



Rep. Ron Sandack

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LRB098 06252 RPM 42385 a

1 AMENDMENT TO HOUSE BILL 1335

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 1335 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 26 as follows:

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

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

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

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

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

1 title insurance;

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

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

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

12 (iv) executing title insurance policies;

13 (v) effecting contracts of reinsurance;

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

15 or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (15) "Financial institution" means any bank subject to the  
25 Illinois Banking Act, any savings and loan association subject  
26 to the Illinois Savings and Loan Act of 1985, any savings bank

1 subject to the Savings Bank Act, any credit union subject to  
2 the Illinois Credit Union Act, and any federally chartered  
3 commercial bank, savings and loan association, savings bank, or  
4 credit union organized and operated in this State pursuant to  
5 the laws of the United States.

6 (Source: P.A. 95-570, eff. 8-31-07; 96-1454, eff. 1-1-11.)

7 (215 ILCS 155/26)

8 Sec. 26. Settlement funds.

9 (a) A title insurance company, title insurance agent, or  
10 independent escrowee shall not make disbursements in  
11 connection with any escrows, settlements, or closings out of a  
12 fiduciary trust account or accounts unless the funds in the  
13 aggregate amount of \$50,000 or greater received from any single  
14 party to the transaction are good funds as defined in  
15 paragraphs (2), (6), or (7) of subsection (c) of this Section;  
16 or are collected funds as defined in subsection (d) of this  
17 Section.

18 For the purposes of this subsection (a), where funds in the  
19 aggregate amount of \$50,000 or greater are received from any  
20 purchaser of residential real property, as defined in paragraph  
21 (14) of Section 3 of this Act, the aggregate amount may consist  
22 of good funds of less than \$50,000 per paragraph, as defined in  
23 paragraphs (3) and (5) of subsection (c) of this Section and of  
24 up to \$5,000 in good funds, as defined in paragraph (4) of  
25 subsection (c) of this Section.



1       (a-5) In addition to the good funds disbursement  
2 authorization set forth in subsection (a) of this Section, a  
3 title insurance company, title insurance agent, or independent  
4 escrowee is authorized to make disbursements in connection with  
5 any escrows, settlements, or closings out of a fiduciary trust  
6 account or accounts where the funds in the aggregate amount of  
7 \$50,000 or greater are received from any single party to the  
8 transaction if:

9           (1) the funds are transferred by a cashier's check,  
10 teller's check, or certified check, as defined in the  
11 Uniform Commercial Code, that is drawn on or issued by a  
12 financial institution, as defined in this Act; and

13           (2) the title insurance company, title insurance  
14 agent, or independent escrowee and the financial  
15 institution, as defined in this Act, are known to each  
16 other and agree to the use of cashier's checks, teller's  
17 checks, or certified checks as good funds under item (3) of  
18 subsection (c) of this Section.

19       (b) A title insurance company or title insurance agent  
20 shall not make disbursements in connection with any escrows,  
21 settlements, or closings out of a fiduciary trust account or  
22 accounts unless the funds in the amount of less than \$50,000  
23 received from any single party to the transaction are collected  
24 funds or good funds as defined in subsection (c) of this  
25 Section.

26       (c) "Good funds" means funds in one of the following forms:

1           (1) lawful money of the United States;

2           (2) wired funds unconditionally held by and credited to  
3 the fiduciary trust account of the title insurance company,  
4 the title insurance agent, or independent escrowee;

5           (3) cashier's checks, certified checks, bank money  
6 orders, official bank checks, or teller's checks drawn on  
7 or issued by a financial institution ~~chartered under the~~  
8 ~~laws of any state or the United States~~ and unconditionally  
9 held by the title insurance company, title insurance agent,  
10 or independent escrowee;

11           (4) a personal check or checks in an aggregate amount  
12 not exceeding \$5,000 per closing, provided that the title  
13 insurance company, title insurance agent, or independent  
14 escrowee has reasonable grounds to believe that sufficient  
15 funds are available for withdrawal in the account upon  
16 which the check is drawn at the time of disbursement;

17           (5) a check drawn on the trust account of any lawyer or  
18 real estate broker licensed under the laws of any state,  
19 provided that the title insurance company, title insurance  
20 agent, or independent escrowee has reasonable grounds to  
21 believe that sufficient funds are available for withdrawal  
22 in the account upon which the check is drawn at the time of  
23 disbursement;

24           (6) a check issued by this State, the United States, or  
25 a political subdivision of this State or the United States;  
26 or

1           (7) a check drawn on the fiduciary trust account of a  
2 title insurance company or title insurance agent, provided  
3 that the title insurance company, title insurance agent, or  
4 independent escrowee has reasonable grounds to believe  
5 that sufficient funds are available for withdrawal in the  
6 account upon which the check is drawn at the time of  
7 disbursement.

8           (d) "Collected funds" means funds deposited, finally  
9 settled, and credited to the title insurance company, title  
10 insurance agent, or independent escrowee's fiduciary trust  
11 account.

12           (e) A purchaser, a seller, or a lender is each considered a  
13 single party to the transaction for the purposes of this  
14 Section, regardless of the number of people or entities making  
15 up the purchaser, seller, or lender.

16           (Source: P.A. 96-645, eff. 1-1-10; 96-1457, eff. 1-1-11.)

17           Section 99. Effective date. This Act takes effect upon  
18 becoming law."