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09500HB1319ham001

LRB095 07310 KBJ 33347 a

1 AMENDMENT TO HOUSE BILL 1319

2 AMENDMENT NO. _____. Amend House Bill 1319 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Title Insurance Act is amended by changing
5 Section 3 and by adding Section 18.1 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 in
7 addition to do any of the following: act as an escrow agent,
8 solicit title insurance, collect premiums, issue title
9 reports, binders or commitments to insure and policies in its
10 behalf, provided, however, the term "title insurance agent"
11 shall not include officers and salaried employees of any title
12 insurance company.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (215 ILCS 155/18.1 new)

22 Sec. 18.1. Choice of title insurance company. It is
23 declared to be the public policy of this State that a party to
24 a contract for the sale of residential real property who is
25 obligated by the contract to pay for title insurance has the

1 right to choose the title insurance company and title insurance
2 agent that will provide the title insurance. No provider of
3 title insurance shall, as a condition of making a loan,
4 providing services of any kind, including, but not limited to,
5 services as a broker, agent, lender, or otherwise, require a
6 party to a contract for the sale of residential real property
7 who is obligated by that contract to pay for title insurance to
8 procure title insurance from a title insurance company or title
9 insurance agent other than a title insurance company or title
10 insurance agent that is chosen by the party paying for the
11 title insurance.

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