

1 H BILL NO. 413  
2 INTRODUCED BY Lynch, Harrington, Mahan, Ellis

4 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A  
5 COMPREHENSIVE TITLE INSURANCE CODE; AMENDING SECTION  
6 40-3639, R.C.M. 1947; AND REPEALING SECTIONS 40-2908,  
7 40-4601, 40-4602, AND 40-4603, R.C.M. 1947."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10       Section 1. Policy -- purpose. It is the purpose of  
11      this act to provide a comprehensive regulation of the  
12      business of title insurance as defined herein as an integral  
13      part of the Montana Insurance Code in order that the  
14      citizens of the state of Montana be afforded adequate  
15      protection in their transactions involving real estate, and  
16      it is the policy of the legislature of the state of Montana  
17      that this enactment be given broad interpretation in order  
18      to effect its purpose.

19           Section 2. Definitions. As used in this act, the  
20        following definitions apply:

21 (1) "Business of title insurance" means:

22 (a) the making or proposing to make, as an insurer,  
23 guarantor, or surety, any contract or policy of title  
24 insurance, which includes all certificates, commitments,  
25 policies, binders, preliminary reports, or other

1 underwriting contracts and endorsements guaranteeing or  
2 insuring the ownership or condition of title to real  
3 property or interest therein;

4 (b) transacting or proposing to transact any phase of  
5 title insurance including solicitations, negotiations  
6 preliminary to, and execution of a contract of title  
7 insurance and matters subsequent to the issuance of such  
8 contract;

9 (c) the performance of any act included herein by a  
10 title insurer or a title insurance agent incident to any  
11 contract or policy of title insurance; or

12 (d) the doing or proposing to do any business in  
13 substance equivalent to any of the foregoing in the manner  
14 designated to evade the provisions of this act.

15 (2) "Title insurance agent" or "agent" means a person  
16 who is licensed by the department to transact the business  
17 of title insurance within this state, appointed by a person  
18 who owns or leases separately or with another a complete  
19 title insurance plant for each county for which policies are  
20 written and who is appointed by a title insurer.

21 (3) (a) "Complete title insurance plant" means a set  
22 of indexes from which the record ownership and condition of  
23 title to all land within a particular county can be traced  
24 and ascertained, such set of indexes to be complete from the  
25 inception of title from the United States of America. Such

1 indexes must contain:

2        (i) all filed and recorded instruments affecting title  
 3 to particularly described parcels of real property and which  
 4 impart constructive notice under the recording laws; and  
 5        (ii) all judicial proceedings in the particular county  
 6 affecting title to particularly described parcels of real  
 7 property which are posted, filed, entered, or otherwise  
 8 included in that part of the indexing system which  
 9 designates the particular parcel of real property. However,  
 10 no reference need be made in this index to any judicial  
 11 proceeding which is included in a name index which may be  
 12 maintained at the option of the agent.

13        (b) No requirement is made for taxes and assessments,  
 14 water rights, governmental land use regulations, zoning  
 15 ordinances, or liens or encumbrances which have been  
 16 properly released of record or barred by the applicable  
 17 statute of limitations to be made a part of the plant  
 18 records.

19        (c) The indexes may be maintained in bound books,  
 20 loose-leaf books, jackets, or folders, on card files, or in  
 21 any other form or system, whether manual, mechanical,  
 22 electronic, or otherwise, or in any combination of such  
 23 forms or systems. The extent to which the prescribed  
 24 indexes are subdivided or refined is dependent upon all  
 25 relevant circumstances, including the population of the

1        particular county, the extent to which land within the  
 2 particular county has been subdivided and passes into  
 3 separate ownerships, and all other facts which are  
 4 reasonably related to the purpose of the stated  
 5 requirements.

6        (4) "Rebates and illegal inducements" means:  
 7            (a) making, permitting to be made, or offering to make  
 8 any contract of title insurance or agreement as to such  
 9 contract, other than as plainly expressed in the contract  
 10 issued thereon;

11            (b) paying, allowing, or giving or offering to pay,  
 12 allow, or give, directly or indirectly, as inducement to  
 13 such insurance or in connection therewith any:

14            (i) rebate or premium payable on the contract;  
 15            (ii) agent's commission;  
 16            (iii) special favor or advantage in the dividends or  
 17 other benefits thereon;

18            (iv) paid employment or contract for services of any  
 19 kind; or

20            (v) valuable consideration or inducement whatever not  
 21 specified in the contract;

22            (c) directly or indirectly giving, selling, or  
 23 purchasing or offering or agreeing to give, sell, purchase,  
 24 or allow, as inducement to such insurance or in connection  
 25 therewith and whether or not specified or to be specified in

1 the policy or contract, any:

2 (i) agreement of any form or nature promising returns  
3 and profits;

4 (ii) stocks, bonds, or other securities or interest,  
5 present or contingent therein or as measured thereby, of any  
6 insurer or other person; or

7 (iii) dividends or profits accrued or to accrue  
8 thereon;

9 (d) offering, promising, or giving anything of value  
10 whatsoever not specified in the contract;

11 (e) knowingly accepting or receiving, directly or  
12 indirectly, any such prohibited contract, agreement, rebate,  
13 advantage, employment, or other inducement, provided this  
14 section shall not affect reinsurance agreements or treaties  
15 entered into in the usual course of business.

16 (5) "Title insurance" means insuring, guaranteeing, or  
17 indemnifying owners of real property or the holders of liens  
18 or encumbrances thereon or others interested therein against  
19 loss or damage suffered by reason of liens, encumbrances  
20 upon, defects in, or the unmarketability of the title to  
21 such property or invalidity or unenforceability of any liens  
22 or encumbrances thereon.

23 (6) "Title insurer" means any company organized under  
24 the laws of this state or any other state holding a  
25 certificate of authority to engage in the business of title

1 insurance in this state.

2 (7) "Preliminary report" means a binder of insurance,  
3 a commitment to insure, a preliminary report of title, and  
4 litigation reports including quiet title action, foreclosure  
5 actions of contracts of sale, deeds of trust, or mortgages  
6 where a policy of title insurance will be issued on the  
7 successful completion thereof. There is excluded herefrom  
8 miscellaneous reports which do not insure title.

9 (8) "Title examination" means a search and examination  
10 of the title and a determination of insurability of the  
11 title in accordance with sound title underwriting practices.  
12 Such examination of the public records as reflected in the  
13 complete title insurance plan shall be made only for the  
14 purpose of determining insurability of the described  
15 property and shall not be a report on the condition of the  
16 record.

17 (9) "Miscellaneous reports" means judgment reports,  
18 lot book reports, memorandums of title, or property search  
19 reports.

20 (10) "Rate" means and includes the charges for the  
21 assumption of the insurance risk, searching, examination,  
22 determination of insurability, and every other activity,  
23 exclusive of escrow, settlement, or closing charges, whether  
24 denominated premium or otherwise, performed by a title  
25 insurer or an agent thereof to an insured or to an applicant

1 for insurance for any policy or contract of title  
 2 insurance, but the term "rate" shall not include any charges  
 3 paid to and retained by an attorney-at-law, surveyor, tax  
 4 service, or any other person acting in a capacity other than  
 5 as a title insurance agent and on behalf of a client other  
 6 than a title insurer or any charges made for special  
 7 services, even though performed in connection with a title  
 8 insurance policy or contract.

9       Section 3. Countersignature of policies. A title  
 10 insurer may not cause to be issued a policy of title  
 11 insurance or guaranteed certificate of title or other  
 12 guaranty of title covering any property located within this  
 13 state unless countersigned by an agent.

14       Section 4. Filing of title insurance rates. All rates  
 15 shall be filed with the commissioner and determined  
 16 according to the provisions of the Montana Insurance Code.

17       Section 5. Determination of insurability. Subject to  
 18 the provisions of [section 3 of this act] title insurance  
 19 may only be issued after a search and examination of the  
 20 title and a determination of insurability have been made in  
 21 accordance with sound title underwriting practice. Evidence  
 22 thereof for each policy shall be preserved and retained in  
 23 the files of the title insurer or its agent. In lieu of  
 24 retaining the original copy, the same may be reproduced by  
 25 any photographic, photostatic, microfilm, or microcard type

1 of system or process which actually reproduces or forms a  
 2 durable medium for reproducing the original.

3       Section 6. Prohibited risks -- rebates -- unauthorized  
 4 practices. (1) A title insurance agent or company doing  
 5 business in this state may not guarantee the payment of  
 6 deeds of trust or mortgages on real property or  
 7 intentionally issue a title insurance policy without showing  
 8 any outstanding enforceable liens and encumbrances which are  
 9 of record against the real property, except under  
 10 circumstances the commissioner may by regulation approve.  
 11 Such guaranty of mortgage payments or intentional omission  
 12 of such outstanding liens and encumbrances in violation  
 13 hereof shall, upon proof thereof to the satisfaction of the  
 14 commissioner, subject the insurer to a fine not to exceed  
 15 \$2,000 and to the revocation of, suspension of, or refusal  
 16 to renew a certificate of authority.

17       (2) No insured in a policy or any other person  
 18 directly or indirectly connected with the transaction  
 19 involving the issuance of a title insurance policy,  
 20 including but not limited to mortgage brokers, real estate  
 21 brokers and agents, builders, or attorneys or any employee,  
 22 agent, representative, or solicitor thereof, shall knowingly  
 23 receive or accept, directly or indirectly, any rebate or  
 24 illegal inducement as defined in this act. No title insurer  
 25 or agent shall quote or make any charge for title insurance

1 to any person less than the currently filed rate for such  
 2 risk with the department of insurance. Each person giving or  
 3 receiving a rebate, illegal inducement, or a reduction in  
 4 rate shall, in addition to the other penalties set forth in  
 5 40-2814 for violation thereof, be liable for a penalty  
 6 equal to three times the amount of such rebate, illegal  
 7 inducement, or reduced rate, payable to the commissioner.

8 (3) Neither a person forwarding or directing title  
 9 insurance business to a title insurer or agent in Montana  
 10 nor the insurer or agent receiving such business may give or  
 11 receive anything of value or a portion of the premium  
 12 therefor.

13 (4) Extension of credit, for the payment of premium  
 14 beyond the customary premium payment period without charging  
 15 and collecting interest at a reasonable rate per year on the  
 16 amount of credit so extended and for the duration of such  
 17 credit, is prohibited under this section.

18 (5) A title insurer or agent may not:

19 (a) charge a premium for a policy in one transaction  
 20 and withhold issuance of a policy thereon;

21 (b) charge a premium for a policy in one transaction  
 22 and apply the premium or any part thereof applicable to the  
 23 first transaction to a premium charged in a subsequent  
 24 transaction, provided that:

25 (i) a title insurer may file a temporary or

1 construction mortgagee's policy rate allowing credit for  
 2 such policy upon a permanent policy to the extent of the  
 3 basic standard coverage charge only for the temporary  
 4 policy provided that full applicable premium and fees have  
 5 been charged and collected on the issuance of the first  
 6 policy; and

7 (ii) a title insurer may file an owner's reissue rate;  
 8 (c) issue a title insurance binder, commitment, or  
 9 preliminary report without an order and without making a  
 10 charge therefor if a policy is not issued thereon or apply  
 11 the charge or any part thereof toward the premium of a  
 12 policy on any other tract of land;

13 (d) issue a binder, commitment, or preliminary report  
 14 or title insurance policy for a charge which is less than  
 15 that currently filed for such risk with the department; or  
 16 (e) give credit for any abstract on the premium due on  
 17 a title policy.

18 (6) In addition to any other penalties described in  
 19 this act, violations of this section are subject to the  
 20 remedies and penalties described in the Montana Insurance  
 21 Code for trade practices and frauds.

22 Section 7. Personal or controlled insurance. (1)  
 23 Personal or controlled insurance means a policy of title  
 24 insurance where the insured or one of the insureds under  
 25 such policy is or the loss thereunder is payable to:

16 (iv) any partner or member of an association; or  
17 (v) if the agent is an entity, any person directly or  
18 indirectly owning or controlling the majority of the voting  
19 stock or ownership of such entity or any corporation which  
20 directly or indirectly controls such person who also  
21 controls the title insurance agent.

22 (2) If the rates and charges for personal or  
23 controlled insurance in any one year received from any one  
24 source by a title insurer or by a title insurance agency  
25 exceed 25% or if from all sources of personal and controlled

1 insurance exceed 50% of the total rates and charges received  
2 by such title insurer or title insurance agent in the same  
3 year, the excess shall be considered unlawful rebates. For  
4 the purpose of this provision, if the interest of the title  
5 insurer or title insurance agent is or was held by the same  
6 in a fiduciary capacity for the beneficial owner thereof  
7 reflected by a writing between the parties, the issuance of  
8 such title insurance policy by which title is conveyed to or  
9 by such title insurer or title insurance agent is not  
10 controlled insurance.

11           Section 8. Licensing of agents. (1) A title insurer  
12        may not allow or permit any person to act as its agent in  
13        relation to the issuance of any certificate, title insurance  
14        policy, or other underwriting contract unless such person  
15        has obtained a title insurance agent's license for each  
16        county for which policies are to be written from the  
17        department. No person may act within this state as such  
18        agent for any title insurer without first having obtained a  
19        license from the department.

20                   (2) A separate agent's license for each county shall  
21 be issued by the department upon due showing filed by the  
22 applicant upon forms to be provided by the department and  
23 payment of the required fee. In addition to other  
24 requirements for agents under the Montana Insurance Code,  
25 each individual who will exercise the license privilege must

1 have reasonable experience or instruction in the field of  
2 title examinations and title insurance and the insurance  
3 laws of Montana, and be appointed by a person who owns or  
4 leases, separately or with another, a complete title  
5 insurance plant in each county wherein he proposes to do  
6 business.

7       Section 9. Examinations and administration. Each title  
8 insurance plant shall be examined at the direction of the  
9 commissioner within 1 year from July 1, 1977, and those  
10 plants found not to be in compliance with [section 2(3)(a)]  
11 shall be reexamined at 6-month intervals thereafter until  
12 they comply with the provisions of [section 2(3)(a)]. The  
13 commissioner may accept a title insurance plant without  
14 examination if the plant is certified as an abstract plant  
15 by the board of abstracters. Thereafter, each title  
16 insurance plant shall be examined not more than once every  
17 5 years provided that the commissioner may cause an  
18 examination to be made at the request of the owner or a  
19 prospective bona fide purchaser thereof with the consent of  
20 the owner thereof or upon the commissioner's determination  
21 that reasonable cause exists to believe that the plant does  
22 not conform to the requirements of this act or rules  
23 promulgated hereunder. All examinations shall be conducted  
24 by such person or persons qualified to make such  
25 examinations as determined by the commissioner, and all

1 examinations shall be conducted in accordance with the  
2 Montana Insurance Code and the expenses of such examination  
3 shall be paid as provided in the Montana Insurance Code.

4       Section 10. Issuance of policy. The preparation,  
5 execution, and delivery of a title insurance policy is  
6 considered only a contract of insurance up to the face  
7 amount of such policy and in no way creates a tort liability  
8 as to the condition of the record insured from. The same  
9 shall include any necessary investigation just prior to  
10 actual issuance of a policy to determine if there has been  
11 proper execution, acknowledgment, and delivery of any  
12 conveyances, mortgage papers, and other title instruments  
13 which may be necessary for the issuance of a policy. It  
14 shall also include determination of the status of taxes  
15 based on the latest available information and a final search  
16 of the title and that all necessary papers have been filed  
17 for record. Issuance of the policy may not include services  
18 which are essentially escrow or closing services, such as  
19 receiving and disbursing money, prorating insurance and  
20 taxes, and other similar services for which an escrow fee  
21 may be charged.

22       Section 11. Miscellaneous reports. Whenever an insurer  
23 or its agent issues miscellaneous reports, each report shall  
24 specifically contain the following statement:

25       "This report is based on a search of our title

1 insurance plant. This is not a title or ownership report,  
 2 and no examination of the title to the property described  
 3 has been made. For this reason, no liability beyond the  
 4 amount paid for this report is assumed hereunder, and the  
 5 company is not responsible beyond the amount paid for any  
 6 errors and omissions contained herein."

7       Section 12. Compliance required -- timetable. On and  
 8 after July 1, 1977, only a title insurer as defined in this  
 9 act may underwrite or cause to be issued a policy of title  
 10 insurance; no person may engage in the business of title  
 11 insurance in this state unless authorized to transact such a  
 12 business by the provisions of this act, and no policy of  
 13 title insurance may be issued after July 1, 1977, except in  
 14 accordance with the provisions of this act. However, all  
 15 title insurance companies and agents doing business in this  
 16 state on July 1, 1977, shall, for the purposes of the county  
 17 in which they are issuing title insurance policies on July  
 18 1, 1977, be allowed until July 1, 1979, to comply with the  
 19 provisions of [section 2(3)(a)], so long as such title  
 20 insurer or agent is appointed by a person who owns or leases  
 21 a title insurance plant which contains at least the minimal  
 22 records required by sound title insurance underwriting  
 23 principles for each such county. The commissioner may, upon  
 24 showing of actual hardship, extend compliance time for an  
 25 additional period of 1 year. The commissioner shall consider

1 hardship based upon the condition of the plant at the  
 2 effective date of this act, amount of progress since initial  
 3 examination, financial outlay required, and such other  
 4 factors as he considers relevant.

5       Section 13. General saving clause. This act may not  
 6 impair or affect any act done, offense committed, or right  
 7 accruing, accrued, or acquired or liability, penalty,  
 8 forfeiture, or punishment incurred prior to the time this  
 9 act takes effect, but the same may be enjoyed, asserted,  
 10 enforced, prosecuted, or inflicted as fully and to the same  
 11 extent as if this act has not been passed.

12       Section 14. Particular provisions prevail. Provisions  
 13 of this act relative to a particular matter shall prevail  
 14 over provisions relating to insurance in general.

15       Section 15. Section 40-3639, R.C.M. 1947, is amended  
 16 to read as follows:

17       "40-3639. Scope of chapter. This chapter applies to  
 18 all insurers and all kinds of insurance, except that nothing  
 19 contained in this chapter shall apply applies to:

- 20       (1) Life life insurance; ;
- 21       (2) Disability disability insurance; ;
- 22       (3) Reinsurance reinsurance, except joint reinsurance  
 23 as provided in section 20 [40-3653] of this chapter; ;
- 24       (4) Insurance insurance against loss of or damage to  
 25 aircraft, their hulls, accessories, and or equipment, or

1 against liability, other than ~~workmen's~~ workers'  
2 compensation and employers' liability, arising out of the  
3 ownership, maintenance, or use of aircraft;  
4

5 (5) ~~insurance~~ insurance of vessels or craft, their  
6 cargoes, marine builders' risks, marine protection and  
7 indemnity, or other risks commonly insured under marine, as  
8 distinguished from inland marine, insurance policies; or

9 (6) ~~title~~ title insurance.

10 (7) ~~(6)~~ Workmen's Workers' compensation or employers'  
11 liability insurance written in connection with ~~workmen's~~  
12 workers' compensation."

13 Section 16. Repealer. Sections 40-2908, 40-4601,  
40-4602, and 40-4603, R.C.M. 1947, are repealed.

-End-

## STATE OF MONTANA

REQUEST NO. 201-77

## FISCAL NOTE

Form BD-15

In compliance with a written request received January 25, 1977, there is hereby submitted a Fiscal Note for House Bill 413 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

## DESCRIPTION OF PROPOSED LEGISLATION:

An act establishing a comprehensive title insurance code.

## ASSUMPTIONS:

1. 65 title insurance forms will be examined in FY 78.
2. Additional FTE will be required to administer the act.
3. The word "department" as used in the bill refers to the Commissioner of Insurance.

## FISCAL IMPACT:

	FY 78	FY 79	TOTAL
Personal services	\$43,291	\$45,455	\$88,746
Operating expenses	4,800	3,500	8,300
Equipment	800	0	800
Total additional cost of proposed legislation	<u>\$48,891</u>	<u>\$48,955</u>	<u>\$97,846</u>

## LOCAL IMPACT:

The act provides for an increase in the number of agents to be licensed. It is assumed that the increase in license fee collections will offset any additional costs incurred.

## TECHNICAL NOTE:

1. The act provides that the agent is required to be appointed by a Title insurer and a title plant. This raises the question: Is the insurer or title plant responsible for any adverse practices of the agent?
2. This act appears to be in conflict with Sections 40-3302, 40-3315, 40-3316, 40-3317 and 40-3318.

*Richard S. Dailey for*  
 BUDGET DIRECTOR  
 Office of Budget and Program Planning  
 Date: 1-31-77