

Jensen
Shuerer
Delahery

SSB-1198

Commerce

Succeeded By

ⓈF/HF 425

SENATE/HOUSE FILE
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 standards of and participation in the title
2 guaranty program.

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

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1 Section 1. Section 16.91, subsections 4, 5, 6, and 7, Code
2 2001, are amended to read as follows:

3 4. Attorneys, abstractors, lenders, closing and escrow
4 companies, and mortgage brokers may participate in the title
5 guaranty program. Each participating attorney and abstractor
6 may be required to pay an annual participation fee to be
7 eligible to participate in the title guaranty program. The
8 fee, if any, shall be set by the division, subject to the
9 approval of the authority.

10 5. The participation of abstractors and attorneys shall be
11 in accordance with rules established by the division and
12 adopted by the authority pursuant to chapter 17A. Each
13 participant participating attorney and abstractor shall at all
14 times maintain liability and other indemnity coverage in
15 amounts approved by the division. Upon payment of a claim by
16 the division, the division shall be subrogated to the rights
17 of the claimant against all persons relating to the claim.

18 Additionally, each participating abstractor is required to
19 own or lease, and maintain and use in the preparation of
20 abstracts, an up-to-date abstract title plant including tract
21 indices for real estate for each county in which abstracts are
22 prepared for real property titles guaranteed by the division.
23 The tract indices shall contain a reference to all instruments
24 affecting the real estate which are recorded in the office of
25 the county recorder, and shall commence not less than forty
26 years prior to the date the abstractor commences participation
27 in the title guaranty program. However, a participating
28 attorney providing abstract services continuously from
29 November 12, 1986, to the date of application, either
30 personally or through persons under the attorney's supervision
31 and control is exempt from the requirements of this paragraph.

32 The division may waive the requirements of this subsection
33 pursuant to an application of an attorney or abstractor which
34 shows that the requirements impose a hardship to the attorney
35 or abstractor and that the waiver clearly is in the public

1 interest or is absolutely necessary to ensure availability of
2 title guaranties throughout the state.

3 The division may also waive the requirements of this
4 subsection pursuant to an application of a participating
5 attorney who is not a participating attorney providing
6 abstract services continuously from November 12, 1986, if the
7 participating attorney is found to be competent to conduct
8 title searches and prepare abstracts of title pursuant to
9 rules issued by the authority. Waivers granted pursuant to
10 this paragraph shall be for a specific county or counties.

11 6. Prior to the issuance of a title guaranty, the division
12 shall require evidence that an abstract of title to the
13 property in question has been brought up-to-date and certified
14 by a participating abstractor in a form approved by division
15 rules and a title opinion issued by a participating attorney
16 in the form approved in the rules stating the attorney's
17 opinion as to the title. The division shall require evidence
18 of the abstract being brought up-to-date and the abstractor
19 shall retain evidence of the abstract as determined by the
20 board. The division may establish standards for title
21 searches and underwriting procedures and requirements for the
22 issuance of a title guaranty in which a title guaranty has
23 previously been issued on the property in question.

24 ~~The-attorney-rendering-a-title-opinion~~ Participating
25 attorneys and participating abstractors shall be authorized to
26 issue a title guaranty certificate subject to the rules of the
27 authority.

28 Sec. 2. Section 16.92, subsection 1, Code 2001, is amended
29 by adding the following new paragraphs after paragraph e:

30 NEW PARAGRAPH. ee. "Participating abstractor" means an
31 abstractor participating in the title guaranty program
32 pursuant to section 16.91.

33 NEW PARAGRAPH. ef. "Participating closing and escrow
34 company" means a closing and escrow company participating in
35 the title guaranty program pursuant to section 16.91.

1 NEW PARAGRAPH. eg. "Participating mortgage broker" means
2 a mortgage broker participating in the title guaranty program
3 pursuant to section 16.91.

4 Sec. 3. Section 16.92, subsection 1, paragraph g, Code
5 2001, is amended to read as follows:

6 g. "Real estate lender or closer" means a person licensed
7 to regularly lend moneys to be secured by a mortgage on real
8 property in this state, a licensed real estate broker, or a
9 licensed attorney, a participating abstractor, a participating
10 closing and escrow company, or a participating mortgage
11 broker.

12 EXPLANATION

13 This bill amends provisions of the title guaranty program
14 of the title guaranty division of the Iowa finance authority
15 relating to standards of and participation in the program.

16 The bill provides that attorneys, abstractors, lenders,
17 closing and escrow companies, and mortgage brokers may
18 participate in the title guaranty program. Currently, only
19 attorneys and abstractors can participate in the program. The
20 bill provides that each participating attorney and abstractor
21 is required to maintain liability and other indemnity
22 coverage.

23 The bill provides that the title guaranty division, upon
24 application by a participating attorney who is not a
25 participating attorney providing abstract services
26 continuously from November 12, 1986, may waive requirements
27 relating to maintaining liability and other indemnity coverage
28 and up-to-date abstract plant if the attorney is found to be
29 competent to conduct title searches and prepare abstracts of
30 title.

31 The bill provides that the title guaranty division may
32 establish standards for title searches and underwriting
33 procedures and requirements for the issuance of a title
34 guaranty in which a title guaranty has previously been issued
35 on the property in question.

1 The bill provides that both participating attorneys and
2 abstractors shall be authorized to issue a title guaranty
3 certificate.

4 The bill adds definitions of "participating abstractor",
5 "participating closing and escrow company", and "participating
6 mortgage broker" to Code section 16.92 relating to mortgage
7 release certificates. The bill provides that participating
8 abstractors, participating closing and escrow companies, and
9 participating mortgage brokers are included under the
10 definition of "real estate lender or closer".

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**IOWA
FINANCE
AUTHORITY**

Title Guaranty Division

January 30, 2001

Thomas J. Vilsack
Governor

Sally J. Pederson
Lt. Governor

Michael L. Tramontina
Executive Director

TO: Members of the General Assembly

FROM: Dennis A. Dietz, Director, Title Guaranty Division

RE: Proposed Iowa Finance Authority Bill relating to the Title Guaranty Division

The original title guaranty division provisions included attorneys, abstractors, and lenders as participants in the program. Lenders were removed by a later amendment but lenders were never removed from the administrative rules and lenders continue to submit requests for title guaranty certificates. The residential real estate transaction is undergoing changes in its procedure from the offer to the closing. As a result, other entities, i.e. closing and escrow companies and mortgage brokers, have also inquired about the possibility of requesting certificates from the division. It is important for the division to provide certificates as widely as possible across the state. By adding more eligible participants, the division can better meet its mission.

When the division implements previous legislation authorizing the issuance of closing protection letters, other indemnification, such as bonding, may be necessary. The amendment adding "other indemnity" is necessary to make it clear that the division may require participating attorneys and abstractors to provide such other indemnification as may be necessary for the division to administer the program.

In order to make title guaranties as available as possible throughout the state and to preserve the division's business, it is necessary to expand the number of abstractors participating under the title guaranty program who are authorized to do title searches and prepare abstracts. Other entities who currently cannot qualify as participants under the division program are entering the title search and abstracting business. Not allowing them to participate in the title guaranty program does not mean they will not do business, it just means they will do business with title insurance companies, lenders and attorneys who will accept their product. The proposed new waiver provision allows the division board to issue a waiver if the board finds they are competent.

The division has received numerous requests to streamline the issuance of title guaranty certificates – particularly where a certificate was previously issued by the division. The proposed amendment would allow the division to establish procedures for issuing a subsequent certificate if one has previously been issued. This will give the division a little more flexibility to compete in the marketplace.

Some abstractors have indicated an interest in issuing certificates. Allowing the division to establish procedures for abstractors to also issue certificates will further the divisions ability to respond to changes in the title business.

REPRINTED

H- 4/6/01 Amend/Do Pass
w/H- 1447

FILED MAR 12 '01

SENATE FILE 425
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO SSB 1198)

Passed Senate, Date (P. 789) 3.22.01 Passed House, Date _____
Vote: Ayes 47 Nays 0 Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to standards of and participation in the title
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SF 425

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2 2001, are amended to read as follows:

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4 companies, and mortgage brokers may participate in the title
5 guaranty program. Each participating attorney and abstractor
6 may be required to pay an annual participation fee to be
7 eligible to participate in the title guaranty program. The
8 fee, if any, shall be set by the division, subject to the
9 approval of the authority.

10 5. The participation of abstractors and attorneys shall be
11 in accordance with rules established by the division and
12 adopted by the authority pursuant to chapter 17A. Each
13 ~~participant~~ participating attorney and abstractor shall at all
14 times maintain liability and other indemnity coverage in
15 amounts approved by the division. Upon payment of a claim by
16 the division, the division shall be subrogated to the rights
17 of the claimant against all persons relating to the claim.

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20 abstracts, an up-to-date abstract title plant including tract
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22 prepared for real property titles guaranteed by the division.
23 The tract indices shall contain a reference to all instruments
24 affecting the real estate which are recorded in the office of
25 the county recorder, and shall commence not less than forty
26 years prior to the date the abstractor commences participation
27 in the title guaranty program. However, a participating
28 attorney providing abstract services continuously from
29 November 12, 1986, to the date of application, either
30 personally or through persons under the attorney's supervision
31 and control is exempt from the requirements of this paragraph.

32 The division may waive the requirements of this subsection
33 pursuant to an application of an attorney or abstractor which
34 shows that the requirements impose a hardship to the attorney
35 or abstractor and that the waiver clearly is in the public

1 interest or is absolutely necessary to ensure availability of
2 title guaranties throughout the state.

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4 subsection pursuant to an application of a participating
5 attorney who is not a participating attorney providing
6 abstract services continuously from November 12, 1986, if the
7 participating attorney is found to be competent to conduct
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9 rules issued by the authority. Waivers granted pursuant to
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13 property in question has been brought up-to-date and certified
14 by a participating abstractor in a form approved by division
15 rules and a title opinion issued by a participating attorney
16 in the form approved in the rules stating the attorney's
17 opinion as to the title. The division shall require evidence
18 of the abstract being brought up-to-date and the abstractor
19 shall retain evidence of the abstract as determined by the
20 board. The division may establish standards for title
21 searches and underwriting procedures and requirements for the
22 issuance of a title guaranty in which a title guaranty has
23 previously been issued on the property in question.

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33 NEW PARAGRAPH. ef. "Participating closing and escrow
34 company" means a closing and escrow company participating in
35 the title guaranty program pursuant to section 16.91.

1 NEW PARAGRAPH. eg. "Participating mortgage broker" means
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3 pursuant to section 16.91.

4 Sec. 3. Section 16.92, subsection 1, paragraph g, Code
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6 g. "Real estate lender or closer" means a person licensed
7 to regularly lend moneys to be secured by a mortgage on real
8 property in this state, a licensed real estate broker, ~~or~~ a
9 licensed attorney, a participating abstractor, a participating
10 closing and escrow company, or a participating mortgage
11 broker.

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19 attorneys and abstractors can participate in the program. The
20 bill provides that each participating attorney and abstractor
21 is required to maintain liability and other indemnity
22 coverage.

23 The bill provides that the title guaranty division, upon
24 application by a participating attorney who is not a
25 participating attorney providing abstract services
26 continuously from November 12, 1986, may waive requirements
27 relating to maintaining liability and other indemnity coverage
28 and up-to-date abstract plant if the attorney is found to be
29 competent to conduct title searches and prepare abstracts of
30 title.

31 The bill provides that the title guaranty division may
32 establish standards for title searches and underwriting
33 procedures and requirements for the issuance of a title
34 guaranty in which a title guaranty has previously been issued
35 on the property in question.

1 The bill provides that both participating attorneys and
2 abstractors shall be authorized to issue a title guaranty
3 certificate.

4 The bill adds definitions of "participating abstractor",
5 "participating closing and escrow company", and "participating
6 mortgage broker" to Code section 16.92 relating to mortgage
7 release certificates. The bill provides that participating
8 abstractors, participating closing and escrow companies, and
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10 definition of "real estate lender or closer".

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**SENATE FILE 425
FISCAL NOTE**

A fiscal note for **Senate File 425** is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

Senate File 425 amends Chapter 16, Code of Iowa, relating to the Title Guaranty Program. The Bill expands the list of persons eligible to request policies to include attorneys not currently grandfathered into the Program, abstractors, lenders, closing and escrow companies, and mortgage brokers. The Bill also makes provisions for the Title Guaranty Division to establish standards for title searches and underwriting procedures for reissuance of title guaranty policies. The Division may streamline procedures for obtaining a policy when refinancing.

ASSUMPTIONS

1. Expanding the eligibility for participation in the Program is expected to increase the sale of title guaranty policies.
2. Home sales are declining and will reduce the potential market for title guaranty policies.
3. Iowans now purchase title insurance from out-of-state companies.
4. The Iowa market for title guaranty policies is assumed to be comparable to the markets for title insurance in the states of Kansas, Nebraska, and Oklahoma. An analysis by the Title Guaranty Division, Iowa Finance Authority shows Iowa's current Program lags behind these states by an average of \$2.5 million after adjusting for premium price differences.
5. Given competition with out-of-state title insurance companies and the slowdown in the housing market, the Division is not expected to capture the full potential market estimated from the comparison to other states.

FISCAL IMPACT

Senate File 425 is expected to increase revenues for housing programs from fees generated by the Title Guaranty Division, Iowa Finance Authority. Due to insufficient information a reliable estimate cannot be provided, however, increased revenues are expected to be less than the \$2.5 million potential.

SOURCE

Iowa Finance Authority

(LSB 1240SV, MDF)

FILED MARCH 19, 2001

BY DENNIS PROUTY, FISCAL DIRECTOR

SENATE FILE 425

S-3222

1 Amend Senate File 425 as follows:

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

4 "Section 1. Section 16.1, subsection 39, Code
5 2001, is amended to read as follows:

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

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

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

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

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

39 Sec. _____. Section 16.5, subsection 15, Code 2001,
40 is amended as follows:

41 15. Through the title guaranty division, make and
42 issue title ~~guaranties~~ guaranty policies on Iowa real
43 property in a form acceptable to the secondary market,
44 to fix and collect the charges for the ~~guaranties~~
45 guaranty policies and to procure reinsurance against
46 any loss in connection with the ~~guaranties~~ guaranty
47 policies."

48 2. Page 1, line 1, by inserting after the word
49 "subsections" the following: "1, 2, 3,".

50 3. Page 1, by inserting after line 2 the

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Page 2

1 following:

2 "1. The authority through the title guaranty
3 division shall initiate and operate a program in which
4 the division shall offer ~~guaranties~~ title guaranty
5 policies of real property titles in this state. The
6 ~~terms, and conditions and form~~ of the title guaranty
7 ~~contract policy~~ shall be forms approved by the
8 division board. The division, as it may determine,
9 may use the policy, endorsement, and other forms
10 adopted for the title insurance industry by the
11 American land title association and may obtain ratings
12 of the division similar to ratings given to title
13 insurance companies. The division shall fix a charge
14 for the guaranty in an amount sufficient to permit the
15 program to operate on a self-sustaining basis,
16 including payment of administrative costs and the
17 maintenance of an adequate reserve against claims
18 under the title guaranty program. A title guaranty
19 policy fund is created in the office of the treasurer
20 of state. Funds collected under this program shall be
21 placed in the title guaranty policy fund and are
22 available to pay all claims, necessary reserves, and
23 all administrative costs of the title guaranty
24 program. Moneys in the fund shall not revert to the
25 general fund and interest on the moneys in the fund
26 shall be transferred to the department of economic
27 development for deposit in the local housing
28 assistance program fund established in section 15.354
29 and shall not accrue to the general fund. If the
30 authority board in consultation with the division
31 board determines that there are surplus funds in the
32 title guaranty policy fund after providing for
33 adequate reserves and operating expenses of the
34 division, the surplus funds shall be transferred to
35 the housing program fund created pursuant to section
36 16.40.

37 2. A title guaranty policy, closing protection
38 letter, or gap coverage issued under this program is
39 an obligation of the division only and claims are
40 payable solely and only out of the moneys, assets, and
41 revenues of the title guaranty policy fund and are not
42 an indebtedness or liability of the state. The state
43 is not liable on any title guaranty policy, closing
44 protection letter, or gap coverage.

45 3. With the approval of the authority board the
46 division and its board shall consult with the
47 insurance division of the department of commerce in
48 developing a title guaranty contract policy acceptable
49 to the secondary market and developing any other
50 feature of the program with which the insurance

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Page 3

1 division may have special expertise. The insurance
2 division shall establish the amount for a loss reserve
3 fund. Except as provided in this subsection, the
4 title guaranty program is not subject to the
5 jurisdiction of or regulation by the insurance
6 division or the commissioner of insurance."

7 4. Page 1, line 9, by inserting after the word
8 "authority." the following: "A participating attorney
9 shall be licensed to practice in this state."

10 5. Page 2, line 2, by striking the word
11 "guaranties" and inserting the following: "guaranties
12 guaranty policies".

13 6. Page 2, by striking lines 9 and 10 and
14 inserting the following: "rules issued by the
15 authority."

16 7. Page 2, line 11, by inserting after the word
17 "guaranty" the following: "policy".

18 8. Page 2, by striking lines 20 through 23 and
19 inserting the following: "board. If an owner is
20 refinancing a loan secured by a mortgage, the division
21 may establish standards for title searches and
22 underwriting procedures and requirements for the
23 issuance of a title guaranty policy if a title
24 guaranty policy was previously issued on the property
25 for the same owner within a period of five years."

26 9. Page 2, line 25, by striking the word "shall"
27 and inserting the following: "~~shall~~ may".

28 10. Page 2, line 26, by striking the word
29 "certificate" and inserting the following:
30 "~~certificate~~ policy".

31 11. Page 3, by inserting after line 11 the
32 following:

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

35 1. The authority through the title guaranty
36 division may issue a closing protection letter to a
37 person to whom a proposed title guaranty policy is to
38 be issued, upon the request of the person, if the
39 division issues a commitment for a title guaranty ~~or~~
40 ~~title guaranty certificate~~ policy. The closing
41 protection letter shall conform to the terms of
42 coverage and form of the instrument as approved by the
43 division board and may indemnify a person to whom a
44 proposed title guaranty policy is to be issued against
45 loss of settlement funds due to only the following
46 acts of the division's named participating attorney or
47 participating abstractor:

48 a. Theft of settlement funds.

49 b. Failure by the participating attorney or
50 participating abstractor to comply with written

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Page 4

1 closing instructions of the person to whom a proposed
 2 title guaranty policy is to be issued relating to
 3 title certificate coverage when agreed to by the
 4 participating attorney or participating abstractor.
 5 2. A closing protection letter shall only be
 6 issued to a person to whom a proposed title guaranty
 7 policy is to be issued for real property transactions
 8 in which the division has committed to issue an owner
 9 or lender certificate and for which the division
 10 receives a premium and other payments or fees for a
 11 title guaranty ~~certificate~~ policy or other coverage.
 12 3. The division board shall establish the amount
 13 of coverage to be provided and may distinguish between
 14 classes of property including, but not limited to,
 15 residential, agricultural, or commercial, provided
 16 that the total amount of coverage provided by the
 17 closing protection letter shall not exceed the amount
 18 of the commitment or title guaranty policy to be
 19 issued. Liability under the closing protection letter
 20 shall be coextensive with liability under the
 21 certificate to be issued in connection with a
 22 transaction such that payments under the terms of the
 23 closing protection letter shall reduce by the same
 24 amount the liability under the title guaranty
 25 ~~certificate~~ policy and payment under the title
 26 guaranty ~~certificate~~ policy shall reduce the liability
 27 under the terms of the closing protection letter.
 28 Sec. ____ . Section 535.8, subsection 2, paragraph
 29 b, subparagraph (10), Code 2001, is amended to read as
 30 follows:
 31 (10) The cost of a title guaranty policy issued by
 32 the Iowa finance authority pursuant to chapter 16."
 33 12. By renumbering as necessary.

By JOHN W. JENSEN

S-3222 FILED MARCH 21, 2001

*Adopted
3/22/01 (p.789)***SENATE FILE 425****S-3224**

1 Amend the amendment, S-3222, to Senate File 425 as
 2 follows:
 3 1. Page 3, by striking lines 13 through 15 and
 4 inserting the following:
 5 " ____ . Page 2, by striking lines 3 through 10."
 By JOHN W. JENSEN

S-3224 FILED MARCH 22, 2001

LOST *3/22/01 (p.789)*

1 Section 1. Section 16.1, subsection 39, Code 2001, is
2 amended to read as follows:

3 39. "Title guaranty policy" means a guaranty policy
4 against loss or damage caused by defective title to real
5 property.

6 Sec. 2. Section 16.2, subsection 1, unnumbered paragraph
7 2, Code 2001, is amended to read as follows:

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

21 Sec. 3. Section 16.3, subsection 15, Code 2001, is amended
22 to read as follows:

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

32 Sec. 4. Section 16.5, subsection 15, Code 2001, is amended
33 as follows:

34 15. Through the title guaranty division, make and issue
35 title guaranties guaranty policies on Iowa real property in a

1 form acceptable to the secondary market, to fix and collect
2 the charges for the guaranties guaranty policies and to
3 procure reinsurance against any loss in connection with the
4 guaranties guaranty policies.

5 Sec. 5. Section 16.91, subsections 1, 2, 3, 4, 5, 6, and
6 7, Code 2001, are amended to read as follows:

7 1. The authority through the title guaranty division shall
8 initiate and operate a program in which the division shall
9 offer guaranties title guaranty policies of real property
10 titles in this state. The terms, and conditions and-form of
11 the title guaranty contract policy shall be forms approved by
12 the division board. The division, as it may determine, may
13 use the policy, endorsement, and other forms adopted for the
14 title insurance industry by the American land title
15 association and may obtain ratings of the division similar to
16 ratings given to title insurance companies. The division
17 shall fix a charge for the guaranty in an amount sufficient to
18 permit the program to operate on a self-sustaining basis,
19 including payment of administrative costs and the maintenance
20 of an adequate reserve against claims under the title guaranty
21 program. A title guaranty policy fund is created in the
22 office of the treasurer of state. Funds collected under this
23 program shall be placed in the title guaranty policy fund and
24 are available to pay all claims, necessary reserves, and all
25 administrative costs of the title guaranty program. Moneys in
26 the fund shall not revert to the general fund and interest on
27 the moneys in the fund shall be transferred to the department
28 of economic development for deposit in the local housing
29 assistance program fund established in section 15.354 and
30 shall not accrue to the general fund. If the authority board
31 in consultation with the division board determines that there
32 are surplus funds in the title guaranty policy fund after
33 providing for adequate reserves and operating expenses of the
34 division, the surplus funds shall be transferred to the
35 housing program fund created pursuant to section 16.40.

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

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

18 4. Attorneys, abstractors, lenders, closing and escrow
19 companies, and mortgage brokers may participate in the title
20 guaranty program. Each participating attorney and abstractor
21 may be required to pay an annual participation fee to be
22 eligible to participate in the title guaranty program. The
23 fee, if any, shall be set by the division, subject to the
24 approval of the authority. A participating attorney shall be
25 licensed to practice in this state.

26 5. The participation of abstractors and attorneys shall be
27 in accordance with rules established by the division and
28 adopted by the authority pursuant to chapter 17A. Each
29 participant participating attorney and abstractor shall at all
30 times maintain liability and other indemnity coverage in
31 amounts approved by the division. Upon payment of a claim by
32 the division, the division shall be subrogated to the rights
33 of the claimant against all persons relating to the claim.

34 Additionally, each participating abstractor is required to
35 own or lease, and maintain and use in the preparation of

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

13 The division may waive the requirements of this subsection
14 pursuant to an application of an attorney or abstractor which
15 shows that the requirements impose a hardship to the attorney
16 or abstractor and that the waiver clearly is in the public
17 interest or is absolutely necessary to ensure availability of
18 title guaranties guaranty policies throughout the state.

19 The division may also waive the requirements of this
20 subsection pursuant to an application of a participating
21 attorney who is not a participating attorney providing
22 abstract services continuously from November 12, 1986, if the
23 participating attorney is found to be competent to conduct
24 title searches and prepare abstracts of title pursuant to
25 rules issued by the authority.

26 6. Prior to the issuance of a title guaranty policy, the
27 division shall require evidence that an abstract of title to
28 the property in question has been brought up-to-date and
29 certified by a participating abstractor in a form approved by
30 division rules and a title opinion issued by a participating
31 attorney in the form approved in the rules stating the
32 attorney's opinion as to the title. The division shall
33 require evidence of the abstract being brought up-to-date and
34 the abstractor shall retain evidence of the abstract as
35 determined by the board. If an owner is refinancing a loan

1 secured by a mortgage, the division may establish standards
2 for title searches and underwriting procedures and
3 requirements for the issuance of a title guaranty policy if a
4 title guaranty policy was previously issued on the property
5 for the same owner within a period of five years.

6 ~~7. The attorney-rendering-a-title-opinion~~ Participating
7 attorneys and participating abstractors ~~shall~~ may be
8 authorized to issue a title guaranty certificate policy
9 subject to the rules of the authority.

10 Sec. 6. Section 16.92, subsection 1, Code 2001, is amended
11 by adding the following new paragraphs after paragraph e:

12 NEW PARAGRAPH. ee. "Participating abstractor" means an
13 abstractor participating in the title guaranty program
14 pursuant to section 16.91.

15 NEW PARAGRAPH. ef. "Participating closing and escrow
16 company" means a closing and escrow company participating in
17 the title guaranty program pursuant to section 16.91.

18 NEW PARAGRAPH. eg. "Participating mortgage broker" means
19 a mortgage broker participating in the title guaranty program
20 pursuant to section 16.91.

21 Sec. 7. Section 16.92, subsection 1, paragraph g, Code
22 2001, is amended to read as follows:

23 g. "Real estate lender or closer" means a person licensed
24 to regularly lend moneys to be secured by a mortgage on real
25 property in this state, a licensed real estate broker, or a
26 licensed attorney, a participating abstractor, a participating
27 closing and escrow company, or a participating mortgage
28 broker.

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

31 1. The authority through the title guaranty division may
32 issue a closing protection letter to a person to whom a
33 proposed title guaranty policy is to be issued, upon the
34 request of the person, if the division issues a commitment for
35 a title guaranty or-title-guaranty-certificate policy. The

1 closing protection letter shall conform to the terms of
2 coverage and form of the instrument as approved by the
3 division board and may indemnify a person to whom a proposed
4 title guaranty policy is to be issued against loss of
5 settlement funds due to only the following acts of the
6 division's named participating attorney or participating
7 abstractor:

- 8 a. Theft of settlement funds.
- 9 b. Failure by the participating attorney or participating
- 10 abstractor to comply with written closing instructions of the
- 11 person to whom a proposed title guaranty policy is to be
- 12 issued relating to title certificate coverage when agreed to
- 13 by the participating attorney or participating abstractor.

14 2. A closing protection letter shall only be issued to a
15 person to whom a proposed title guaranty policy is to be
16 issued for real property transactions in which the division
17 has committed to issue an owner or lender certificate and for
18 which the division receives a premium and other payments or
19 fees for a title guaranty certificate policy or other
20 coverage.

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

35 Sec. 9. Section 535.8, subsection 2, paragraph b,

1 subparagraph (10), Code 2001, is amended to read as follows:

2 (10) The cost of a title guaranty policy issued by the

3 Iowa finance authority pursuant to chapter 16.

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