



Sen. Iris Y. Martinez

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LRB096 18559 RPM 38956 a

1 AMENDMENT TO SENATE BILL 2985

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 2985 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Title Insurance Act is amended by changing  
5 Sections 3 and 16 and by adding Section 16.1 as follows:

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

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

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

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

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

1 title insurance;

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

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

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

12 (iv) executing title insurance policies;

13 (v) effecting contracts of reinsurance;

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

15 or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24          (9) "Independent Escrowee" means any firm, person,  
25       partnership, association, corporation or other legal entity,  
26       other than a title insurance company or a title insurance

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

18 (10) "Single risk" means the insured amount of any title  
19 insurance policy, except that where 2 or more title insurance  
20 policies are issued simultaneously covering different estates  
21 in the same real property, "single risk" means the sum of the  
22 insured amounts of all such title insurance policies. Any title  
23 insurance policy insuring a mortgage interest, a claim payment  
24 under which reduces the insured amount of a fee or leasehold  
25 title insurance policy, shall be excluded in computing the  
26 amount of a single risk to the extent that the insured amount

1 of the mortgage title insurance policy does not exceed the  
2 insured amount of the fee or leasehold title insurance policy.

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

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

7 (13) "Insured closing letter" or "closing protection  
8 letter" means an indemnification or undertaking to a party to a  
9 real estate transaction, from a principal such as a title  
10 insurance company or similar entity, setting forth in writing  
11 the extent of the principal's responsibility for intentional  
12 misconduct or errors in closing the real estate transaction on  
13 the part of a settlement agent, such as a title insurance agent  
14 or other settlement service provider.

15 (14) "Residential real property" means a building or  
16 buildings consisting of one to 4 residential units or a  
17 residential condominium unit where at least one of the  
18 residential units or condominium units is occupied or intended  
19 to be occupied as a residence by the purchaser or borrower, or  
20 in the event that the purchaser or borrower is the trustee of a  
21 trust, by a beneficiary of that trust.

22 (Source: P.A. 94-893, eff. 6-20-06; 95-570, eff. 8-31-07.)

23 (215 ILCS 155/16) (from Ch. 73, par. 1416)

24 Sec. 16. Title insurance agents.

25 (a) No person, firm, partnership, association, corporation

1 or other legal entity shall act as or hold itself out to be a  
2 title insurance agent unless duly registered by a title  
3 insurance company with the Secretary.

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

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

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

20 (e) Funds deposited in connection with any escrows,  
21 settlements, or closings shall be deposited in a separate  
22 fiduciary trust account or accounts in a bank or other  
23 financial institution insured by an agency of the federal  
24 government unless the instructions provide otherwise. The  
25 funds shall be the property of the person or persons entitled  
26 thereto under the provisions of the escrow, settlement, or



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

6 Interest received on funds deposited with the escrow agent  
7 in connection with any escrow, settlement, or closing shall be  
8 paid to the depositing party unless the instructions provide  
9 otherwise.

10 The escrow agent shall maintain separate records of all  
11 receipts and disbursements of escrow, settlement, or closing  
12 funds.

13 The escrow agent shall comply with any rules adopted by the  
14 Secretary pertaining to escrow, settlement, or closing  
15 transactions.

16 (f) A title insurance agent shall not act as an escrow  
17 agent in a real property transaction unless the title insurance  
18 agent, title insurance company, or another authorized title  
19 insurance agent has committed for the issuance of title  
20 insurance in that transaction and the title insurance agent is  
21 authorized to act as an escrow agent on behalf of the title  
22 insurance company for which the commitment for title insurance  
23 has been issued. The authorization under the preceding sentence  
24 shall be given either (1) by an agency contract with the title  
25 insurance company which contract, in compliance with the  
26 requirements set forth in subsection (g) of this Section,

1 authorizes the title insurance agent to act as an escrow agent  
2 on behalf of the title insurance company or (2) by a closing  
3 protection letter in compliance with the requirements set forth  
4 in Section 16.1 of this Act, issued by the title insurance  
5 company to the seller, buyer, borrower, and lender. A closing  
6 protection letter shall not be issued by a title insurance  
7 agent. The provisions of this subsection (f) shall not apply to  
8 the authority of a title insurance agent to act as an escrow  
9 agent under subsection (g) of Section 17 of this Act.

10 (g) If an agency contract between the title insurance  
11 company and the title insurance agent is the source of the  
12 authority under subsection (f) of this Section for a title  
13 insurance agent to act as escrow agent for a real property  
14 transaction, then the agency contract shall provide for no less  
15 protection from the title insurance company to all parties to  
16 the real property transaction than the title insurance company  
17 would have provided to those parties had the title insurance  
18 company issued a closing protection letter in conformity with  
19 Section 16.1 of this Act.

20 (h) A title insurance company shall be liable for the acts  
21 or omissions of its title insurance agent as an escrow agent if  
22 the title insurance company has authorized the title insurance  
23 agent under subsections (f) and (g) of this Section 16 and only  
24 to the extent of the liability undertaken by the title  
25 insurance company in the agency agreement or closing protection  
26 letter. The liability, if any, of the title insurance agent to

1 the title insurance company for acts and omissions of the title  
2 insurance agent as an escrow agent shall not be limited or  
3 otherwise modified because the title insurance company has  
4 provided closing protection to a party or parties to a real  
5 property transaction escrow, settlement, or closing. The  
6 escrow agent shall not charge a fee for protection provided by  
7 a title insurance company to parties to real property  
8 transactions under subsections (f) and (g) of this Section 16  
9 and Section 16.1, but shall collect from the parties the fee  
10 charged by the title insurance company under Section 16.1 of  
11 this Act and shall promptly remit the fee to the title  
12 insurance company. The title insurance company shall charge the  
13 parties a fee as specified in Section 16.1 of this Act for  
14 protection provided pursuant to subsections (f) and (g) of this  
15 Section 16 and shall not pay any portion of the fee to the  
16 escrow agent. The failure of the title insurance company to  
17 charge the fee required under the preceding sentence, or the  
18 payment of any portion of the fee to the escrow agent by the  
19 title insurance company, shall be deemed a prohibited  
20 inducement or compensation in violation of Section 24 of this  
21 Act.

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

23 (215 ILCS 155/16.1 new)

24 Sec. 16.1. Closing or settlement protection.

25 (a) Notwithstanding the provisions of item (iii) of

1 paragraph (B) of subsection (1) and subsections (3) and (8) of  
2 Section 3 and Section 16 of this Act, a title insurance company  
3 or title insurance agent is not authorized to act as an escrow  
4 agent in a real property transaction unless as part of the same  
5 transaction a commitment, binder, or title insurance policy and  
6 closing protection letters protecting the buyer's or  
7 borrower's, lender's, and seller's interests have been issued  
8 by the title insurance company on whose behalf the commitment,  
9 binder, or title insurance policy has been issued. Closing  
10 protection letters are not required when the authorization for  
11 the title insurance agent to act as an escrow agent is given by  
12 an agency contract with the title insurance company pursuant to  
13 subsections (f), (g), and (h) of Section 16 of this Act, but  
14 may be issued by the title insurance company upon the request  
15 of a party to the real property transaction.

16 (b) A closing protection letter under this Section shall  
17 indemnify all parties to a real property transaction against  
18 actual loss, not to exceed the amount of the settlement funds  
19 deposited with the escrow agent, when such loss arises out of:

20 (1) failure of the escrow agent to comply with written  
21 closing instructions to the extent that they relate to (A)  
22 the status of the title to an interest in land or the  
23 validity, enforceability, and priority of the lien of a  
24 mortgage on an interest in land, including the obtaining of  
25 documents and the disbursement of funds necessary to  
26 establish the status of title or lien or (B) the obtaining

1       of any other document specifically required by a party to  
2       the real property transaction, but only to the extent that  
3       the failure to obtain such other document affects the  
4       status of the title to an interest in land or the validity,  
5       enforceability, and priority of the lien of a mortgage on  
6       an interest in land; or

7           (2) fraud, dishonesty, or negligence of the escrow  
8       agent in handling funds or documents in connection with  
9       closings to the extent that the fraud, dishonesty, or  
10       negligence relates to the status of the title to the  
11       interest in land or to the validity, enforceability, and  
12       priority of the lien of a mortgage on an interest in land  
13       or, in the case of a seller, to the extent that the fraud,  
14       dishonesty, or negligence relates to funds paid to or on  
15       behalf of, or which should have been paid to or on behalf  
16       of, the seller.

17       (c) The indemnification under a closing protection letter  
18       may include limitations on the liability of the title insurance  
19       company for any of the following:

20           (1) Failure of the escrow agent to comply with closing  
21       instructions that require title insurance protection  
22       inconsistent with that set forth in the title insurance  
23       commitment for the real property transaction. Instructions  
24       that require the removal of specific exceptions to title or  
25       compliance with the requirements contained in the title  
26       insurance commitment shall not be deemed to be

1       inconsistent.

2           (2) Loss or impairment of funds in the course of  
3       collection or while on deposit with a bank due to bank  
4       failure, insolvency, or suspension, except such as shall  
5       result from failure of the escrow agent closer to comply  
6       with written closing instructions to deposit the funds in a  
7       bank that is designated by name by a party to the real  
8       property transaction.

9           (3) Mechanics' and materialmen's liens in connection  
10       with sale, purchase, lease, or construction loan  
11       transactions, except to the extent that protection against  
12       such liens is afforded by a title insurance commitment or  
13       policy issued by the escrow agent.

14           (4) Failure of the escrow agent to comply with written  
15       closing instructions to the extent that such instructions  
16       require a determination by the escrow agent of the  
17       validity, enforceability, or effectiveness of any document  
18       described in subitem (B) of item (1) of subsection (g) of  
19       this Section.

20           (5) Fraud, dishonesty, or negligence of an employee,  
21       agent, attorney, or broker, who is not also the escrow  
22       agent, of the indemnified party to the real property  
23       transaction.

24           (6) The settlement or release of any claim by the  
25       indemnified party to the real property transaction without  
26       the written consent of the title insurance company.

1           (7) Any matters created, suffered, assumed, or agreed  
2           to by, or known to, the indemnified party to the real  
3           property transaction without the written consent of the  
4           title insurance company.

5           The closing protection letter may also include reasonable  
6           additional provisions concerning the dollar amount of  
7           protection, provided such limit is not less than the amount  
8           deposited with the escrow agent, arbitration, subrogation,  
9           claim notices, and other conditions and limitations that do not  
10          materially impair the protection required by this Section 16.1.

11          (d) Notwithstanding Section 19 of this Act, a title  
12          insurance company shall collect a service fee for closing  
13          protection, whether provided by agency contract or by the  
14          issuance of a closing protection letter.

15          The fee for closing protection, whether by agency contract  
16          or the issuance of a closing protection letter, indemnifying a  
17          purchase of, or lender with a lien on, an interest in real  
18          property where the purchaser and lender are both insured by  
19          title insurance policies issued in connection with such  
20          transaction shall be not less than \$25.

21          The fee for closing protection, whether by agency contract  
22          or the issuance of a closing protection letter, indemnifying  
23          the seller of, or the current owner granting a mortgage or  
24          other lieu on, an interest in real property where the seller or  
25          borrower is not insured by a title insurance policy in  
26          connection with such transaction shall be not less than \$50.

1       The entire fee for the closing protection letter shall be  
2 remitted by the title insurance agent to the title insurance  
3 company. Title insurance agents shall not charge the parties  
4 any additional amount for closing protection letters issued  
5 under this Section.

6       (e) Except as provided under this Section and subsection  
7 (13) of Section 3 and Section 16 of this Act, a title insurance  
8 company shall not provide any other coverage that purports to  
9 indemnify against improper acts or omissions of a person with  
10 regard to escrow, settlement, or closing services.

11       (f) This Section shall not apply to the authority of a  
12 title insurance company and title insurance agent to act as an  
13 escrow agent under subsection (g) of Section 17 of this Act."