

HOUSE BILL 706

IN THE HOUSE

February 9, 1979

Introduced and referred to  
Committee on Business and  
Industry.

1 House BILL NO. 706  
 2 INTRODUCED BY Ellis J. Ellis Clerk  
 3 BY REQUEST OF THE LEGISLATIVE AUDIT COMMITTEE

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 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR THE  
 6 REGULATION OF THE ABSTRACTING INDUSTRY BY THE DEPARTMENT OF  
 7 BUSINESS REGULATION; TERMINATING THE OPERATION OF THE BOARD  
 8 OF ABSTRACTERS ON JULY 1, 1979; ELIMINATING REFERENCES TO  
 9 THE BOARD OF ABSTRACTERS; AMENDING SECTIONS 2-8-121,  
 10 33-25-103, AND 76-3-612, MCA; AND REPEALING SECTIONS  
 11 2-15-1643, 37-52-101, 37-52-102, 37-52-201 THROUGH  
 12 37-52-203, 37-52-301 THROUGH 37-52-306, 37-52-311,  
 13 37-52-312, 37-52-401, AND 37-52-402, MCA."

14  
 15 WHEREAS, the sunset law, sections 2-8-103 and 2-8-112,  
 16 will terminate the board of abstracters and require a  
 17 performance evaluation of the board by the legislative audit  
 18 committee; and

19 WHEREAS, as a result of the performance evaluation, the  
 20 legislative audit committee recommends that the board of  
 21 abstracters be abolished, that only abstract plants be  
 22 regulated, and that certain statutory provisions be enacted,  
 23 amended, or repealed.

24  
 25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

1 NEW SECTION. Section 1. Purpose. The purpose of  
 2 [sections 1 through 8] is to provide for the licensing of  
 3 abstract plants as defined in [section 2] to protect the  
 4 public from economic harm in transactions involving title to  
 5 real estate and to require the department of business  
 6 regulation to license and inspect abstract plants to  
 7 determine the adequacy of land records necessary to prepare  
 8 an abstract of title.

9 NEW SECTION. Section 2. Definitions. Unless the  
 10 context requires otherwise, as used in [sections 1 through  
 11 8], the following definitions apply:

12 (1) "Department" means the department of business  
 13 regulation.

14 (2) "Abstract plant" means a business conducted by any  
 15 person, firm, or corporation for the purpose of preparing an  
 16 abstract of title to real property which is a memorandum or  
 17 concise statement of the substance of documents or facts  
 18 appearing on the public record which affect the title to  
 19 real property.

20 (3) "Licensed abstract plant" means an abstract plant  
 21 licensed pursuant to [sections 4 and 5].

22 NEW SECTION. Section 3. License requirement. Any  
 23 person, firm, or corporation desiring to hold himself or  
 24 itself out to the public as a licensed abstract plant  
 25 engaging in or continuing the business of making or

1 compiling abstracts of title to real estate within Montana  
2 shall have a current license issued pursuant to [sections 4  
3 and 5].

4 NEW SECTION. Section 4. Requirements of licensure.  
5 Before any person, firm, or corporation is considered  
6 licensed under this section and [section 5], he or it shall:

7 (1) make application for and receive a license from  
8 the department;

9 (2) have and maintain a set of indexed records from  
10 which the record of ownership and condition of title to all  
11 land, within each county in which the plant is licensed, can  
12 be traced and ascertained. The set of indexed records shall  
13 be complete from the inception of title from the United  
14 States of America. The indexed records must contain all  
15 instruments affecting the title to particularly described  
16 parcels of real property which are recorded and filed in the  
17 clerk and recorder's office in each county in which the  
18 plant is licensed.

19 (3) comply with rules of the department.

20 NEW SECTION. Section 5. Duties of department. The  
21 department shall:

22 (1) inspect all abstract plants seeking licensure or  
23 licensure renewal to ensure compliance with licensure  
24 requirements for each county in which the plant is seeking  
25 licensure;

1 (2) issue and renew licenses to abstract plants for  
2 each county in which the plant meets the requirements of  
3 [section 4]. Such licenses are valid for up to 3 years as  
4 determined by the Department;

5 (3) revoke or suspend licenses for noncompliance with  
6 the provisions of [sections 3 through 5];

7 (4) inspect all licensed abstract plants as required,  
8 but not less frequently than every 3 years to ensure  
9 compliance with licensure requirements;

10 (5) adopt rules to inspect and license abstract plants  
11 necessary to determine the adequacy of land records needed  
12 to prepare an abstract of title and to assess reasonable  
13 license and inspection fees to cover the costs of  
14 administering the licensing and inspection program.

15 NEW SECTION. Section 6. Abstract prima facie evidence  
16 of its contents. A certified abstract of title to real  
17 estate issued by a licensed abstract plant shall be received  
18 by any court of this state as prima facie evidence of its  
19 contents under such rules of procedure as the court may  
20 promulgate.

21 NEW SECTION. Section 7. Application. [Sections 1  
22 through 6] do not impair the right of any person to examine  
23 the public records and to make copies or abstracts of  
24 instruments filed or recorded. Nothing in [sections 1  
25 through 6] prohibits any person, firm, or corporation from

1 preparing abstracts of title so long as they are not offered  
2 to the public as prepared by a licensed abstract plant.  
3 [Sections 1 through 6] do not apply to county clerk and  
4 recorders or persons employed by counties in the preparation  
5 of abstracts of title.

6 NEW SECTION. Section 8. Penalty. Any person, firm, or  
7 corporation violating the provisions of [sections 3 through  
8 5] is guilty of a misdemeanor.

9 Section 9. Section 2-8-121, MCA, is amended to read:

10 "2-8-121. Effect of termination. Upon Unless otherwise  
11 provided, upon termination, each agency or unit shall  
12 continue in existence until July 1 of the next succeeding  
13 year for the purpose of winding up its affairs. During the  
14 windup period, termination does not reduce or otherwise  
15 limit the powers or authority of each respective agency  
16 except that no action may be taken which would continue in  
17 effect beyond the 1-year windup period. Upon the expiration  
18 of the 1 year after termination, each agency not modified or  
19 reestablished shall be abolished and all unexpended balances  
20 of appropriations, allocations, or other funds shall revert  
21 to the fund from which they were appropriated or, if that  
22 fund is abolished, to the general fund."

23 Section 10. Section 33-25-103, MCA, is amended to  
24 read:

25 "33-25-103. Policy based on title evidence. (1) No

1 title insurance policy as to property in this state shall be  
2 issued by any insurer unless based upon evidence of the  
3 condition of title certified in writing as of the date of  
4 the policy by ~~some person, firm, or corporation holding a~~  
5 ~~certificate of authority issued under 37-52-304 to engage in~~  
6 ~~the title abstracting business in the county in which the~~  
7 ~~property is located~~ a licensed abstract plant. This  
8 provision shall not apply as to title insurance policies  
9 issued upon the basis of an opinion of an attorney, duly  
10 authorized to practice law in this state, as to the  
11 condition of the title following a review by such attorney  
12 of pertinent title records or abstracts and issued through a  
13 licensed title insurance agent who was so licensed and was  
14 regularly procuring title insurance policies issued upon  
15 such basis up to January 1, 1961.

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

20 Section 11. Section 76-3-612, MCA, is amended to read:

21 "76-3-612. Abstract of title or title insurance  
22 required for review process. (1) The subdivider shall submit  
23 with the final plat ~~a certificate of a licensed title~~  
24 abstracter an abstract of title from a licensed abstract  
25 plant or a title insurance policy showing the names of the

1 owners of record of the land to be subdivided and the names  
 2 of lien holders or claimants of record against the land and  
 3 the written consent to the subdivision by the owners of the  
 4 land, if other than the subdivider, and any lien holders or  
 5 claimants of record against the land.

6 (2) The governing body may provide for the review of  
 7 the abstract or certificate of title of the land in question  
 8 by the county attorney where the land lies in an  
 9 unincorporated area or by the city or town attorney when the  
 10 land lies within the limits of a city or town."

11 Section 12. Transfer of funds. All unexpended balances  
 12 of appropriations, allocations, or other funds of the board  
 13 of abstracters shall be transferred to the department of  
 14 business regulation on July 1, 1979, to be used for the  
 15 purpose of regulating abstract plants.

16 Section 13. Effect of termination. Section 2-8-121  
 17 does not apply to the board of abstracters.

18 Section 14. Transition. The records and documents of  
 19 the board of abstracters are transferred to the department  
 20 of business regulation. Licenses, permits, and certificates  
 21 issued prior to July 1, 1979, remain valid under the same  
 22 terms and conditions as when issued and are subject to the  
 23 provisions of Title 37, chapter 52.

24 Section 15. Codification. It is intended that sections  
 25 1 through 8 be codified as an integral part of Title 37,

1 chapter 52.

2 Section 16. Repealer. Sections 2-15-1643, 37-52-101,  
 3 37-52-102, 37-52-201 through 37-52-203, 37-52-301 through  
 4 37-52-306, 37-52-311, 37-52-312, 37-52-401, and 37-52-402,  
 5 MCA, are repealed.

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