

**94TH GENERAL ASSEMBLY****State of Illinois****2005 and 2006****SB2718**

Introduced 1/20/2006, by Sen. Don Harmon

SYNOPSIS AS INTRODUCED:

See Index

Amends the Title Insurance Act. Makes changes to definitions of "title insurance", "Escrow Agent", and "Independent Escrowee". Changes the definition of "Department" to mean the Department of Financial and Professional Regulation. Replaces references to the Director of Financial Institutions with Secretary of Financial and Professional Regulation and makes corresponding changes to the definition of "Director". 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 a title insurance company may continue to issue policies and perform other actions that are required to complete contractual obligations entered into prior to receiving notice from the Secretary to discontinue doing business until its capital has been made good. Requires title insurance companies to maintain reserves for losses independent of any other form of insurance and prohibits the issuance of other lines of insurance. 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 that the Secretary may impose a fine for a violation of the Act. 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 17937 LJB 53240 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. Title
3 insurance is a single line form of insurance, also known as
4 monoline. An attorney's opinion of title pursuant to paragraph
5 (1)(C) is not intended to be within the definition of "title
6 insurance".

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

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

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

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

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

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

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

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

1 to do business under the Illinois Corporate Fiduciary Act,
2 licensees under the Consumer Installment Loan Act, real estate
3 brokers licensed pursuant to the Real Estate License Act of
4 2000, as such Acts are now or hereafter amended, and licensed
5 attorneys when engaged in the attorney-client relationship are
6 exempt from the escrow provisions of this Act. "Independent
7 Escrowee" does not include employees or independent
8 contractors of a title insurance company or title insurance
9 agent authorized by a title insurance company to perform
10 closing, escrow, or settlement services.

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

22 (11) "Department" means the Department of Financial and
23 Professional Regulation Institutions.

24 (12) "Secretary" ~~"Director"~~ means the Secretary ~~Director~~
25 of Financial and Professional Regulation Institutions.

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

34 (Source: P.A. 91-159, eff. 1-1-00; 91-245, eff. 12-31-99;
35 92-16, eff. 6-28-01.)

1 (215 ILCS 155/4) (from Ch. 73, par. 1404)

2 Sec. 4. Deposits.

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

25 (b) The deposit required under subsection (a) must have a
26 then current value of \$1,000,000. All deposits shall be held
27 for the benefit of any insured under a policy the title
28 insurance company issued or named party to a written escrow it
29 accepted. The deposit is not to be otherwise pledged or subject
30 to distribution among creditors or stockholders. ~~Every title~~
31 ~~insurance company shall deposit bonds or securities in the sum~~
32 ~~of \$50,000 plus \$5,000 for each county, more than one, in which~~
33 ~~the real estate, upon which such policies are issued, is~~
34 ~~located, to maximum deposit of \$500,000. Every title insurance~~
35 ~~company guaranteeing or insuring titles to real estate in~~
36 ~~counties having 500,000 or more inhabitants shall deposit~~

1 ~~securities with the Department in the sum of \$500,000. Any~~
2 ~~title insurance company having deposited \$500,000 in~~
3 ~~securities with the Department shall be entitled to guarantee~~
4 ~~or insure titles in any or all counties of the State.~~

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

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

30 (e) The Secretary may revoke the certificate of authority
31 of a company that fails to maintain the deposit required by
32 this Section. The Secretary shall give notice of that
33 revocation to the company as provided by this Act, and during
34 the time of the revocation, the company may not conduct a title
35 insurance business. A company may complete contractual
36 obligations, such as issuing a policy where the obligations

1 have already been assumed. However, it may not solicit new
2 business, complete new searches or examinations, or close
3 transactions. A revocation shall not be set aside until a good
4 and sufficient deposit has been filed with the Secretary and
5 the company is otherwise in compliance with this Act.

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

7 (215 ILCS 155/4.1 new)

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

13 (215 ILCS 155/5) (from Ch. 73, par. 1405)

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

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

33 (215 ILCS 155/6) (from Ch. 73, par. 1406)

1 Sec. 6. Reinsurance.

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

8 (b) A title insurance company licensed to do business in
9 this State shall retain at least \$100,000 of primary liability
10 for policies it issues, unless a lesser sum is authorized by
11 the Secretary. A lesser sum may be retained at the request of
12 an insured for a particular policy. This subsection (b) applies
13 only to policies issued on or after the effective date of this
14 amendatory Act of the 94th General Assembly.

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

16 (215 ILCS 155/7) (from Ch. 73, par. 1407)

17 Sec. 7. Investments.

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

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

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

11 (215 ILCS 155/8) (from Ch. 73, par. 1408)

12 Sec. 8. Retained liability.

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

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

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

23 (215 ILCS 155/9) (from Ch. 73, par. 1409)

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

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

33 (b) The Secretary ~~Director~~ shall give notice as provided by
34 this Act to ~~the~~ ~~such~~ company to discontinue doing business

1 ~~issuing new policies~~ until its ~~such~~ capital has been made good.
2 The title insurance company may continue to issue policies and
3 perform other actions that are required to complete contractual
4 obligations undertaken prior to the notice.

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

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

13 (215 ILCS 155/10) (from Ch. 73, par. 1410)

14 Sec. 10. Reserves. All title insurance companies
15 authorized to do business under this Act shall establish and
16 maintain reserves against unpaid losses and loss expenses. Upon
17 receiving notice from or on behalf of the insured of a title
18 defect, lien or adverse claim against the title of the insured
19 that may result in a loss or cause expense to be incurred in
20 the proper disposition of the claim, the title insurance
21 company shall determine the amount to be added to the reserve,
22 which amount shall reflect a careful estimate of the loss or
23 loss expense likely to result by reason of the claim. Reserves
24 required under this Section may be revised from time to time
25 and shall be redetermined at least once each year. A title
26 insurance company must maintain its reserves for losses
27 independent of any other form of insurance and therefore may
28 not issue other lines of insurance.

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

30 (215 ILCS 155/11) (from Ch. 73, par. 1411)

31 Sec. 11. Statutory premium reserve.

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

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

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

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

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

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

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

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

1 reserve or similar premium reserve maintained before January 1,
2 1990, shall be released in accordance with the law in effect
3 before January 1, 1990.

4 (f) This reserve is independent of the deposit requirements
5 of Section 4 of this Act.

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

7 (215 ILCS 155/12) (from Ch. 73, par. 1412)

8 Sec. 12. Examinations; compliance.

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

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

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

32 (215 ILCS 155/13) (from Ch. 73, par. 1413)

33 Sec. 13. Annual statement.

34 (a) Each title insurance company shall file with the

1 Department during the month of March of each year, a statement
2 under oath, of the condition of such company on the
3 thirty-first day of December next preceding disclosing the
4 assets, liabilities, earnings and expenses of the company. The
5 report shall be in such form and shall contain such additional
6 statements and information as to the affairs, business, and
7 conditions of the company as the Secretary ~~Director~~ may from
8 time to time prescribe or require.

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

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

13 (215 ILCS 155/14) (from Ch. 73, par. 1414)

14 Sec. 14. Fees.

15 (a) Every title insurance company and every independent
16 escrowee subject to this Act shall pay the following fees:

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

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

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

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

25 (5) for filing the annual statement, \$50.

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 and Professional

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

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

5 (215 ILCS 155/15) (from Ch. 73, par. 1415)

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

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

34 (215 ILCS 155/16) (from Ch. 73, par. 1416)

1 Sec. 16. Title insurance agents.

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

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

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

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

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

35 Interest received on funds deposited with the escrow agent
36 in connection with any escrow, settlement, or closing shall be

1 paid to the depositing party unless the instructions provide
2 otherwise.

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

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

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

10 (215 ILCS 155/17) (from Ch. 73, par. 1417)

11 Sec. 17. Independent escrowees.

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

15 (b) No person, firm, corporation or other legal entity
16 shall hold itself out to be an independent escrowee unless it
17 has been issued a certificate of authority by the Secretary
18 ~~Director~~.

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

22 (d) Every certificate of authority shall remain in effect
23 one year unless revoked or suspended by the Secretary ~~Director~~
24 or voluntarily surrendered by the holder.

25 (e) An independent escrowee may engage in the escrow,
26 settlement, or closing business, or any combination of such
27 business, and operate as an escrow, settlement, or closing
28 agent, provided that:

29 (1) Funds deposited in connection with any escrow,
30 settlement, or closing shall be deposited in a separate
31 fiduciary trust account or accounts in a bank or other
32 financial institution insured by an agency of the federal
33 government unless the instructions provide otherwise. Such
34 funds shall be the property of the person or persons
35 entitled thereto under the provisions of the escrow,

1 settlement, or closing and shall be segregated by escrow,
2 settlement or closing in the records of the independent
3 escrowee. Such funds shall not be subject to any debts of
4 the escrowee and shall be used only in accordance with the
5 terms of the individual escrow, settlement or closing under
6 which the funds were accepted.

7 (2) Interest received on funds deposited with the
8 independent escrowee in connection with any escrow,
9 settlement or closing shall be paid to the depositing party
10 unless the instructions provide otherwise.

11 (3) The independent escrowee shall maintain separate
12 records of all receipt and disbursement of escrow,
13 settlement or closing funds.

14 (4) The independent escrowee shall comply with any
15 rules or regulations promulgated by the Secretary ~~Director~~
16 pertaining to escrow, settlement or closing transactions.

17 (f) The Secretary ~~Director~~ or his authorized
18 representative shall have the power and authority to visit and
19 examine at any time any independent escrowee certified under
20 this Act and to verify and compel compliance with the
21 provisions of this Act.

22 (g) A title insurance company or title insurance agent, not
23 qualified as an independent escrowee, may act in the capacity
24 of an escrow agent when it is supplying an abstract of title,
25 grantor-grantee search, tract search, lien search, tax
26 assessment search, or other limited purpose search to the
27 parties to the transaction even if it is not issuing a title
28 insurance commitment or title insurance policy. A title
29 insurance agent may act as an escrow agent only when
30 specifically authorized in writing on forms prescribed by the
31 Secretary ~~Director~~ by a title insurance company that has duly
32 registered the agent with the Secretary ~~Director~~ and only when
33 notice of the authorization is provided to and receipt thereof
34 is acknowledged by the Secretary ~~Director~~. The authority
35 granted to a title insurance agent may be limited or revoked at
36 any time by the title insurance company.

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

2 (215 ILCS 155/18) (from Ch. 73, par. 1418)

3 Sec. 18. No referral payments; kickbacks.

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

7 (b) No title insurance company, independent escrowee, or
8 title insurance agent may issue a title insurance policy to, or
9 provide services to an applicant if it knows or has reason to
10 believe that the applicant was referred to it by any producer
11 of title business or by any associate of such producer, where
12 the producer, the associate, or both, have a financial interest
13 in the title insurance company, independent escrowee, or title
14 insurance agent to which business is referred unless the
15 producer has disclosed to any party paying for the products or
16 services, or his representative, the financial interest of the
17 producer of title business or associate referring the title
18 business and a disclosure of an estimate of those charges to be
19 paid as described in Section 19. Such disclosure must be made
20 in writing on forms prescribed by the Secretary ~~Director~~ prior
21 to the time that the commitment for title insurance is issued.
22 The title insurance company, independent escrowee, or title
23 insurance agent shall maintain the disclosure forms for a
24 period of 3 years.

25 (c) Each title insurance company, independent escrowee,
26 and title insurance agent shall file with the Secretary
27 ~~Director~~, on forms prescribed by the Secretary ~~Director~~,
28 reports setting forth the names and addresses of those persons,
29 if any, who have had a financial interest in the title
30 insurance company, independent escrowee, or title insurance
31 agent during the calendar year, who are known or reasonably
32 believed by the title insurance company, independent escrowee,
33 or title insurance agent to be producers of title business or
34 associates of producers.

35 (1) Each title insurance company and independent

1 escrowee shall file the report required under this
2 subsection with its application for a certificate of
3 authority and at any time there is a change in the
4 information provided in the last report.

5 (2) Each title insurance agent shall file the report
6 required under this subsection with its title insurance
7 company for inclusion with its application for
8 registration and at any time there is a change in the
9 information provided in its last report.

10 (3) Each title insurance company, independent
11 escrowee, or title insurance agent doing business on the
12 effective date of this Act shall file the report required
13 under this subsection within 90 days after such effective
14 date.

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

16 (215 ILCS 155/19) (from Ch. 73, par. 1419)

17 Sec. 19. Secretary powers; pricing. Nothing contained in
18 this Act shall be construed as giving any authority to the
19 Secretary ~~Director~~ to set or otherwise adjust the fees charged
20 to the parties to the transaction for:

21 (1) issuing a title insurance policy, including any
22 service charge or administration fee for the issuance of a
23 title insurance policy;

24 (2) abstracting, searching and examining title;

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

27 (4) closing fees, escrow fees, settlement fees, and
28 like charges.

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

30 (215 ILCS 155/20) (from Ch. 73, par. 1420)

31 Sec. 20. Rules and regulations. The Secretary ~~Director~~
32 shall rely upon federal regulations and opinion letters and may
33 adopt rules and regulations as needed to implement and
34 interpret the provisions of this Act.

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

2 (215 ILCS 155/21) (from Ch. 73, par. 1421)

3 Sec. 21. Regulatory action.

4 (a) The Secretary ~~Director~~ may refuse to grant, and may
5 suspend or revoke, any certificate of authority, registration,
6 or license issued pursuant to this Act or may impose a fine for
7 a violation of this Act if he determines that the holder of or
8 applicant for such certificate, registration or license:

9 (1) has intentionally made a material misstatement or
10 fraudulent misrepresentation in relation to a matter
11 covered by this Act;

12 (2) has misappropriated or tortiously converted to its
13 own use, or illegally withheld, monies held in a fiduciary
14 capacity;

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

18 (4) has materially misrepresented the terms or
19 conditions of contracts or agreements to which it is a
20 party;

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

26 (6) has failed to comply with the deposit and reserve
27 requirements of this Act or any other requirements of this
28 Act.

29 (b) In every case where a registration or certificate is
30 suspended or revoked, or an application for a registration or
31 certificate or renewal thereof is refused, the Secretary
32 ~~Director~~ shall serve notice of his action, including a
33 statement of the reasons for his action, as provided by this
34 Act. When a notice of suspension or revocation of a certificate
35 of authority is given to a title insurance company, the

1 Secretary shall also notify all the registered agents of that
2 title insurance company of the Secretary's action. either
3 ~~personally or by registered or certified mail. Service by mail~~
4 ~~shall be deemed completed if such notice is deposited in the~~
5 ~~post office, postage paid, addressed to the last known address~~
6 ~~specified in the application for the certificate or~~
7 ~~registration of such holder or registrant.~~

8 (c) In the case of a refusal to issue or renew a
9 certificate or accept a registration, the applicant or
10 registrant may request in writing, within 30 days after the
11 date of service, a hearing. In the case of a refusal to renew,
12 the expiring registration or certificate shall be deemed to
13 continue in force until 30 days after the service of the notice
14 of refusal to renew, or if a hearing is requested during that
15 period, until a final order is entered pursuant to such
16 hearing.

17 (d) The suspension or revocation of a registration or
18 certificate shall take effect upon service of notice thereof.
19 The holder of any such suspended registration or certificate
20 may request in writing, within 30 days of such service, a
21 hearing.

22 (e) In cases of suspension or revocation of registration
23 pursuant to subsection (a), the Secretary ~~Director~~ may, in the
24 public interest, issue an order of suspension or revocation
25 which shall take effect upon service of notification thereof.
26 Such order shall become final 60 days from the date of service
27 unless the registrant requests in writing, within such 60 days,
28 a formal hearing thereon. In the event a hearing is requested,
29 the order shall remain temporary until a final order is entered
30 pursuant to such hearing.

31 (f) Hearing shall be held at such time and place as may be
32 designated by the Secretary ~~Director~~ either in the City of
33 Springfield, the City of Chicago, or in the county in which the
34 principal business office of the affected registrant or
35 certificate holder is located.

36 (g) The suspension or revocation of a registration or

1 certificate or the refusal to issue or renew a registration or
2 certificate shall not in any way limit or terminate the
3 responsibilities of any registrant or certificate holder
4 arising under any policy or contract of title insurance to
5 which it is a party. No new contract or policy of title
6 insurance may be issued, nor may any existing policy or
7 contract to title insurance be renewed by any registrant or
8 certificate holder during any period of suspension or
9 revocation of a registration or certificate.

10 (h) The Secretary ~~Director~~ may issue a cease and desist
11 order to a title insurance company, agent, or other entity
12 doing business without the required license or registration,
13 when in the opinion of the Secretary ~~Director~~, the company,
14 agent, or other entity is violating or is about to violate any
15 provision of this Act or any law or of any rule or condition
16 imposed in writing by the Department.

17 The Secretary ~~Director~~ may issue the cease and desist order
18 without notice and before a hearing.

19 The Secretary ~~Director~~ shall have the authority to
20 prescribe rules for the administration of this Section.

21 If it is determined that the Secretary ~~Director~~ had the
22 authority to issue the cease and desist order, he may issue
23 such orders as may be reasonably necessary to correct,
24 eliminate or remedy such conduct.

25 Any person or company subject to an order pursuant to this
26 Section is entitled to judicial review of the order in
27 accordance with the provisions of the Administrative Review
28 Law.

29 The powers vested in the Secretary ~~Director~~ by this Section
30 are additional to any and all other powers and remedies vested
31 in the Secretary ~~Director~~ by law, and nothing in this Section
32 shall be construed as requiring that the Secretary ~~Director~~
33 shall employ the powers conferred in this Section instead of or
34 as a condition precedent to the exercise of any other power or
35 remedy vested in the Secretary ~~Director~~.

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

1 (215 ILCS 155/21.1 new)

2 Sec. 21.1. Receiver and involuntary liquidation.

3 (a) The Secretary's proceedings under this Section shall be
4 the exclusive remedy and the only proceedings commenced in any
5 court for the dissolution of, the winding up of the affairs of,
6 or the appointment of a receiver for a title insurance company.

7 (b) If the Secretary, with respect to a title insurance
8 company, finds that (i) its capital is impaired or it is
9 otherwise in an unsound condition, (ii) its business is being
10 conducted in an unlawful, fraudulent, or unsafe manner, (iii)
11 it is unable to continue operations, or (iv) its examination
12 has been obstructed or impeded, the Secretary may give notice
13 to the board of directors of the title insurance company of his
14 or her finding or findings. If the Secretary's findings are not
15 corrected to his or her satisfaction within 60 days after the
16 company receives the notice, the Secretary shall take
17 possession and control of the title insurance company, its
18 assets, and assets held by it for any person for the purpose of
19 examination, reorganization, or liquidation through
20 receivership.

21 If, in addition to making a finding as provided in this
22 subsection (b), the Secretary is of the opinion and finds that
23 an emergency that may result in serious losses to any person
24 exists, the Secretary may, in his or her discretion, without
25 having given the notice provided for in this subsection, and
26 whether or not proceedings under subsection (a) of this Section
27 have been instituted or are then pending, take possession and
28 control of the title insurance company and its assets for the
29 purpose of examination, reorganization, or liquidation through
30 receivership.

31 (c) The Secretary may take possession and control of a
32 title insurance company, its assets, and assets held by it for
33 any person by posting upon the premises of each office located
34 in the State of Illinois at which it transacts its business as
35 a title insurance company a notice reciting that the Secretary

1 is assuming possession pursuant to this Act and the time when
2 the possession shall be deemed to commence.

3 (d) Promptly after taking possession and control of a title
4 insurance company the Secretary, represented by the Attorney
5 General, shall file a copy of the notice posted upon the
6 premises in the Circuit Court of either Cook County or Sangamon
7 County, which cause shall be entered as a court action upon the
8 dockets of the court under the name and style of "In the matter
9 of the possession and control by the Secretary of the
10 Department of Financial and Professional Regulation of (insert
11 the name of the title insurance company)". If the Secretary
12 determines (which determination may be made at the time of, or
13 at any time subsequent to, taking possession and control of a
14 title insurance company) that no practical possibility exists
15 to reorganize the title insurance company after reasonable
16 efforts have been made, the Secretary, represented by the
17 Attorney General, shall also file a complaint, if it has not
18 already been done, for the appointment of a receiver or other
19 proceeding as is appropriate under the circumstances. The court
20 where the cause is docketed shall be vested with the exclusive
21 jurisdiction to hear and determine all issues and matters
22 pertaining to or connected with the Secretary's possession and
23 control of the title insurance company as provided in this Act,
24 and any further issues and matters pertaining to or connected
25 with the Secretary's possession and control as may be submitted
26 to the court for its adjudication.

27 The Secretary, upon taking possession and control of a
28 title insurance company, may, and if not previously done shall,
29 immediately upon filing a complaint for dissolution make an
30 examination of the affairs of the title insurance company or
31 appoint a suitable person to make the examination as the
32 Secretary's agent. The examination shall be conducted in
33 accordance with and pursuant to the authority granted under
34 Section 12 of this Act. The person conducting the examination
35 shall have and may exercise on behalf of the Secretary all of
36 the powers and authority granted to the Secretary under Section

1 12. A copy of the report shall be filed in any dissolution
2 proceeding filed by the Secretary. The reasonable fees and
3 necessary expenses of the examining person, as approved by the
4 Secretary or as recommended by the Secretary and approved by
5 the court if a dissolution proceeding has been filed, shall be
6 borne by the subject title insurance company and shall have the
7 same priority for payment as the reasonable and necessary
8 expenses of the Secretary in conducting an examination. The
9 person appointed to make the examination shall make a proper
10 accounting, in the manner and scope as determined by the
11 Secretary to be practical and advisable under the
12 circumstances, on behalf of the title insurance company and no
13 guardian ad litem need be appointed to review the accounting.

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

18 (1) the power to continue or to discontinue the
19 business;

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

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

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

26 (5) the power to employ and to pay any necessary
27 assistants;

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

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

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

1 (9) the power, upon the order of the court, to make and
2 to carry out agreements with other title insurance
3 companies, financial institutions, or with the United
4 States or any agency of the United States for the payment
5 or assumption of the title insurance company's
6 liabilities, in whole or in part, and to transfer assets
7 and to make guaranties, in whole or in part, in connection
8 therewith;

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

12 (11) the power to terminate his or her possession and
13 control by restoring the title insurance company to its
14 board of directors;

15 (12) the power to appoint a receiver which may be the
16 Secretary of the Department of Financial and Professional
17 Regulation, another title insurance company, or another
18 suitable person and to order liquidation of the title
19 insurance company as provided in this Act; and

20 (13) the power, upon the order of the court and without
21 the appointment of a receiver, to determine that the title
22 insurance company has been closed for the purpose of
23 liquidation without adequate provision being made for
24 payment of its obligations, and thereupon the title
25 insurance company shall be deemed to have been closed on
26 account of inability to meet its obligations to its
27 insureds or escrow depositors.

28 (f) Upon taking possession, the Secretary shall make an
29 examination of the condition of the title insurance company, an
30 inventory of the assets and, unless the time shall be extended
31 by order of the court or unless the Secretary shall have
32 otherwise settled the affairs of the title insurance company
33 pursuant to the provisions of this Act, within 90 days after
34 the time of taking possession and control of the title
35 insurance company, the Secretary shall either terminate his or
36 her possession and control by restoring the title insurance

1 company to its board of directors or appoint a receiver, which
2 may be the Secretary of the Department of Financial and
3 Professional Regulation, another title insurance company, or
4 another suitable person and order the liquidation of the title
5 insurance company as provided in this Act. All necessary and
6 reasonable expenses of the Secretary's possession and control
7 shall be a priority claim and shall be borne by the title
8 insurance company and may be paid by the Secretary from the
9 title insurance company's own assets as distinguished from
10 assets held for any other person.

11 (g) If the Secretary takes possession and control of a
12 title insurance company and its assets, any period of
13 limitation fixed by a statute or agreement that would otherwise
14 expire on a claim or right of action of the title insurance
15 company, on its own behalf or on behalf of its insureds or
16 escrow depositors, or upon which an appeal must be taken or a
17 pleading or other document filed by the title insurance company
18 in any pending action or proceeding, shall be tolled until 6
19 months after the commencement of the possession, and no
20 judgment, lien, levy, attachment, or other similar legal
21 process may be enforced upon or satisfied, in whole or in part,
22 from any asset of the title insurance company or from any asset
23 of an insured or escrow depositor while it is in the possession
24 of the Secretary.

25 (h) If the Secretary appoints a receiver to take possession
26 and control of the assets of insureds or escrow depositors for
27 the purpose of holding those assets as fiduciary for the
28 benefit of the insureds or escrow depositors pending the
29 winding up of the affairs of the title insurance company being
30 liquidated and the appointment of a successor escrowee for
31 those assets, any period of limitation fixed by statute, rule
32 of court, or agreement that would otherwise expire on a claim
33 or right of action in favor of or against the insureds or
34 escrow depositors of those assets or upon which an appeal must
35 be taken or a pleading or other document filed by a title
36 insurance company on behalf of an insured or escrow depositor

1 in any pending action or proceeding shall be tolled for a
2 period of 6 months after the appointment of a receiver, and no
3 judgment, lien, levy, attachment, or other similar legal
4 process shall be enforced upon or satisfied, in whole or in
5 part, from any asset of the insured or escrow depositor while
6 it is in the possession of the receiver.

7 (i) If the Secretary determines at any time that no
8 reasonable possibility exists for the title insurance company
9 to be operated by its board of directors in accordance with the
10 provisions of this Act after reasonable efforts have been made
11 and that it should be liquidated through receivership, he or
12 she shall appoint a receiver. The Secretary may require of the
13 receiver such bond and security as the Secretary deems proper.
14 The Secretary, represented by the Attorney General, shall file
15 a complaint for the dissolution or winding up of the affairs of
16 the title insurance company in a court of the county in which
17 the principal office of the title insurance company is located
18 and shall cause notice to be given in a newspaper of general
19 circulation once each week for 4 consecutive weeks so that
20 persons who may have claims against the title insurance company
21 may present them to the receiver and make legal proof thereof
22 and notifying those persons and all to whom it may concern of
23 the filing of a complaint for the dissolution or winding up of
24 the affairs of the title insurance company and stating the name
25 and location of the court. All persons who may have claims
26 against the assets of the title insurance company, as
27 distinguished from the assets of insureds and escrow depositors
28 held by the title insurance company, and the receiver to whom
29 those persons have presented their claims may present the
30 claims to the clerk of the court, and the allowance or
31 disallowance of the claims by the court in connection with the
32 proceedings shall be deemed an adjudication in a court of
33 competent jurisdiction. Within a reasonable time after
34 completion of publication, the receiver shall file with the
35 court a correct list of all creditors of the title insurance
36 company as shown by its books, who have not presented their

1 claims and the amount of their respective claims after allowing
2 adjusted credit, deductions, and set-offs as shown by the books
3 of the title insurance company. The claims so filed shall be
4 deemed proven unless objections are filed thereto by a party or
5 parties interested therein within the time fixed by the court.

6 (j) The receiver for a title insurance company has the
7 power and authority and is charged with the duties and
8 responsibilities as follows:

9 (1) To take possession of and, for the purpose of the
10 receivership, title to the books, records, and assets of
11 every description of the title insurance company.

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

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

16 (4) To sell the real and personal property of the title
17 insurance company, as distinguished from the real and
18 personal property of the insureds or escrow depositors, on
19 such terms as the court shall direct.

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

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

26 (7) To surrender to the insureds and escrow depositors
27 of the title insurance company, when requested in writing
28 directed to the receiver by them, the escrowed funds (on a
29 pro rata basis), and escrowed documents in the receiver's
30 possession upon satisfactory proof of ownership and
31 determination by the receiver of available escrow funds.

32 (8) To redeem or take down collateral hypothecated by
33 the title insurance company to secure its notes and other
34 evidence of indebtedness whenever the court deems it to be
35 in the best interest of the creditors of the title
36 insurance company and directs the receiver so to do.

1 (k) Whenever the receiver finds it necessary in his or her
2 opinion to use and employ money of the title insurance company
3 in order to protect fully and benefit the title insurance
4 company by the purchase or redemption of property, real or
5 personal, in which the title insurance company may have any
6 rights by reason of any bond, mortgage, assignment, or other
7 claim thereto, the receiver may certify the facts together with
8 the receiver's opinions as to the value of the property
9 involved and the value of the equity the title insurance
10 company may have in the property to the court, together with a
11 request for the right and authority to use and employ so much
12 of the money of the title insurance company as may be necessary
13 to purchase the property, or to redeem the property from a sale
14 if there was a sale, and if the request is granted, the
15 receiver may use so much of the money of the title insurance
16 company as the court may have authorized to purchase the
17 property at the sale.

18 The receiver shall deposit daily all moneys collected by
19 him or her in any State or national bank approved by the court.
20 The deposits shall be made in the name of the Secretary, in
21 trust for the receiver, and be subject to withdrawal upon the
22 receiver's order or upon the order of those persons the
23 Secretary may designate. The moneys may be deposited without
24 interest, unless otherwise agreed. The receiver shall do the
25 things and take the steps from time to time under the direction
26 and approval of the court that may reasonably appear to be
27 necessary to conserve the title insurance company's assets and
28 secure the best interests of the creditors, insureds, and
29 escrow depositors of the title insurance company. The receiver
30 shall record any judgment of dissolution entered in a
31 dissolution proceeding and thereupon turn over to the Secretary
32 a certified copy of the judgment.

33 The receiver may cause all assets of the insureds and
34 escrow depositors of the title insurance company to be
35 registered in the name of the receiver or in the name of the
36 receiver's nominee.

1 For its services in administering the escrows held by the
2 title insurance company during the period of winding up the
3 affairs of the title insurance company, the receiver is
4 entitled to be reimbursed for all costs and expenses incurred
5 by the receiver and shall also be entitled to receive out of
6 the assets of the individual escrows being administered by the
7 receiver during the period of winding up the affairs of the
8 title insurance company and prior to the appointment of a
9 successor escrowee the usual and customary fees charged by an
10 escrowee for escrows or reasonable fees approved by the court.

11 The receiver, during its administration of the escrows of
12 the title insurance company during the winding up of the
13 affairs of the title insurance company, shall have all of the
14 powers that are vested in trustees under the terms and
15 provisions of the Trusts and Trustees Act.

16 Upon the appointment of a successor escrowee, the receiver
17 shall deliver to the successor escrowee all of the assets
18 belonging to each individual escrow to which the successor
19 escrowee succeeds, and the receiver shall thereupon be relieved
20 of any further duties or obligations with respect thereto.

21 (1) The receiver shall, upon approval by the court, pay all
22 claims against the assets of the title insurance company
23 allowed by the court pursuant to subsection (i) of this
24 Section, as well as claims against the assets of insureds and
25 escrow depositors of the title insurance company in accordance
26 with the following priority:

27 (1) All necessary and reasonable expenses of the
28 Secretary's possession and control and of its receivership
29 shall be paid from the assets of the title insurance
30 company.

31 (2) All usual and customary fees charged for services
32 in administering escrows shall be paid from the assets of
33 the individual escrows being administered. If the assets of
34 the individual escrows being administered are
35 insufficient, the fees shall be paid from the assets of the
36 title insurance company.

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

6 (4) Claims by policyholders, beneficiaries, insureds,
7 and escrow depositors of the title insurance company shall
8 be paid from the assets of the insureds and escrow
9 depositors. If there are insufficient assets of the
10 insureds and escrow depositors, claims shall be paid from
11 the assets of the title insurance company.

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

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

19 (7) All other claims of general creditors not falling
20 within any priority under this subsection (1) including
21 claims for taxes and debts due any state or local
22 government which are not secured claims and claims for
23 attorney's fees incurred by the title insurance company in
24 contesting the dissolution shall be paid from the assets of
25 the title insurance company.

26 (8) Proprietary claims asserted by an owner, member, or
27 stockholder of the title insurance company in receivership
28 shall be paid from the assets of the title insurance
29 company.

30 The receiver shall pay all claims of equal priority
31 according to the schedule set out in this subsection, and shall
32 not pay claims of lower priority until all higher priority
33 claims are satisfied. If insufficient assets are available to
34 meet all claims of equal priority, those assets shall be
35 distributed pro rata among those claims. All unclaimed assets
36 of the title insurance company shall be deposited with the

1 receiver to be paid out by him or her when such claims are
2 submitted and allowed by the court.

3 (m) At the termination of the receiver's administration,
4 the receiver shall petition the court for the entry of a
5 judgment of dissolution. After a hearing upon the notice as the
6 court may prescribe, the court may enter a judgment of
7 dissolution whereupon the title insurance company's corporate
8 existence shall be terminated and the receivership concluded.

9 (n) The receiver shall serve at the pleasure of the
10 Secretary and upon the death, inability to act, resignation, or
11 removal by the Secretary of a receiver, the Secretary may
12 appoint a successor, and upon the appointment, all rights and
13 duties of the predecessor shall at once devolve upon the
14 appointee.

15 (o) Whenever the Secretary shall have taken possession and
16 control of a title insurance company or a title insurance agent
17 and its assets for the purpose of examination, reorganization
18 or liquidation through receivership, or whenever the Secretary
19 shall have appointed a receiver for a title insurance company
20 or title insurance agent and filed a complaint for the
21 dissolution or winding up of its affairs, and the title
22 insurance company or title insurance agent denies the grounds
23 for such actions, it may at any time within 10 days apply to
24 the Circuit Court of Cook or Sangamon County to enjoin further
25 proceedings in the premises; and the Court shall cite the
26 Secretary to show cause why further proceedings should not be
27 enjoined, and if the Court shall find that grounds do not
28 exist, the Court shall make an order enjoining the Secretary or
29 any receiver acting under his direction from all further
30 proceedings on account of the alleged grounds.

31 (215 ILCS 155/21.2 new)

32 Sec. 21.2. Notice.

33 (a) Notice of any action by the Secretary under this Act or
34 regulations or orders promulgated under it shall be made either
35 personally or by registered or certified mail, return receipt

1 requested, and by sending a copy of the notice by telephone
2 facsimile or electronic mail, if known and operating, and if
3 unknown or not operating, then by regular mail. Service by mail
4 shall be deemed completed if the notice is deposited as
5 registered or certified mail in the post office, postage paid,
6 addressed to the last known address specified in the
7 application for the certificate of authority to do business or
8 certificate of registration of the holder or registrant.

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

12 (215 ILCS 155/21.3 new)

13 Sec. 21.3. Record retention. Evidence of the examination of
14 title, if any, and determination of insurability for business
15 written by a title insurance company or its title insurance
16 agent and records relating to escrow, closings, and security
17 deposits shall be preserved and retained by the title insurance
18 company or its title insurance agent for as long as appropriate
19 to the circumstances, but in no event less than 7 years after
20 the title insurance policy has been issued or the escrow,
21 closing, or security deposit account has been closed or as
22 provided by applicable federal law. This Section shall not
23 apply to a title insurance company acting as a coinsurer if one
24 of the other coinsurers has complied with this Section.

25 (215 ILCS 155/22) (from Ch. 73, par. 1422)

26 Sec. 22. Tax indemnity; notice. A corporation authorized to
27 do business under this Act shall notify the Director of Revenue
28 of the State of Illinois, by notice directed to his office in
29 the City of Chicago, of each trust account or similar account
30 established which relates to title exceptions due to a judgment
31 lien or any other lien arising under any tax Act administered
32 by the Illinois Department of Revenue, when notice of such lien
33 has been filed with the registrar of titles or recorder, as the
34 case may be, in the manner prescribed by law. Such notice shall

1 contain the name, address, and tax identification number of the
2 debtor, the permanent real estate index numbers, if any, and
3 the address and legal description of the property, the type of
4 lien claimed by the Department and identification of any trust
5 fund or similar account held by such corporation or any agent
6 thereof relating to such lien. Any trust fund or similar
7 account established by such corporation or agent relating to
8 any such lien shall include provisions requiring such
9 corporation or agent to apply such fund in satisfaction or
10 release of such lien upon written demand therefor by the
11 Department of Revenue.

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

13 (215 ILCS 155/23) (from Ch. 73, par. 1423)

14 Sec. 23. Violation; penalties.

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

18 (b) Nothing contained in this Section shall affect the
19 right of the Secretary to revoke or suspend a title insurance
20 company's or independent escrowee's certificate of authority
21 or a title insurance agent's registration under any other
22 Section of this Act.

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

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

25 Sec. 24. Referral fee; penalty. Except as permitted by this
26 Act or by federal law, regulations or opinion letters, no
27 person shall pay or accept, directly or indirectly, any
28 commission, discount, referral fee or other consideration as
29 inducement or compensation for the referral of title business
30 or for the referral of any escrow or other service from a title
31 insurance company, independent escrowee or title insurance
32 agent.

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

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

1 (215 ILCS 155/25) (from Ch. 73, par. 1425)

2 Sec. 25. Actual damages; injunctive relief.

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

7 (b) Any title insurance company or a title insurance agent
8 who violates the prohibitions or limitations of subsection (a)
9 of Section 21 of this Act shall be subject to injunctive
10 relief. If a permanent injunction is granted, the court may
11 award actual damages. Reasonable attorney's fees and costs may
12 be awarded to the prevailing party.

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

14 Section 99. Effective date. This Act takes effect upon
15 becoming law.

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