

1 AMENDMENT TO SENATE BILL 887

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 887 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Title Insurance Act is amended by  
5 changing Sections 4, 5, 6, 9, 11, 12, 13, 14, 16, 17, 21, 23,  
6 and 25 and adding Sections 21.1, 21.2, and 21.3 as follows:

7 (215 ILCS 155/4) (from Ch. 73, par. 1404)

8 Sec. 4. Deposit and surety bonds.

9 (a) Before doing business in this State, a title  
10 insurance company must deposit with the Department bonds of  
11 the United States or this State with a then current value of  
12 \$100,000 plus \$50,000 for each county, more than one, in  
13 which the real estate, upon which its policies are issued, is  
14 located, to a maximum amount of \$750,000. A title insurance  
15 company guaranteeing or insuring titles to real estate in  
16 counties having 500,000 or more inhabitants must deposit with  
17 the Department bonds of the United States or this State with  
18 a then current value of \$750,000. A title insurance company  
19 that has deposited \$750,000 in bonds with the Department is  
20 entitled to guarantee or insure titles in any or all counties  
21 of the State. All deposits shall be held for the benefit of  
22 any insured under a policy the title insurance company issued

1 or any named party to a written escrow the title insurance  
2 company accepted. The deposit shall not be otherwise pledged  
3 or subject to distribution among creditors or stockholders.

4 In addition, before doing business in this State, a title  
5 insurance company must file with and have approved by the  
6 Director a surety bond issued by a bonding company, in which  
7 the company has no financial interest, that is authorized to  
8 do business in this State and that has a rating of one of the  
9 3 highest grades as determined by a national rating service.  
10 The bond shall be in the principal sum of \$350,000 and shall  
11 run to the Director to pay any expenses incident to a  
12 receivership or involuntary liquidation action pursuant to  
13 Section 21.1 of this Act. Instead of a surety bond and upon  
14 the title insurance company demonstrating good cause, the  
15 Director may approve the deposit of bonds of the United  
16 States or this State with a then current value of \$350,000.

17 (b) The Director may provide for custody of the deposits  
18 by any trust company or bank located in this State and  
19 qualified to do business under the Corporate Fiduciary Act.  
20 The compensation, if any, of the custodian shall be paid by  
21 the depositing company. When the required deposits have been  
22 made by a title insurance company, the Director shall certify  
23 that the company has complied with the provisions of this  
24 Section and is authorized to transact the business of  
25 insuring and guaranteeing titles to real estate.

26 (c) If, at any time, a title insurance company causes  
27 all of its unexpired policies, escrow deposits, and  
28 reinsurance obligations in Illinois to be paid in full,  
29 cancelled, discharged, reinsured, or otherwise assumed by  
30 another title insurance company authorized to do business  
31 under this Act, the Director shall, upon application of the  
32 company, verified by the oath of its president or secretary,  
33 and upon being satisfied by an examination of its books and  
34 its officers under oath that all of its policies are paid in

1 full, cancelled, discharged, reinsured, or otherwise assumed,  
2 authorize the release of any deposit or surety bond posted  
3 under this Section.

4 (d) The Director may revoke the certificate of a company  
5 that fails to maintain the surety bond or deposit required by  
6 this Section. The Director shall give notice of that  
7 revocation to the company as provided by this Act, and during  
8 the time of the revocation, the company may not conduct a  
9 title insurance business. A revocation shall not be set  
10 aside until a good and sufficient bond or deposit, or both,  
11 has been filed with the Department and the company has  
12 fulfilled all requirements of this Act.

13 ~~(a) Every title insurance company licensed or qualified~~  
14 ~~to do business in this State shall, within 30 days after the~~  
15 ~~effective date of this Act or within 30 days after~~  
16 ~~incorporated or licensed to do business, whichever is later,~~  
17 ~~deposit with the Department, for the benefit of the creditors~~  
18 ~~of the company by reason of any policy issued by it, bonds of~~  
19 ~~the United States, this State or any body politic of this~~  
20 ~~State in amounts as specified in subsection (b). The bonds~~  
21 ~~and securities so deposited may be exchanged for other such~~  
22 ~~securities. No such bond or security shall be sold or~~  
23 ~~transferred by the Director except on order of the circuit~~  
24 ~~court or as provided in subsection (d). As long as the~~  
25 ~~company depositing such securities remains solvent, the~~  
26 ~~company shall be permitted to receive from the Director the~~  
27 ~~interest on such deposit.~~

28 ~~(b) Every title insurance company shall deposit bonds or~~  
29 ~~securities in the sum of \$50,000 plus \$5,000 for each county,~~  
30 ~~more than one, in which the real estate, upon which such~~  
31 ~~policies are issued, is located, to maximum deposit of~~  
32 ~~\$500,000. Every title insurance company guaranteeing or~~  
33 ~~insuring titles to real estate in counties having 500,000 or~~  
34 ~~more inhabitants shall deposit securities with the Department~~

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

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

15 (d)--If--a--title--insurance--company--shall--at--any--time--cause  
 16 all--of--its--unexpired--policies--to--be--paid,--cancelled--or  
 17 reinsured--and--all--of--its--liabilities--under--such--policies  
 18 thereby--to--be--extinguished,--or--to--be--assumed--by--some--surety  
 19 or--other--responsible--company--authorized--to--do--business--in  
 20 this--State,--the--Director--shall,--on--application--of--such  
 21 company,--verified--by--the--oath--of--its--president--or--secretary  
 22 and--on--being--satisfied--by--an--examination--of--its--books--and--its  
 23 officers--under--oath--that--all--of--its--policies--are--so--paid,  
 24 cancelled,--extinguished--or--reinsured,--deliver--up--to--it--such  
 25 securities.

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

27 (215 ILCS 155/5) (from Ch. 73, par. 1405)

28 Sec. 5. Certificate of authority required. It is  
 29 unlawful shall-not-be-lawful for any company to engage or to  
 30 continue in the business of guaranteeing or insuring titles  
 31 to real estate, without first procuring from the Director a  
 32 certificate of authority stating that the such-a company has  
 33 complied with the requirements of Section 4 of this Act. If

1 any--company--shall--fail--to--maintain--a--deposit--as--required--by  
 2 this--Act,--the--Director--may--revoke--the--certificate--of  
 3 authority--granted--on--behalf--of--such--company.--The--Director  
 4 shall--mail--a--copy--of--that--revocation--to--the--company--and  
 5 during--the--time--of--such--revocation--the--company--shall--not  
 6 conduct--such--business.--A--revocation--shall--not--be--set--aside  
 7 until--a--good--and--sufficient--deposit--shall--have--been--made--with  
 8 the--Department,--fulfilling--all--the--requirements--of--this--Act.  
 9 (Source: P.A. 86-239.)

10 (215 ILCS 155/6) (from Ch. 73, par. 1406)

11 Sec. 6. Reinsurance; primary liability.

12 (a) A title insurance company may obtain reinsurance for  
 13 all or any part of its liability under one or more of its  
 14 title insurance policies or reinsurance agreements and may  
 15 also reinsure title insurance policies issued by other title  
 16 insurance companies on risks located in this State or  
 17 elsewhere.

18 (b) A title insurance company licensed to do business in  
 19 this State shall retain at least \$25,000 of primary liability  
 20 for policies it issues for the first 5 years after the date  
 21 of the policy, unless otherwise authorized by the Director.

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

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

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

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

1           (b) The Director shall give notice as provided by this  
 2 Act to the such company to discontinue doing business issuing  
 3 new-policies until its such capital has been made good.

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

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

12 (215 ILCS 155/11) (from Ch. 73, par. 1411)

13 Sec. 11. Statutory premium reserve.

14 (a) A domestic title insurance company shall establish  
 15 and maintain a statutory premium reserve computed in  
 16 accordance with this Section. The reserve shall be reported  
 17 as a liability of the title insurance company in its  
 18 financial statements. The statutory premium reserve shall be  
 19 maintained by the title insurance company for the protection  
 20 of holders of title insurance policies. Except as provided  
 21 in this Section, assets equal in value to the statutory  
 22 premium reserve are not subject to distribution among  
 23 creditors or stockholders of the title insurance company  
 24 until all claims of policyholders or claims under  
 25 reinsurance contracts have been paid in full,--and--all  
 26 liability-on-the-policies-or-reinsurance-contracts--has--been  
 27 paid--in--full and discharged, or lawfully reinsured, or  
 28 otherwise assumed by another title insurance company  
 29 authorized to do business under this Act.

30 (b) A foreign or alien title insurance company  
 31 authorized to do business under this Act shall maintain at  
 32 least the same reserves on title insurance policies issued on  
 33 properties located in this State as are required of domestic

1 title insurance companies.

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

3 (1) the amount of the statutory premium reserve on  
4 January 1, 1990; and

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

9 (d) Amounts placed in the statutory premium reserve in  
10 any year in accordance with this Section shall be deducted in  
11 determining the net profit of the title insurance company for  
12 that year.

13 (e) A title insurance company shall release from the  
14 statutory premium reserve a sum equal to 10% of the amount  
15 added to the reserve during a calendar year on July 1 of each  
16 of the 5 years following the year in which the sum was added,  
17 and shall release from the statutory premium reserve a sum  
18 equal to 3 1/3% of the amount added to the reserve during  
19 that year on each succeeding July 1 until the entire amount  
20 for that year has been released. The amount of the statutory  
21 premium reserve or similar premium reserve maintained before  
22 January 1, 1990, shall be released in accordance with the law  
23 in effect before January 1, 1990.

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

25 (215 ILCS 155/12) (from Ch. 73, par. 1412)

26 Sec. 12. Examination; audit.

27 (a) The Director or the Director's his authorized  
28 representative shall have the power, and authority, and it  
29 shall--be--his duty, to cause to be visited and examined  
30 annually any title insurance company doing business under  
31 this Act, and to verify and compel a compliance with the  
32 provisions of law governing the title insurance company it-as  
33 he-may-by-law-exercise-in-relation-to-trust-companies.

1 (b) The Director or the Director's his authorized  
 2 representative agent shall have power and authority to compel  
 3 compliance with the provisions of this Act and shall ~~only~~  
 4 ~~upon the showing of good cause,~~ require any title insurance  
 5 company to make reasonable efforts to obtain the appropriate  
 6 records of its registered agents and make them available for  
 7 audit at a time and place designated by the Director.  
 8 Expenses incurred in the course of such audits will be the  
 9 responsibility of the title insurance company. If a present  
 10 or former registered agent or its successor refuses or is  
 11 unable to cooperate in furnishing the records requested by  
 12 the Director or the Director's authorized representative,  
 13 then the Director or the Director's authorized representative  
 14 shall have the power and authority to obtain those records  
 15 directly from such agent.

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

17 (215 ILCS 155/13) (from Ch. 73, par. 1413)

18 Sec. 13. Annual statement.

19 (a) A Each title insurance company shall file with the  
 20 Department during the month of March of each year, a  
 21 statement under oath, of the condition of such company on the  
 22 thirty-first day of December next preceding disclosing the  
 23 assets, liabilities, earnings and expenses of the company.  
 24 The report shall be in such form and shall contain such  
 25 additional statements and information as to the affairs,  
 26 business, and conditions of the company as the Director may  
 27 from time to time prescribe or require.

28 (b) By June 1 of each year, a title insurance company  
 29 must file with the Department a copy of its audited financial  
 30 statements.

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

32 (215 ILCS 155/14) (from Ch. 73, par. 1414)



1           Sec. 14. Fees.

2           (a) A Every title insurance company and an every  
3 independent escrowee subject to this Act shall pay the  
4 following fees:

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

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

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

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

13                (5) for filing the annual statement, \$50; and-

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

16           (b) By April 1 of each year, a Each title insurance  
17 company shall pay, for all of its title insurance agents  
18 subject to this Act an annual registration fee of ~~for filing~~  
19 ~~an annual registration of its agents, an amount equal to~~  
20 \$1.00 for each policy issued by it and all of its agents in  
21 this State in the immediately preceding calendar year,  
22 provided such sum shall not exceed \$20,000 per annum.

23           (c) By April 1 of each year, a title insurance company  
24 shall remit an amount equal to \$1.25 for each policy issued  
25 by it and its agents in the immediately preceding calendar  
26 year, which shall be collected and disclosed as a per policy  
27 remittance fee upon the issuance of any policy.

28           (d) The Director shall review the annual license fee on  
29 an annual basis and adjust the fee no more than 5% annually  
30 to meet the estimated administrative and operational expenses  
31 for the upcoming fiscal year incidental to administering this  
32 Act. By November 1 of each year, the Director shall provide  
33 written notice to each title insurance company of any  
34 adjustment made in the annual license fee.

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

2 (215 ILCS 155/16) (from Ch. 73, par. 1416)

3 Sec. 16. Title insurance agents.

4 (a) No person, firm, partnership, association,  
5 corporation or other legal entity shall act as or hold itself  
6 out to be a title insurance agent unless duly registered by a  
7 title insurance company with the Director. The Director may  
8 impose a civil penalty as provided by this Act for each  
9 violation of this registration requirement.

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

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

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

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

27 (215 ILCS 155/17) (from Ch. 73, par. 1417)

28 Sec. 17. Independent escrowees.

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

32 (b) No person, firm, corporation or other legal entity

1 shall hold itself out to be an independent escrowee unless it  
2 has been issued a certificate of authority by the Director.

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

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

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

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

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

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

33 (4) The independent escrowee shall comply with any  
34 rules or regulations promulgated by the Director

1           pertaining to escrow, settlement or closing transactions.

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

7           (g) A title insurance company or title insurance agent,  
8 not qualified as an independent escrowee, may act in the  
9 capacity of an escrow agent when it is supplying an abstract  
10 of title, grantor-grantee search, tract search, lien search,  
11 tax assessment search, or other limited purpose search to the  
12 parties to the transaction even if it is not issuing a title  
13 insurance commitment or title insurance policy. A title  
14 insurance agent may act as an escrow agent only when  
15 specifically authorized in writing on forms prescribed by the  
16 Director by a title insurance company that has duly  
17 registered the agent with the Director and only when notice  
18 of the authorization is provided to and receipt thereof is  
19 acknowledged by the Director. The authority granted to a  
20 title insurance agent may be limited or revoked at any time  
21 by the title insurance company. When a title insurance agent  
22 has been authorized by more than one title insurance company  
23 to act under this subsection and when that title insurance  
24 agent is unable to pay a claim or loss arising from such  
25 business, then the balance of liability and expense shall  
26 become the shared liability of each title insurance company  
27 in the proportion of title insurance premiums written by the  
28 title insurance agent for each of them in the twelve months  
29 prior to the act or omission causing the liability.

30           (h) The Director may impose a civil penalty as provided  
31 by this Act for each violation of the requirements of this  
32 Section.

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

1 (215 ILCS 155/21) (from Ch. 73, par. 1421)

2 Sec. 21. Regulatory action.

3 (a) The Director may refuse to grant, and may suspend or  
4 revoke, any certificate of authority, registration or license  
5 issued pursuant to this Act and may impose a civil penalty  
6 upon any registrant or licensee as provided by this Act if he  
7 determines that the holder of or applicant for such  
8 certificate, registration or license:

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

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

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

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

22 (4) ~~(5)~~ has paid any commissions, discounts or any  
23 part of its premiums, fees or other charges to any person  
24 in violation of any State or federal law or regulations  
25 or opinion letters issued under the federal Real Estate  
26 Settlement Procedures Act of 1974<sub>+</sub>; ~~or~~

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

30 (b) In every case where a registration or certificate is  
31 suspended or revoked, or an application for a registration or  
32 certificate or renewal thereof is refused, or when a civil  
33 penalty is imposed, the Director shall serve notice of the  
34 his action, including a statement of the reasons for the his

1 action, as provided by this Act. either--personally--or--by  
2 registered--or--certified--mail,---Service--by--mail--shall--be  
3 deemed--completed--if--such--notice--is--deposited--in--the--post  
4 office,--postage--paid,--addressed--to--the--last--known--address  
5 specified--in--the--application--for--the--certificate--or  
6 registration--of--such--holder--or--registrant.

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

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

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

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

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

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

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

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

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

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

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

1 precedent to the exercise of any other power or remedy vested  
2 in the Director.

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

4 (215 ILCS 155/21.1 new)

5 Sec. 21.1. Receiver and involuntary liquidation.

6 (a) The proceedings under this Section shall be the  
7 exclusive remedy and the only proceedings commenced in any  
8 court for the dissolution of, the winding up of the affairs  
9 of, or the appointment of a receiver for a title insurance  
10 company.

11 (b) If the Director, with respect to a title insurance  
12 company, finds that (1) its capital is impaired or it is  
13 otherwise in an unsound condition, (2) its business is being  
14 conducted in an unlawful, fraudulent, or unsafe manner, (3)  
15 it is unable to continue operations, or (4) its examination  
16 has been obstructed or impeded, the Director may give notice  
17 to the board of directors of the title insurance company of  
18 the finding or findings. If the Director's finding is not  
19 corrected within 60 days after the company receives the  
20 notice, the Director shall take possession and control of the  
21 title insurance company, its assets, and assets held by it  
22 for any person for the purpose of examination,  
23 reorganization, or liquidation through receivership.

24 If, in addition to making a finding as provided in item  
25 (1), (2), (3), or (4), the Director is of the opinion and  
26 finds that an emergency that may result in serious losses to  
27 any person exists, the Director may, without having given the  
28 notice provided for in this subsection, and whether or not  
29 proceedings under subsection (a) of this Section have been  
30 instituted or are then pending, take possession and control  
31 of the title insurance company and its assets for the purpose  
32 of examination, reorganization, or liquidation through  
33 receivership.



1       (c) The Director may take possession and control of a  
2 title insurance company, its assets, and assets held by it  
3 for any person by posting upon the premises of each office at  
4 which it transacts its business as a title insurance company  
5 a notice reciting that the Director is assuming possession  
6 pursuant to this Act and the time when the possession shall  
7 be deemed to commence.

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

31       The Director, upon taking possession and control of a  
32 title insurance company, may, and if not previously done,  
33 shall immediately upon filing a complaint for dissolution,  
34 make an examination of the affairs of the title insurance

1 company or appoint a suitable person to make the examination  
2 as the Director's agent. The examination shall be conducted  
3 in accordance with and pursuant to the authority granted  
4 under Section 12 of this Act. The person conducting the  
5 examination shall have and may exercise on behalf of the  
6 Director all of the powers and authority granted to the  
7 Director under Section 12. A copy of the report shall be  
8 filed in any dissolution proceeding filed by the Director.  
9 The reasonable fees and necessary expenses of the examining  
10 person, as approved by the Director or as recommended by the  
11 Director and approved by the court if a dissolution  
12 proceeding has been filed, shall be borne by the subject  
13 title insurance company and shall have the same priority for  
14 payment as the reasonable and necessary expenses of the  
15 Director in conducting an examination. The person appointed  
16 to make the examination shall make a proper accounting, in  
17 the manner and scope as determined by the Director to be  
18 practical and advisable under the circumstances, on behalf of  
19 the title insurance company and no guardian ad litem need be  
20 appointed to review the accounting.

21 (e) The Director, upon taking possession and control of  
22 a title insurance company and its assets, shall be vested  
23 with the full powers of management and control including, but  
24 not limited to, the following:

25 (1) the power to continue or to discontinue the  
26 business;

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

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

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

33 (5) the power to employ and to pay any necessary  
34 assistants;

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

3           (7) the power to commence, defend, and conduct in  
4 its name any action or proceeding in which it may be a  
5 party;

6           (8) the power, upon the order of the court, to sell  
7 and convey its assets, in whole or in part, and to sell  
8 or compound bad or doubtful debts upon such terms and  
9 conditions as may be fixed in that order;

10           (9) the power, upon the order of the court, to make  
11 and to carry out agreements with other title insurance  
12 companies, financial institutions, or with the United  
13 States or any agency of the United States for the payment  
14 or assumption of the title insurance company's  
15 liabilities, in whole or in part, and to transfer assets  
16 and to make guaranties, in whole or in part, in  
17 connection therewith;

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

21           (11) the power to terminate his or her possession  
22 and control by restoring the title insurance company to  
23 its board of directors;

24           (12) the power to appoint a receiver which may be  
25 the Office of the Director of the Department of Financial  
26 Institutions, another title insurance company, or another  
27 suitable person and to order liquidation of the title  
28 insurance company as provided in this Act; and

29           (13) the power, upon the order of the court and  
30 without the appointment of a receiver, to determine that  
31 the title insurance company has been closed for the  
32 purpose of liquidation without adequate provision being  
33 made for payment of its obligations, and thereupon the  
34 title insurance company shall be deemed to have been

1 closed on account of inability to meet its obligations to  
2 its insureds or escrow depositors.

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

22 (g) If the Director takes possession and control of a  
23 title insurance company and its assets, any period of  
24 limitation fixed by a statute or agreement that would  
25 otherwise expire on a claim or right of action of the title  
26 insurance company, on its own behalf or on behalf of its  
27 insureds or escrow depositors, or upon which an appeal must  
28 be taken or a pleading or other document must be filed by the  
29 title insurance company in any pending action or proceeding  
30 shall be tolled until 6 months after the commencement of the  
31 possession, and no judgment, lien, levy, attachment, or other  
32 similar legal process must be enforced upon or satisfied, in  
33 whole or in part, from any asset of the title insurance  
34 company or from any asset of an insured or escrow depositor

1 while it is in the possession of the Director.

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

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

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

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

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

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

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

33 (4) To sell the real and personal property of the  
34 title insurance company, as distinguished from the real

1 and personal property of the insureds or escrow  
2 depositors, on such terms as the court shall direct.

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

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

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

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

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

1 redeem the property from a sale if there was a sale, and if  
2 the request is granted, the receiver may use so much of the  
3 money of the title insurance company as the court may have  
4 authorized to purchase the property at the sale.

5 The receiver shall deposit daily all moneys collected in  
6 any State or national bank approved by the court. The  
7 deposits shall be made in the name of the Director, in trust  
8 for the receiver, and be subject to withdrawal upon the  
9 receiver's order or upon the order of those persons the  
10 Director may designate. The moneys may be deposited without  
11 interest, unless otherwise agreed. The receiver shall do the  
12 things and take the steps from time to time under the  
13 direction and approval of the court that may reasonably  
14 appear to be necessary to conserve the title insurance  
15 company's assets and secure the best interests of the  
16 creditors, insureds, and escrow depositors of the title  
17 insurance company. The receiver shall record any judgment of  
18 dissolution entered in a dissolution proceeding and thereupon  
19 turn over to the Director a certified copy of the judgment.  
20 The receiver may cause all assets of the insureds and escrow  
21 depositors of the title insurance company to be registered in  
22 the name of the receiver or in the name of the receiver's  
23 nominee.

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



1       The receiver, during its administration of the escrows of  
2 the title insurance company during the winding up of the  
3 affairs of the title insurance company, shall have all of the  
4 powers that are vested in trustees under the terms and  
5 provisions of the Trusts and Trustees Act.

6       Upon the appointment of a successor escrowee, the  
7 receiver shall deliver to the successor escrowee all of the  
8 assets belonging to each individual escrow to which the  
9 successor escrowee succeeds, and the receiver shall thereupon  
10 be relieved of any further duties or obligations with respect  
11 thereto.

12       (1) The receiver shall, upon approval by the court, pay  
13 all claims against the assets of the title insurance company  
14 allowed by the court pursuant to subsection (i) of this  
15 Section, as well as claims against the assets of insureds and  
16 escrow depositors of the title insurance company in  
17 accordance with the following priority:

18           (1) All necessary and reasonable expenses of the  
19 Director's possession and control and of its receivership  
20 shall be paid from the assets of the title insurance  
21 company.

22           (2) All usual and customary fees charged for  
23 services in administering escrows shall be paid from the  
24 assets of the individual escrows being administered. If  
25 the assets of the individual escrows being administered  
26 are insufficient, the fees shall be paid from the assets  
27 of the title insurance company.

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

33           (4) Claims by policyholders, beneficiaries,  
34 insureds and escrow depositors of the title insurance

1 company shall be paid from the assets of the insureds and  
2 escrow depositors. If there are insufficient assets of  
3 the insureds and escrow depositors, claims shall be paid  
4 from the assets of the title insurance company.

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

8 (6) Claims for wages or salaries, excluding  
9 vacation, severance and sick leave pay earned by  
10 employees for services rendered within 90 days prior to  
11 the date of filing of the complaint for dissolution,  
12 shall be paid from the assets of the title insurance  
13 company.

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

21 (8) Proprietary claims asserted by an owner, member  
22 or stockholder of the title insurance company in  
23 receivership shall be paid from the assets of the title  
24 insurance company.

25 The receiver shall pay all claims of equal priority  
26 according to the schedule set out in this subsection, and  
27 shall not pay claims of lower priority until all higher  
28 priority claims are satisfied. If insufficient assets are  
29 available to meet all claims of equal priority, those assets  
30 shall be distributed pro rata among those claims. All  
31 unclaimed assets of the title insurance company shall be  
32 deposited with the receiver to be paid out by him when such  
33 claims are submitted and allowed by the court.

34 (m) At the termination of the receiver's administration,

1 the receiver shall petition the court for the entry of a  
2 judgment of dissolution. After a hearing upon the notice as  
3 the court may prescribe, the court may enter a judgment of  
4 dissolution whereupon the title insurance company's corporate  
5 existence shall be terminated and the receivership concluded.

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

12 (215 ILCS 155/21.2 new)

13 Sec. 21.2. Notice.

14 (a) Notice of any action to be given to title insurance  
15 companies by the Director under this Act or rules or orders  
16 promulgated under it shall be made either personally or by  
17 U.S. mail and by sending a copy of the notice by telephone  
18 facsimile or electronic mail, if known and operating. Service  
19 by mail shall be deemed completed if the notice is deposited  
20 in the U.S. Mail, postage paid, addressed to the last known  
21 address specified in the application for the certificate of  
22 authority to do business or certificate of registration of  
23 the holder or registrant.

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

28 (215 ILCS 155/21.3 new)

29 Sec. 21.3. Record retention. Evidence of the examination  
30 of title, if any, and determination of insurability for  
31 business written by a title insurance company or its title  
32 insurance agent and records relating to escrow, closings, and

1 security deposits shall be preserved and retained by the  
 2 title insurance company or its title insurance agent for as  
 3 long as appropriate to the circumstances, but in no event  
 4 less than 5 years after the title insurance policy has been  
 5 issued or the escrow, closing, or security deposit account  
 6 has been closed.

7 (215 ILCS 155/23) (from Ch. 73, par. 1423)

8 Sec. 23. Violation; penalty.

9 (a) If the Director determines that a title insurance  
 10 company or any other person has violated this Act, or any  
 11 rule or order promulgated under this Act, the Director may  
 12 order:

13 (1) a civil penalty not exceeding \$10,000 for each  
 14 violation of Section 9 or each determination under  
 15 Section 21 and not exceeding \$1,000 for any other  
 16 violation; or

17 (2) revocation or suspension of the title insurance  
 18 company's or independent escrowee's certificate of  
 19 authority or title agent's registration.

20 (b) Any intentional violation of any of the provisions  
 21 of this Act shall constitute a petty offense.

22 (c) Nothing contained in this Section shall affect the  
 23 authority of the Director to revoke or suspend a title  
 24 insurance company's or independent escrowee's certificate of  
 25 authority or a title insurance agent's registration under any  
 26 other Section of this Act. Any--violation--of-any-of-the  
 27 provisions-of-this-Act-shall-constitute--a--business--offense  
 28 and--shall--subject-the-party-violating-the-same-to-a-penalty  
 29 of-\$1000-for-each-offense.

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

31 (215 ILCS 155/25) (from Ch. 73, par. 1425)

32 Sec. 25. Damages. (a) Any person or persons who violate

1 the prohibitions or limitations of subsection (a) of Section  
2 21 of this Act shall be liable to the person or persons  
3 charged for the settlement service involved in the violation  
4 for actual damages and costs.

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

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

12 Section 99. Effective date. This Act takes effect  
13 January 1, 2002."