

FEB 28 2001  
COMMERCE AND REGULATION

HOUSE FILE 454  
BY HATCH and DOTZLER

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

**A BILL FOR**

1 An Act relating to the title insurance guaranty program.  
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 454

1 Section 1. Section 16.1, subsection 9, Code 2001, is  
2 amended to read as follows:

3 9. "Division" means the Iowa title guaranty company  
4 division.

5 Sec. 2. Section 16.1, subsection 39, Code 2001, is amended  
6 to read as follows:

7 39. "Title insurance guaranty policy" means a an insurance  
8 guaranty policy against loss or damage caused by defective  
9 title to real property.

10 Sec. 3. Section 16.2, subsection 1, unnumbered paragraph  
11 2, Code 2001, is amended to read as follows:

12 A An Iowa title guaranty company division is created within  
13 the authority. The powers of the division relating to the  
14 issuance of title guaranties insurance guaranty policies are  
15 vested in and shall be exercised by a division board of five  
16 members appointed by the governor subject to confirmation by  
17 the senate. The membership of the board shall include an  
18 attorney, an abstractor, a real estate broker, a  
19 representative of a mortgage-lender, and a representative of  
20 the housing development industry. The executive director of  
21 the authority shall appoint an attorney as director of the  
22 Iowa title guaranty company division who shall serve as an ex  
23 officio member of the board. The appointment of and  
24 compensation for the division director are exempt from the  
25 merit system provisions of chapter 19A.

26 Sec. 4. Section 16.3, subsection 15, Code 2001, is amended  
27 to read as follows:

28 15. The abstract-attorney's title opinion system promotes  
29 land title stability for determining the marketability of land  
30 titles and is a public purpose. A public purpose will be  
31 served by providing, as an adjunct to the abstract-attorney's  
32 title opinion system, a low cost mechanism to provide for  
33 additional guaranties of real property titles in Iowa. The  
34 title guaranties insurance guaranty policies will facilitate  
35 mortgage lenders' participation in the secondary market and

1 add to the integrity of the land-title transfer system in the  
2 state.

3 Sec. 5. Section 16.5, subsection 15, Code 2001, is amended  
4 to read as follows:

5 15. Through the Iowa title guaranty company division, make  
6 and issue title insurance guaranties, through attorneys acting  
7 on behalf of the division, on Iowa real property in a form  
8 acceptable to the secondary market, to fix and collect the  
9 charges for the guaranties insurance guaranty policies and to  
10 procure reinsurance against any loss in connection with the  
11 guaranties insurance guaranty policies.

12 Sec. 6. Section 16.91, Code 2001, is amended to read as  
13 follows:

14 16.91 TITLE INSURANCE GUARANTY PROGRAM.

15 1. The authority through the title guaranty company  
16 division shall initiate and operate a one-stop program in  
17 which the division, through participating attorneys acting on  
18 behalf of the state, shall offer guaranties title insurance  
19 guaranty policies of real property titles in this state. The  
20 terms, conditions, and form of the title insurance guaranty  
21 policy contract shall be forms approved by the division board.  
22 The division shall fix a charge for the guaranty in an amount  
23 sufficient to permit the program to operate on a self-  
24 sustaining basis, including payment of administrative costs  
25 and the maintenance of an adequate reserve against claims  
26 under the title guaranty program. A title insurance guaranty  
27 policy fund is created in the office of the treasurer of  
28 state. Funds collected under this program shall be placed in  
29 the title insurance guaranty policy fund and are available to  
30 pay all claims, necessary reserves, and all administrative  
31 costs of the title guaranty program. Moneys in the fund shall  
32 not revert to the general fund and interest on the moneys in  
33 the fund shall be transferred to the department of economic  
34 development for deposit in the local housing assistance  
35 program fund established in section 15.354 and shall not

1 accrue to the general fund. If the authority board in  
2 consultation with the division board determines that there are  
3 surplus funds in the title insurance guaranty policy fund  
4 after providing for adequate reserves and operating expenses  
5 of the division, the surplus funds shall be transferred to the  
6 housing program fund created pursuant to section 16.40.

7 2. A title insurance guaranty policy, closing protection  
8 letter, or gap coverage issued under this program is an  
9 obligation of the division only and claims are payable solely  
10 and only out of the moneys, assets, and revenues of the title  
11 guaranty fund and are not an indebtedness or liability of the  
12 state or an agent of the state. The state ~~is~~ and an agent of  
13 the state are not liable on any title insurance guaranty  
14 policy, closing protection letter, or gap coverage.

15 3. With the approval of the authority board, the division  
16 and its board shall consult with the insurance division of the  
17 department of commerce in developing a title insurance  
18 guaranty policy contract acceptable to the secondary market  
19 and developing any other feature of the program with which the  
20 insurance division may have special expertise. The insurance  
21 division shall establish the amount for a loss reserve fund.  
22 Except as provided in this subsection, the title insurance  
23 guaranty program is not subject to the jurisdiction of or  
24 regulation by the insurance division or the commissioner of  
25 insurance.

26 ~~4.--Each-participating-attorney-and-abstractor-may-be~~  
27 ~~required-to-pay-an-annual-participation-fee-to-be-eligible-to~~  
28 ~~participate-in-the-title-guaranty-program.--The-fee,-if-any,~~  
29 ~~shall-be-set-by-the-division,-subject-to-the-approval-of-the~~  
30 ~~authority.~~

31 5: 4. The participation of abstractors and attorneys shall  
32 be in accordance with rules established by the division and  
33 adopted by the authority pursuant to chapter 17A. Each  
34 participant shall at all times maintain liability coverage,  
35 including errors and omission coverage, in amounts approved by

1 the division. Upon payment of a claim by the division, the  
2 division shall be subrogated to the rights of the claimant  
3 against all persons relating to the claim. A participating  
4 attorney shall be domiciled and licensed to practice in this  
5 state.

6 Additionally, each participating abstractor is required to  
7 own or lease, and maintain and use in the preparation of  
8 abstracts, an up-to-date abstract title plant including tract  
9 indices for real estate for each county in which abstracts are  
10 prepared for real property titles guaranteed by the division.  
11 The tract indices shall contain a reference to all instruments  
12 affecting the real estate which are recorded in the office of  
13 the county recorder, and shall commence not less than forty  
14 years prior to the date the abstractor commences participation  
15 in the title insurance guaranty program. However, a  
16 participating attorney providing abstract services  
17 continuously from November 12, 1986, to the date of  
18 application, either personally or through persons under the  
19 attorney's supervision and control is exempt from the  
20 requirements of this paragraph.

21 The division may waive the requirements of this subsection  
22 pursuant to an application of an attorney or abstractor which  
23 shows that the requirements impose a hardship to the attorney  
24 or abstractor and that the waiver clearly is in the public  
25 interest or is absolutely necessary to ensure availability of  
26 title guaranties insurance guaranty policies throughout the  
27 state.

28 6. Upon receiving a request from a buyer or seller of  
29 commercial or residential real estate, the buyer or seller  
30 shall designate an attorney of the buyer's or seller's choice  
31 provided the attorney meets the criteria provided in this  
32 section. Prior to the issuance of a title insurance guaranty  
33 policy by the attorney, the division attorney shall require  
34 evidence-that have an abstract of title to the property in  
35 question has-been brought up-to-date and certified by a

1 participating abstractor in a form approved by division rules  
2 and. Upon completion of a title opinion issued by a  
3 participating the attorney in-the-form-approved-in-the-rules  
4 stating the attorney's opinion as to the title, the attorney,  
5 as an agent of the division, or the division shall issue a  
6 title insurance guaranty policy directly to the buyer or  
7 lender. The title insurance guaranty policy issued by the  
8 attorney or the division shall be subject to and in  
9 conformance with underwriting rules adopted by the authority  
10 pursuant to chapter 17A. Within one week of issuing the title  
11 insurance guaranty policy, the attorney shall send copies of  
12 the title opinion and the title insurance guaranty policy to  
13 the division shall-require-evidence-of-the-abstract-being  
14 brought-up-to-date-and-the. The abstractor shall retain  
15 evidence of the abstract as determined by the board.

16 7. ~~The-attorney-rendering-a-title-opinion-shall-be~~  
17 ~~authorized-to-issue-a-title-guaranty-certificate-subject-to~~  
18 ~~the-rules-of-the-authority.~~ When applicable during the title  
19 insurance guaranty policy process, standardized forms provided  
20 by the American land title association shall be used.

21 8. The division shall obtain an insurance rating similar  
22 to that of title insurance companies.

23 9. The authority shall adopt a marketing strategy designed  
24 to market the title insurance guaranty program to real estate  
25 buyers, sellers, lenders, brokers, and attorneys in the state.

26 ~~8.~~ 10. The authority shall adopt rules pursuant to chapter  
27 17A that are necessary for the implementation of the title  
28 guaranty program as established by the division and that have  
29 been approved by the authority.

30 Sec. 7. Section 16.92, subsection 1, paragraph a, Code  
31 2001, is amended to read as follows:

32 a. "Division" means the Iowa title guaranty company  
33 division in the Iowa finance authority.

34 Sec. 8. Section 16.93, subsections 1, 2, and 3, Code 2001,  
35 are amended to read as follows:

1 1. The authority through the Iowa title guaranty company  
2 division may issue a closing protection letter to a person to  
3 whom a proposed title insurance guaranty policy is to be  
4 issued, upon the request of the person, if the division issues  
5 a commitment for a title insurance guaranty ~~or-title-guaranty~~  
6 certificate policy. The closing protection letter shall  
7 conform to the terms of coverage and form of the instrument as  
8 approved by the division board and may indemnify a person to  
9 whom a proposed title insurance guaranty policy is to be  
10 issued against loss of settlement funds due to only the  
11 following acts of the division's named participating attorney  
12 or participating abstractor:

13 a. Theft of settlement funds.

14 b. Failure by the participating attorney or participating  
15 abstractor to comply with written closing instructions of the  
16 person to whom a proposed title insurance guaranty policy is  
17 to be issued relating to title certificate coverage when  
18 agreed to by the participating attorney or participating  
19 abstractor.

20 2. A closing protection letter shall only be issued to a  
21 person to whom a proposed title insurance guaranty policy is  
22 to be issued for real property transactions in which the  
23 division has committed to issue an owner or lender certificate  
24 and for which the division receives a premium and other  
25 payments or fees for a title insurance guaranty certificate  
26 policy or other coverage.

27 3. The division board shall establish the amount of  
28 coverage to be provided and may distinguish between classes of  
29 property including, but not limited to, residential,  
30 agricultural, or commercial, provided that the total amount of  
31 coverage provided by the closing protection letter shall not  
32 exceed the amount of the commitment or title insurance  
33 guaranty policy to be issued. Liability under the closing  
34 protection letter shall be coextensive with liability under  
35 the certificate to be issued in connection with a transaction

1 such that payments under the terms of the closing protection  
2 letter shall reduce by the same amount the liability under the  
3 title insurance guaranty certificate policy and payment under  
4 the title insurance guaranty certificate policy shall reduce  
5 the liability under the terms of the closing protection  
6 letter.

7 Sec. 9. Section 535.8, subsection 2, paragraph b,  
8 subparagraph (10), Code 2001, is amended to read as follows:

9 (10) The cost of a title insurance guaranty policy issued  
10 by the Iowa finance authority pursuant to chapter 16.

11 EXPLANATION

12 This bill amends the title guaranty program administered by  
13 the title guaranty division of the Iowa finance authority.

14 The bill changes the name of the title guaranty division to  
15 the Iowa title guaranty company division. The bill also  
16 changes references in the Code from title guaranty to title  
17 insurance guaranty policy.

18 The bill provides that the authority through the title  
19 guaranty company division shall initiate and operate a one-  
20 stop program in which the division, through participating  
21 attorneys acting on behalf of the state, shall offer title  
22 insurance guaranty policies of real property titles in this  
23 state.

24 The bill provides that an attorney participating in the  
25 program shall be domiciled and licensed to practice in Iowa.  
26 The bill provides that attorneys and abstractors participating  
27 in the program shall maintain liability coverage, including  
28 errors and omission coverage, in amounts approved by the  
29 division.

30 The bill provides that upon receiving a request from a  
31 buyer or seller of commercial or residential real estate, the  
32 buyer or seller shall designate an attorney of the buyer's or  
33 seller's choice provided the attorney meets the participating  
34 attorney criteria. The bill provides that prior to the  
35 issuance of a title insurance guaranty policy by the attorney,

1 the attorney shall have an abstract of title to the property  
2 in question brought up-to-date and certified by a  
3 participating abstractor in a form approved by division rules.  
4 The bill provides that upon completion of a title opinion  
5 issued by the attorney as an agent of the division stating the  
6 attorney's opinion as to the title, the attorney as an agent  
7 of the division or the division shall issue a title insurance  
8 guaranty policy directly to the buyer or lender. The bill  
9 provides that the policy issued by the attorney or division  
10 shall be subject to and in conformance with underwriting rules  
11 adopted by the authority.

12 The bill provides that within one week of issuing the title  
13 insurance guaranty policy, the attorney shall send copies of  
14 the title opinion and the title insurance guaranty policy to  
15 the division. The bill provides that the abstractor shall  
16 retain evidence of the abstract as determined by the board.

17 The bill provides that, when applicable during the title  
18 insurance guaranty policy process, standardized forms provided  
19 by the American land title association shall be used. The  
20 bill provides that the division shall obtain an insurance  
21 rating similar to that of title insurance companies.

22 The bill provides that the authority shall adopt a  
23 marketing strategy designed to market the title insurance  
24 guaranty program to real estate buyers, sellers, lenders,  
25 brokers, and attorneys in the state.

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