Circuit Court of either Cook County or Sangamon
24 County, which cause shall be entered as a court action upon the
25 dockets of the court under the name and style of "In the matter
26 of the possession and control by the Secretary of the
27 Department of Financial and Professional Regulation of (insert
28 the name of the title insurance company)". If the Secretary
29 determines (which determination may be made at the time of, or
30 at any time subsequent to, taking possession and control of a
31 title insurance company) that no practical possibility exists
32 to reorganize the title insurance company after reasonable
33 efforts have been made, the Secretary, represented by the
34 Attorney General, shall also file a complaint, if it has not
35 already been done, for the appointment of a receiver or other
36 proceeding as is appropriate under the circumstances. The court

1 where the cause is docketed shall be vested with the exclusive
2 jurisdiction to hear and determine all issues and matters
3 pertaining to or connected with the Secretary's possession and
4 control of the title insurance company as provided in this Act,
5 and any further issues and matters pertaining to or connected
6 with the Secretary's possession and control as may be submitted
7 to the court for its adjudication.

8 The Secretary, upon taking possession and control of a
9 title insurance company, may, and if not previously done shall,
10 immediately upon filing a complaint for dissolution make an
11 examination of the affairs of the title insurance company or
12 appoint a suitable person to make the examination as the
13 Secretary's agent. The examination shall be conducted in
14 accordance with and pursuant to the authority granted under
15 Section 12 of this Act. The person conducting the examination
16 shall have and may exercise on behalf of the Secretary all of
17 the powers and authority granted to the Secretary under Section
18 12. A copy of the report shall be filed in any dissolution
19 proceeding filed by the Secretary. The reasonable fees and
20 necessary expenses of the examining person, as approved by the
21 Secretary or as recommended by the Secretary and approved by
22 the court if a dissolution proceeding has been filed, shall be
23 borne by the subject title insurance company and shall have the
24 same priority for payment as the reasonable and necessary
25 expenses of the Secretary in conducting an examination. The
26 person appointed to make the examination shall make a proper
27 accounting, in the manner and scope as determined by the
28 Secretary to be practical and advisable under the
29 circumstances, on behalf of the title insurance company and no
30 guardian ad litem need be appointed to review the accounting.

31 (e) The Secretary, upon taking possession and control of a
32 title insurance company and its assets, shall be vested with
33 the full powers of management and control including, but not
34 limited to, the following:

35 (1) the power to continue or to discontinue the
36 business;

1 (2) the power to stop or to limit the payment of its
2 obligations;

3 (3) the power to collect and to use its assets and to
4 give valid receipts and acquittances therefor;

5 (4) the power to transfer title and liquidate any bond
6 or deposit made under Section 4 of this Act;

7 (5) the power to employ and to pay any necessary
8 assistants;

9 (6) the power to execute any instrument in the name of
10 the title insurance company;

11 (7) the power to commence, defend, and conduct in the
12 title insurance company's name any action or proceeding in
13 which it may be a party;

14 (8) the power, upon the order of the court, to sell and
15 convey the title insurance company's assets, in whole or in
16 part, and to sell or compound bad or doubtful debts upon
17 such terms and conditions as may be fixed in that order;

18 (9) the power, upon the order of the court, to make and
19 to carry out agreements with other title insurance
20 companies, financial institutions, or with the United
21 States or any agency of the United States for the payment
22 or assumption of the title insurance company's
23 liabilities, in whole or in part, and to transfer assets
24 and to make guaranties, in whole or in part, in connection
25 therewith;

26 (10) the power, upon the order of the court, to borrow
27 money in the name of the title insurance company and to
28 pledge its assets as security for the loan;

29 (11) the power to terminate his or her possession and
30 control by restoring the title insurance company to its
31 board of directors;

32 (12) the power to appoint a receiver which may be the
33 Secretary of the Department of Financial and Professional
34 Regulation, another title insurance company, or another
35 suitable person and to order liquidation of the title
36 insurance company as provided in this Act; and

1 (13) the power, upon the order of the court and without
2 the appointment of a receiver, to determine that the title
3 insurance company has been closed for the purpose of
4 liquidation without adequate provision being made for
5 payment of its obligations, and thereupon the title
6 insurance company shall be deemed to have been closed on
7 account of inability to meet its obligations to its
8 insureds or escrow depositors.

9 (f) Upon taking possession, the Secretary shall make an
10 examination of the condition of the title insurance company, an
11 inventory of the assets and, unless the time shall be extended
12 by order of the court or unless the Secretary shall have
13 otherwise settled the affairs of the title insurance company
14 pursuant to the provisions of this Act, within 90 days after
15 the time of taking possession and control of the title
16 insurance company, the Secretary shall either terminate his or
17 her possession and control by restoring the title insurance
18 company to its board of directors or appoint a receiver, which
19 may be the Secretary of the Department of Financial and
20 Professional Regulation, another title insurance company, or
21 another suitable person and order the liquidation of the title
22 insurance company as provided in this Act. All necessary and
23 reasonable expenses of the Secretary's possession and control
24 shall be a priority claim and shall be borne by the title
25 insurance company and may be paid by the Secretary from the
26 title insurance company's own assets as distinguished from
27 assets held for any other person.

28 (g) If the Secretary takes possession and control of a
29 title insurance company and its assets, any period of
30 limitation fixed by a statute or agreement that would otherwise
31 expire on a claim or right of action of the title insurance
32 company, on its own behalf or on behalf of its insureds or
33 escrow depositors, or upon which an appeal must be taken or a
34 pleading or other document filed by the title insurance company
35 in any pending action or proceeding, shall be tolled until 6
36 months after the commencement of the possession, and no

1 judgment, lien, levy, attachment, or other similar legal
2 process may be enforced upon or satisfied, in whole or in part,
3 from any asset of the title insurance company or from any asset
4 of an insured or escrow depositor while it is in the possession
5 of the Secretary.

6 (h) If the Secretary appoints a receiver to take possession
7 and control of the assets of insureds or escrow depositors for
8 the purpose of holding those assets as fiduciary for the
9 benefit of the insureds or escrow depositors pending the
10 winding up of the affairs of the title insurance company being
11 liquidated and the appointment of a successor escrowee for
12 those assets, any period of limitation fixed by statute, rule
13 of court, or agreement that would otherwise expire on a claim
14 or right of action in favor of or against the insureds or
15 escrow depositors of those assets or upon which an appeal must
16 be taken or a pleading or other document filed by a title
17 insurance company on behalf of an insured or escrow depositor
18 in any pending action or proceeding shall be tolled for a
19 period of 6 months after the appointment of a receiver, and no
20 judgment, lien, levy, attachment, or other similar legal
21 process shall be enforced upon or satisfied, in whole or in
22 part, from any asset of the insured or escrow depositor while
23 it is in the possession of the receiver.

24 (i) If the Secretary determines at any time that no
25 reasonable possibility exists for the title insurance company
26 to be operated by its board of directors in accordance with the
27 provisions of this Act after reasonable efforts have been made
28 and that it should be liquidated through receivership, he or
29 she shall appoint a receiver. The Secretary may require of the
30 receiver such bond and security as the Secretary deems proper.
31 The Secretary, represented by the Attorney General, shall file
32 a complaint for the dissolution or winding up of the affairs of
33 the title insurance company in a court of the county in which
34 the principal office of the title insurance company is located
35 and shall cause notice to be given in a newspaper of general
36 circulation once each week for 4 consecutive weeks so that

1 persons who may have claims against the title insurance company
2 may present them to the receiver and make legal proof thereof
3 and notifying those persons and all to whom it may concern of
4 the filing of a complaint for the dissolution or winding up of
5 the affairs of the title insurance company and stating the name
6 and location of the court. All persons who may have claims
7 against the assets of the title insurance company, as
8 distinguished from the assets of insureds and escrow depositors
9 held by the title insurance company, and the receiver to whom
10 those persons have presented their claims may present the
11 claims to the clerk of the court, and the allowance or
12 disallowance of the claims by the court in connection with the
13 proceedings shall be deemed an adjudication in a court of
14 competent jurisdiction. Within a reasonable time after
15 completion of publication, the receiver shall file with the
16 court a correct list of all creditors of the title insurance
17 company as shown by its books, who have not presented their
18 claims and the amount of their respective claims after allowing
19 adjusted credit, deductions, and set-offs as shown by the books
20 of the title insurance company. The claims so filed shall be
21 deemed proven unless objections are filed thereto by a party or
22 parties interested therein within the time fixed by the court.

23 (j) The receiver for a title insurance company has the
24 power and authority and is charged with the duties and
25 responsibilities as follows:

26 (1) To take possession of and, for the purpose of the
27 receivership, title to the books, records, and assets of
28 every description of the title insurance company.

29 (2) To proceed to collect all debts, dues, and claims
30 belonging to the title insurance company.

31 (3) To sell and compound all bad and doubtful debts on
32 such terms as the court shall direct.

33 (4) To sell the real and personal property of the title
34 insurance company, as distinguished from the real and
35 personal property of the insureds or escrow depositors, on
36 such terms as the court shall direct.

1 (5) To file with the Secretary a copy of each report
2 that he or she makes to the court, together with such other
3 reports and records as the Secretary may require.

4 (6) To sue and defend in his or her own name and with
5 respect to the affairs, assets, claims, debts, and choses
6 in action of the title insurance company.

7 (7) To surrender to the insureds and escrow depositors
8 of the title insurance company, when requested in writing
9 directed to the receiver by them, the escrowed funds (on a
10 pro rata basis), and escrowed documents in the receiver's
11 possession upon satisfactory proof of ownership and
12 determination by the receiver of available escrow funds.

13 (8) To redeem or take down collateral hypothecated by
14 the title insurance company to secure its notes and other
15 evidence of indebtedness whenever the court deems it to be
16 in the best interest of the creditors of the title
17 insurance company and directs the receiver so to do.

18 (k) Whenever the receiver finds it necessary in his or her
19 opinion to use and employ money of the title insurance company
20 in order to protect fully and benefit the title insurance
21 company by the purchase or redemption of property, real or
22 personal, in which the title insurance company may have any
23 rights by reason of any bond, mortgage, assignment, or other
24 claim thereto, the receiver may certify the facts together with
25 the receiver's opinions as to the value of the property
26 involved and the value of the equity the title insurance
27 company may have in the property to the court, together with a
28 request for the right and authority to use and employ so much
29 of the money of the title insurance company as may be necessary
30 to purchase the property, or to redeem the property from a sale
31 if there was a sale, and if the request is granted, the
32 receiver may use so much of the money of the title insurance
33 company as the court may have authorized to purchase the
34 property at the sale.

35 The receiver shall deposit daily all moneys collected by
36 him or her in any State or national bank approved by the court.

1 The deposits shall be made in the name of the Secretary, in
2 trust for the receiver, and be subject to withdrawal upon the
3 receiver's order or upon the order of those persons the
4 Secretary may designate. The moneys may be deposited without
5 interest, unless otherwise agreed. The receiver shall do the
6 things and take the steps from time to time under the direction
7 and approval of the court that may reasonably appear to be
8 necessary to conserve the title insurance company's assets and
9 secure the best interests of the creditors, insureds, and
10 escrow depositors of the title insurance company. The receiver
11 shall record any judgment of dissolution entered in a
12 dissolution proceeding and thereupon turn over to the Secretary
13 a certified copy of the judgment.

14 The receiver may cause all assets of the insureds and
15 escrow depositors of the title insurance company to be
16 registered in the name of the receiver or in the name of the
17 receiver's nominee.

18 For its services in administering the escrows held by the
19 title insurance company during the period of winding up the
20 affairs of the title insurance company, the receiver is
21 entitled to be reimbursed for all costs and expenses incurred
22 by the receiver and shall also be entitled to receive out of
23 the assets of the individual escrows being administered by the
24 receiver during the period of winding up the affairs of the
25 title insurance company and prior to the appointment of a
26 successor escrowee the usual and customary fees charged by an
27 escrowee for escrows or reasonable fees approved by the court.

28 The receiver, during its administration of the escrows of
29 the title insurance company during the winding up of the
30 affairs of the title insurance company, shall have all of the
31 powers that are vested in trustees under the terms and
32 provisions of the Trusts and Trustees Act.

33 Upon the appointment of a successor escrowee, the receiver
34 shall deliver to the successor escrowee all of the assets
35 belonging to each individual escrow to which the successor
36 escrowee succeeds, and the receiver shall thereupon be relieved

1 of any further duties or obligations with respect thereto.

2 (1) The receiver shall, upon approval by the court, pay all
3 claims against the assets of the title insurance company
4 allowed by the court pursuant to subsection (i) of this
5 Section, as well as claims against the assets of insureds and
6 escrow depositors of the title insurance company in accordance
7 with the following priority:

8 (1) All necessary and reasonable expenses of the
9 Secretary's possession and control and of its receivership
10 shall be paid from the assets of the title insurance
11 company.

12 (2) All usual and customary fees charged for services
13 in administering escrows shall be paid from the assets of
14 the individual escrows being administered. If the assets of
15 the individual escrows being administered are
16 insufficient, the fees shall be paid from the assets of the
17 title insurance company.

18 (3) Secured claims, including claims for taxes and
19 debts due the federal or any state or local government,
20 that are secured by liens perfected prior to the date of
21 filing of the complaint for dissolution, shall be paid from
22 the assets of the title insurance company.

23 (4) Claims by policyholders, beneficiaries, insureds,
24 and escrow depositors of the title insurance company shall
25 be paid from the assets of the insureds and escrow
26 depositors. If there are insufficient assets of the
27 insureds and escrow depositors, claims shall be paid from
28 the assets of the title insurance company.

29 (5) Any other claims due the federal government shall
30 be paid from the assets of the title insurance company.

31 (6) Claims for wages or salaries, excluding vacation,
32 severance, and sick leave pay earned by employees for
33 services rendered within 90 days prior to the date of
34 filing of the complaint for dissolution, shall be paid from
35 the assets of the title insurance company.

36 (7) All other claims of general creditors not falling

1 within any priority under this subsection (l) including
2 claims for taxes and debts due any state or local
3 government which are not secured claims and claims for
4 attorney's fees incurred by the title insurance company in
5 contesting the dissolution shall be paid from the assets of
6 the title insurance company.

7 (8) Proprietary claims asserted by an owner, member, or
8 stockholder of the title insurance company in receivership
9 shall be paid from the assets of the title insurance
10 company.

11 The receiver shall pay all claims of equal priority
12 according to the schedule set out in this subsection, and shall
13 not pay claims of lower priority until all higher priority
14 claims are satisfied. If insufficient assets are available to
15 meet all claims of equal priority, those assets shall be
16 distributed pro rata among those claims. All unclaimed assets
17 of the title insurance company shall be deposited with the
18 receiver to be paid out by him or her when such claims are
19 submitted and allowed by the court.

20 (m) At the termination of the receiver's administration,
21 the receiver shall petition the court for the entry of a
22 judgment of dissolution. After a hearing upon the notice as the
23 court may prescribe, the court may enter a judgment of
24 dissolution whereupon the title insurance company's corporate
25 existence shall be terminated and the receivership concluded.

26 (n) The receiver shall serve at the pleasure of the
27 Secretary and upon the death, inability to act, resignation, or
28 removal by the Secretary of a receiver, the Secretary may
29 appoint a successor, and upon the appointment, all rights and
30 duties of the predecessor shall at once devolve upon the
31 appointee.

32 (o) Whenever the Secretary shall have taken possession and
33 control of a title insurance company or a title insurance agent
34 and its assets for the purpose of examination, reorganization
35 or liquidation through receivership, or whenever the Secretary
36 shall have appointed a receiver for a title insurance company

1 or title insurance agent and filed a complaint for the
2 dissolution or winding up of its affairs, and the title
3 insurance company or title insurance agent denies the grounds
4 for such actions, it may at any time within 10 days apply to
5 the Circuit Court of Cook or Sangamon County to enjoin further
6 proceedings in the premises; and the Court shall cite the
7 Secretary to show cause why further proceedings should not be
8 enjoined, and if the Court shall find that grounds do not
9 exist, the Court shall make an order enjoining the Secretary or
10 any receiver acting under his direction from all further
11 proceedings on account of the alleged grounds.

12 (215 ILCS 155/21.2 new)

13 Sec. 21.2. Notice.

14 (a) Notice of any action by the Secretary under this Act or
15 regulations or orders promulgated under it shall be made either
16 personally or by registered or certified mail, return receipt
17 requested, and by sending a copy of the notice by telephone
18 facsimile or electronic mail, if known and operating, and if
19 unknown or not operating, then by regular mail. Service by mail
20 shall be deemed completed if the notice is deposited as
21 registered or certified mail in the post office, postage paid,
22 addressed to the last known address specified in the
23 application for the certificate of authority to do business or
24 certificate of registration of the holder or registrant.

25 (b) The Secretary shall notify all registered agents of a
26 title insurance company when that title insurance company's
27 certificate of authority is suspended or revoked.

28 (215 ILCS 155/21.3 new)

29 Sec. 21.3. Record retention. Evidence of the examination of
30 title, if any, and determination of insurability for business
31 written by a title insurance company or its title insurance
32 agent and records relating to escrow, closings, and security
33 deposits shall be preserved and retained by the title insurance
34 company or its title insurance agent for as long as appropriate

1 to the circumstances, but in no event less than 7 years after
2 the title insurance policy has been issued or the escrow,
3 closing, or security deposit account has been closed or as
4 provided by applicable federal law. This Section shall not
5 apply to a title insurance company acting as a coinsurer if one
6 of the other coinsurers has complied with this Section.

7 (215 ILCS 155/22) (from Ch. 73, par. 1422)

8 Sec. 22. Tax indemnity; notice. A corporation authorized to
9 do business under this Act shall notify the Director of Revenue
10 of the State of Illinois, by notice directed to his office in
11 the City of Chicago, of each trust account or similar account
12 established which relates to title exceptions due to a judgment
13 lien or any other lien arising under any tax Act administered
14 by the Illinois Department of Revenue, when notice of such lien
15 has been filed with the registrar of titles or recorder, as the
16 case may be, in the manner prescribed by law. Such notice shall
17 contain the name, address, and tax identification number of the
18 debtor, the permanent real estate index numbers, if any, and
19 the address and legal description of the property, the type of
20 lien claimed by the Department and identification of any trust
21 fund or similar account held by such corporation or any agent
22 thereof relating to such lien. Any trust fund or similar
23 account established by such corporation or agent relating to
24 any such lien shall include provisions requiring such
25 corporation or agent to apply such fund in satisfaction or
26 release of such lien upon written demand therefor by the
27 Department of Revenue.

28 (Source: P.A. 86-239.)

29 (215 ILCS 155/23) (from Ch. 73, par. 1423)

30 Sec. 23. Violation; penalties.

31 (a) Any violation of any of the provisions of this Act
32 shall constitute a business offense and shall subject the party
33 violating the same to a penalty of \$1000 for each offense.

34 (b) Nothing contained in this Section shall affect the

1 right of the Secretary to revoke or suspend a title insurance
2 company's or independent escrowee's certificate of authority
3 or a title insurance agent's registration under any other
4 Section of this Act.

5 (c) An action to enforce the provisions of this Section may
6 be brought only by the Secretary.

7 (Source: P.A. 86-239.)

8 (215 ILCS 155/24) (from Ch. 73, par. 1424)

9 Sec. 24. Referral fee; penalty. Except as permitted by this
10 Act or by federal law, regulations or opinion letters, no
11 person shall pay or accept, directly or indirectly, any
12 commission, discount, referral fee or other consideration as
13 inducement or compensation for the referral of title business
14 or for the referral of any escrow or other service from a title
15 insurance company, independent escrowee or title insurance
16 agent.

17 Any violation of this Section 24 is a Class A misdemeanor.

18 (Source: P.A. 86-239.)

19 (215 ILCS 155/25) (from Ch. 73, par. 1425)

20 Sec. 25. Actual damages; injunctive relief.

21 (a) Any person or persons who violate the prohibitions or
22 limitations of subsection (a) of Section 21 of this Act shall
23 be liable to the person or persons charged for the settlement
24 service involved in the violation for actual damages.

25 (b) Any title insurance company or a title insurance agent
26 who violates the prohibitions or limitations of subsection (a)
27 of Section 21 of this Act shall be subject to injunctive
28 relief. ~~If a permanent injunction is granted, the court may~~
29 ~~award actual damages. Reasonable attorney's fees and costs may~~
30 ~~be awarded to the prevailing party.~~

31 (Source: P.A. 86-239.)

32 Section 99. Effective date. This Act takes effect upon
33 becoming law.

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