

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
April 4, 1977

The meeting of this committee was called to order by Senator Turnage, Chairman, on the above date at 9:45 a.m. in Room 442 of the State Capitol Building.

ROLL CALL:

All members of the committee were present for this meeting.

WITNESSES PRESENT TO TESTIFY:

Phil Strobe - Helena attorney representing First Montana Title Co.

Joe Driscoll - office of the Insurance Commissioner

CONSIDERATION OF HOUSE BILL 713:

The committee considered amendments proposed by Phil Strobe who represents the First Montana Title Co.. Mr. Strobe explained both sections of the attached amendments. (See Exhibit #1) He said that the second section would take out the exception for attorneys and that they would then have to qualify the same as any other person. Accompanying him was Jack Peterson of the First Montana Title Co. who agreed with the amendments proposed and said that the title company issuing the insurance is to stand behind it.

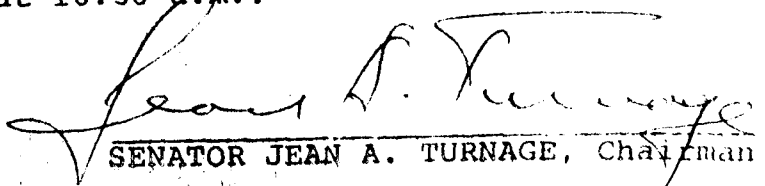
Joe Driscoll of the office of the Insurance Commissioner told the committee that this bill is going to create a monopoly and that the rates will be higher. Only one title company in the state has control of all the plants in the state. A plant is a tract index and the index is not kept by the Clerk & Recorder. Rep. Ramirez, at the hearing on this bill, said that he was adamant against raising this issue in his bill. House Bill 413 has no relation - or a very limited relationship -- to House Bill 713.

At this time, Sen. Roberts suggested that a straw vote be taken for the proposed dated amendments. (See Exhibit 2) The amendments were not accepted as the vote was 4 - 4 with Senators Olson, Lensink, Turnage and Murray voting "Yes" and Senators Towe, Warden, Regan and Roberts voting "No".

Sen. Murray then moved for the adoption of the undated proposed amendments. (See Exhibit 1) That motion failed also.

Sen. Towe then moved that HB 713 BE NOT CONCURRED IN. The motion carried on a vote of 5 - 3 with Senators Murray, Regan and Roberts voting "No".

There being no further business before the committee at this time, the committee adjourned at 10:30 a.m..


SENATOR JEAN A. TURNAGE, Chairman

JUDICIARY COMMITTEE

Date 4-4-77

[illegible]

(STROPE)
AMENDMENT

(67.1)

HOUSE BILL 713

1. Amend title, line 5

Following: "1977"

Insert: "; An act to simplify, facilitate and improve the marketability of land titles by amending Section 67-1612 and Section 40-4601, R.C.M. 1947."

2. Amend page 1, line 8, through page 11, line 18, by striking everything after the enacting clause and insert: Section 1. Section 67-1612, R.C.M. 1947, is amended to read as follows:

"67-1612 (6870). Grants made on condition subsequent. When a grant is made upon condition subsequent, and is subsequently defeated by the non-performance of the condition, the ~~person-otherwise-entitled-to-hold-under-the-grant~~ grantee or his successors must reconvey the property to the grantor or his successors, by grant, duly acknowledged for record. If 30 years have elapsed since the non-performance of the condition and the property has not been reconveyed as provided herein, all right, title and interest in grantee or his successors is extinguished and the grantor and his successors take the property free and clear of any claims created by the condition.

"Section 2. Section 40-4601, R.C.M. 1947, is amended to read as follows:

"40-4601. Policy based upon title evidence. (1) No title insurance policy as to property in this state shall be issued by any insurer unless based upon evidence of the condition of title certified in writing as of the date of the policy by some a person, firm, or corporation holding a certificate of authority issued under section 66-2111, to engage in the title abstracting business in the county in which the property is located except, that this provision shall not apply as to title insurance policies issued upon the basis of an opinion of an attorney, duly authorized to practice law in this state, as to the condition of the title following a review by such attorney of the pertinent title records or abstracts, and issued through a licensed title insurance agent who was so licensed and was regularly processing title insurance policies issued upon the basis up to the effective date of this code.

(2) An insurer issuing any policy in violation of this section is estopped, as a matter of law, to deny the validity of the policy as to any claim or demand of the insured or assigns arising thereunder.

(3) The commissioner of insurance may make reasonable regulations necessary to effectuate the provisions of this section under the authority of 40-2710."

(Ex. 2)

AMENDMENT (4/1/76)

HOUSE BILL 713

1. Amend title, line 5

Following: "1977"

Insert: "; An act to simplify, facilitate and improve the marketability of land titles, amending Section 40-4601, R.C.M. 1947 and providing an effective date."

2. Amend page 1, line 8, through page 11, line 18, by striking everything after the enacting clause and insert:

Section 1. Except as provided in sub. (5), no action affecting the possession or title of any real estate shall be commenced by any person, the state, or any subdivision thereof which is founded upon any unrecorded instrument executed more than 30 years prior to the date of commencement of such action, or upon any instrument recorded more than 30 years prior to the date of commencement of the action, or upon any transaction or event occurring more than 30 years prior to the date of commencement of the action, unless within 30 years after the execution of such unrecorded instrument or within 30 years after the date of recording of such recorded instrument, or within 30 years after the date of such transaction or event there is recorded in the office of the register of deeds of the county in which the real estate is located, some instrument expressly referring to the existence of such claim, or a notice setting forth the name of the claimant, a description of the real estate affected and of the instrument or transaction or event on which such claim is founded, with its date and the volume and page of its recording, if it be recorded, and a statement of the claims made. This notice may be discharged the same as a notice of pendency of action. Such notice or instrument recorded after the expiration of 30 years shall be likewise effective, except as to the rights of a purchaser for value of the real estate or any interest therein which may have arisen prior to such recording.

Section 2. The recording of such notice, or of an instrument expressly referring to the existence of the claim, shall extend for 30 years from the date of recording (whether such recording occurred before or after the enactment of this section), the time in which any action founded upon the written instrument or transaction or event referred to in the notice or recorded instrument may be commenced; and like notices or instruments may thereafter be recorded with like effect before the expiration of each successive 30-year period.

Section 3. This section does not extend the right to commence any action beyond the date at which such right would be extinguished by any other statute.

Section 4. This section shall be construed to effect the legislative purpose of barring all claims to an interest in real property, whether dower (which for the purpose of this section shall be considered as based on the title of the husband without regard to the date of marriage) inchoate or consummate, curtesy, remainders, reversions and reverter clauses in covenants restricting the use of real estate, mortgage liens, old tax deeds, inheritance, gift and income tax liens, rights as heirs or under wills, or any claim of any nature whatsoever, however denominated, and whether such claims are asserted by a person sui juris or under disability, whether such person is within or without the state, and whether such person is natural or corporate, or private or governmental, unless within such 30-year period there has been recorded in the office of the register of deeds some instrument expressly referring to the existence of such claim, or a notice pursuant to this section. This section does not apply to any action commenced by any person, partnership, association or corporation who is in possession of the real estate involved as owner at the time the action is commenced, nor does this section apply to any real estate or interest therein while the record title thereto remains in the state or any political subdivision or municipal corporation thereof.

Section 5. Actions to enforce easements, or covenants restricting the use of real estate set forth in any instrument of public record shall not be barred by this section for a period of 60 years after the date of recording such instrument, and the timely recording of instruments expressly referring to such easements or covenants or of notices pursuant to this section shall extend such time for 60-year periods from such recording.

Section 6. The word "purchaser" as used in this section shall be construed to embrace every person, partnership, association or corporation to whom any estate or interest in real estate shall be conveyed for a valuable consideration and also every assignee of a mortgage or lease or other conditional estate.

Section 7. Section 40-4601, R.C.M. 1947, is amended to read as follows:

"40-4601. Policy based upon title evidence. (1) No title insurance policy as to property in this state shall be issued by any insurer unless based upon evidence of the condition of title certified in writing as of the date of the policy by some a person, firm, or corporation holding a certificate of authority issued under section 66-2111, to engage in the title abstracting business in the county in which the property is located ~~except, that this provision shall not apply as to title insurance policies issued upon the basis of an opinion of an attorney, duly authorized to practice law in this state, as to the condition of the title following a review by such attorney of the pertinent title records~~

~~or-abstracts,-and-issued-through-a-licensed-title-insurance-agent
who-was-so-licensed-and-was-regularly-processing-title-insurance
policies-issued-upon-the-basis-up-to-the-effective-date-of-this
cede.~~

(2) An insurer issuing any policy in violation of this section is estopped, as a matter of law, to deny the validity of the policy as to any claim or demand of the insured or assigns arising thereunder.

(3) The commissioners of insurance may make reasonable regulations necessary to effectuate the provisions of this section under the authority of 40-2710."

Section 8. The effective date of this action on January 1, 1979.

161 Mt Title (Strope)

END