

Veenstra
Soukup
Rittner

SSB-3032

Small Business/Econ.
Development & Tourism
Succeeded By

SENATE/HOUSE FILE JF/HF 2295

BY (PROPOSED IOWA FINANCE
AUTHORITY BILL)

Passed Senate, Date _____

Passed House, Date _____

Vote: Ayes _____ Nays _____

Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act relating to the issuance of closing protection letters by
2 the Iowa finance authority.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section 16.91, subsection 2, Code 1999, is
2 amended to read as follows:

3 2. A title guaranty, closing protection letter, or gap
4 coverage issued under this program is an obligation of the
5 division only and claims are payable solely and only out of
6 the moneys, assets, and revenues of the title guaranty fund
7 and are not an indebtedness or liability of the state. The
8 state is not liable on ~~the-guaranties~~ any guaranty, closing
9 protection letter, or gap coverage.

10 Sec. 2. NEW SECTION. 16.93 CLOSING PROTECTION LETTERS.

11 1. The authority through the title guaranty division may
12 issue a closing protection letter to a person to whom a
13 proposed title guaranty is to be issued, upon the request of
14 the person, if the division issues a commitment for title
15 guaranty or title guaranty certificate. The closing
16 protection letter shall conform to the terms of coverage and
17 form of the instrument as approved by the division board and
18 may indemnify a person to whom a proposed title guaranty is to
19 be issued against loss of settlement funds due to only the
20 following acts of the division's named participating attorney
21 or participating abstractor:

22 a. Theft of settlement funds.

23 b. Failure by the participating attorney or participating
24 abstractor to comply with written closing instructions of the
25 person to whom a proposed title guaranty is to be issued
26 relating to title certificate coverage when agreed to by the
27 participating attorney or participating abstractor.

28 2. A closing protection letter shall only be issued to a
29 person to whom a proposed title guaranty is to be issued for
30 real property transactions in which the division has committed
31 to issue an owner or lender certificate and for which the
32 division receives a premium and other payments or fees for a
33 title guaranty certificate or other coverage.

34 3. The division board shall establish the amount of
35 coverage to be provided and may distinguish between classes of

1 property including, but not limited to, residential,
2 agricultural, or commercial, provided that the total amount of
3 coverage provided by the closing protection letter shall not
4 exceed the amount of the commitment or title guaranty to be
5 issued. Liability under the closing protection letter shall
6 be coextensive with liability under the certificate to be
7 issued in connection with a transaction such that payments
8 under the terms of the closing protection letter shall reduce
9 by the same amount the liability under the title guaranty
10 certificate and payment under the title guaranty certificate
11 shall reduce the liability under the terms of the closing
12 protection letter.

13 4. The division may adopt a required fee for providing
14 closing protection letter coverage.

15 5. The division shall not provide any other coverage which
16 purports to indemnify against improper acts or omissions of a
17 person with regard to escrow, settlement, or closing services.

18 6. The authority shall adopt rules pursuant to chapter 17A
19 as necessary to administer this section.

20

EXPLANATION

21 This bill allows the Iowa finance authority through the
22 title guaranty division to issue a closing protection letter
23 to a person to whom a proposed title guaranty is to be issued,
24 upon the request of the person, if the division issues a
25 commitment for title guaranty or title guaranty certificate.
26 The bill provides that the closing protection letter may only
27 indemnify a person to whom a proposed title guaranty is to be
28 issued against loss of settlement funds due to the theft of
29 settlement funds and the noncompliance with written closing
30 instructions relating to title certificate coverage.

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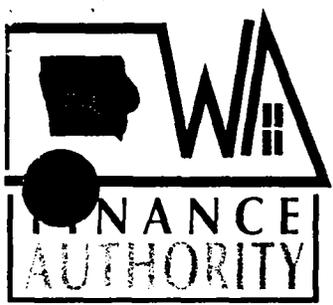
1 payments or fees for a title guaranty certificate or other
2 coverage.

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4 the amount of coverage which shall not exceed the amount of
5 the commitment or title guaranty to be issued.

6 The bill prohibits the division from providing any other
7 coverage which purports to indemnify against improper acts or
8 omissions of a person with regard to escrow, settlement, or
9 closing services.

10 The bill provides that a title guaranty, closing protection
11 letter, or gap coverage issued by the division is an
12 obligation of the division and not an indebtedness or
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Thomas J. Vilsack
Governor

MEMORANDUM OF PROBLEM

Sally J. Pederson
Lt. Governor

The Title Guaranty Division is receiving requests for closing protection letters from Participating Attorneys. Closing protection letters provide coverage to a guaranteed for theft of the funds by the closing agent or the closing agents failure to follow the closing instructions of the guaranteed which causes the guaranteed to suffer a loss.

Darlene M. Jeris
Executive Director

Closing protection letters are issued in the regular course of business of title insurance companies for their agents. The Division needs to be able to provide the ancillary services that are customary and expected in the title guarantee business. The letter issued by the Division would only cover participating attorneys and abstractors because they are the Division's "agents". Abstractors should be included because they are getting into the escrow and closing services.

The Division would need to amend an amendment to the statute to be able to provide closing protection letters. Under current provisions, the Division can only provide title guaranty certificates.

3/8/00 Referred from Leg. Calendar
to Work & memo
Comm.
FILED FEB 23 2000

SENATE FILE 2295
BY COMMITTEE ON SMALL BUSINESS,
ECONOMIC DEVELOPMENT AND TOURISM

(SUCCESSOR TO SSB 3032)

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Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
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SENATE FILE 2295

S-5042

1 Amend Senate File 2295 as follows:

2 1. Page 1, by inserting after line 9 the
3 following:

4 "Sec. ____ . Section 16.92, subsection 1, paragraph
5 f, subparagraph (4), Code Supplement 1999, is amended
6 to read as follows:

7 (4) If after payment of the unpaid balance of the
8 loan secured by the mortgage, the mortgage continues
9 to secure any unpaid obligation due the mortgagee or
10 any unfunded commitment by the mortgagor to the
11 mortgagee, ~~the legal description of the property that~~
12 ~~will continue to be subject to the mortgage, and the~~
13 legal description of the property that will be
14 released from the mortgage.

15 Sec. ____ . Section 16.92, subsection 2, paragraph
16 a, subparagraph (1), subparagraph subdivision (b),
17 Code Supplement 1999, is amended to read as follows:

18 (b) The statement contains the legal description
19 of the property to be released from the mortgage ~~and~~
20 ~~the legal description of the property that will~~
21 ~~continue to be subject to the mortgage.~~

22 Sec. ____ . Section 16.92, subsection 3, paragraph
23 d, subparagraph (2), Code Supplement 1999, is amended
24 to read as follows:

25 (2) A statement that the certificate is a partial
26 release of the mortgage, and the legal description of
27 the property that will be released from the mortgage,
28 ~~and the legal description of the property that will~~
29 ~~continue to be subject to the mortgage.~~

30 Sec. ____ . Section 16.92, subsection 7, Code
31 Supplement 1999, is amended to read as follows:

32 7. PRIOR MORTGAGES.

33 a. If the real estate lender or closer has
34 notified the division that a mortgage has been paid in
35 full by someone other than the real estate lender or
36 closer, or was paid by the real estate lender or
37 closer under a previous transaction, and an effective
38 release has not been filed of record, the division may
39 execute and record a certificate of release without
40 certification by the real estate lender or closer that
41 payment was made pursuant to a payoff statement and
42 the date payment was received by the mortgagee. A
43 certificate of release filed pursuant to this
44 subsection is subject to the requirements of
45 subsection 2, paragraph "c".

46 b. For purposes of this subsection, an effective
47 release has not been filed of record if there appears
48 that a mortgagee in the record chain of title to the
49 mortgage has not, either on the mortgagee's own behalf
50 or by the mortgagee's duly appointed servicer or

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Page 2

1 attorney in fact as established of record by a filed
2 servicing agreement or power of attorney, filed of
3 record either an assignment of the mortgage to another
4 mortgagee in the record chain of title to the mortgage
5 or a release of the mortgagee's interest in the
6 mortgage. For the purposes of this subsection and
7 subsection 2, paragraph "c", "mortgage servicer"
8 includes a mortgagee for which an effective release
9 has not been filed of record as provided in this
10 paragraph."

11 2. Title page, line 1, by inserting after the
12 words "relating to" the following: "the title
13 guaranty program, mortgage release certificates, and".
14 3. By renumbering as necessary.

By KEN VEENSTRA

S-5042 FILED MARCH 1, 2000