

HOUSE BILL 794

IN THE HOUSE

February 14, 1979

Introduced and referred to  
Committee on Judiciary.

February 16, 1979

Committee recommend bill, as  
amended, do not pass.

February 17, 1979

Report adopted.

1 House BILL NO. 794  
 2 INTRODUCED BY [Signature]  
 3  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR  
 5 LICENSURE OF ABSTRACT AND TITLE INSURANCE PLANTS BY THE  
 6 DEPARTMENT OF BUSINESS REGULATION; TERMINATING THE BOARD OF  
 7 TITLE ABSTRACTERS AND REPEALING THE PROVISIONS REQUIRING AND  
 8 GOVERNING THE LICENSURE OF ABSTRACTERS; AMENDING SECTIONS  
 9 2-8-121, 33-17-202, 33-25-103, AND 76-3-612, MCA; AND  
 10 REPEALING SECTIONS 2-15-1643, 37-52-101, 37-52-102,  
 11 37-52-201 THROUGH 37-52-203, 37-52-301 THROUGH 37-52-306,  
 12 37-52-311, 37-52-312, 37-52-401, AND 37-52-402, MCA."  
 13  
 14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
 15 NEW SECTION. Section 1. Definitions. As used in  
 16 [sections 1 through 5], the following definitions apply:  
 17 (1) "Abstract plant" means a set of tract indexed  
 18 records from which the record of ownership and condition of  
 19 title to all land within the county in which the plant is  
 20 licensed can be traced and ascertained from the inception of  
 21 title from the United States of America to the present.  
 22 (2) "Department" means the department of business  
 23 regulation.  
 24 (3) "Licensed plant" means a plant licensed as  
 25 provided under [section 2].

1 (4) "Title insurance plant" means records identical to  
 2 an abstract plant except that they need not contain  
 3 reference to mineral rights, liens, or encumbrances that  
 4 have been properly released of record or are barred by the  
 5 statutes of limitation.  
 6 (5) "Tract indexed records" means an index or indices  
 7 of geographic subdivisions of land classified by legal  
 8 description and maintained in books, folders, files, or any  
 9 other manual, mechanical, or electronic system. Tract  
 10 indexed records:  
 11 (a) need not contain reference to taxes, assessments,  
 12 land-use regulations, or zoning references; and  
 13 (b) are not organized by the name of the titleholder  
 14 to land.  
 15 NEW SECTION. Section 2. Plant license required --  
 16 application -- penalty. (1) Any person, firm, or corporation  
 17 who operates an abstract plant or a title insurance plant in  
 18 Montana for profit must secure a license from the department  
 19 for each county to which its records pertain. This license  
 20 must be renewed every 3 years.  
 21 (2) County clerk and recorders or other persons  
 22 employed by a government unit to prepare abstracts of title  
 23 are not required to secure a license.  
 24 (3) An applicant for licensure must complete a form  
 25 provided by the department, providing information the

1 department considers necessary to determine the applicant's  
2 eligibility.

3 (4) A license fee in the amount required in the  
4 department rules must accompany the application.

5 (5) Any person, firm, or corporation operating an  
6 abstract plant or a title insurance plant without a license  
7 is guilty of a misdemeanor.

8 NEW SECTION. Section 3. Reservation of title. No  
9 person, firm, or corporation may hold its records out to the  
10 public as an abstract plant unless the plant is licensed by  
11 the department.

12 NEW SECTION. Section 4. Provisional licenses. (1) The  
13 department shall issue a provisional license to:

14 (a) all holders of a certificate of authority, issued  
15 under the former 37-52-304, on [the effective date of this  
16 act]; and

17 (b) all persons, firms, or corporations regularly  
18 engaged in issuing title insurance policies on [the  
19 effective date of this act].

20 (2) A provisional license is valid for 3 years.

21 NEW SECTION. Section 5. Duties and powers of the  
22 department. (1) Prior to issuing a license, the department  
23 shall inspect the plant to insure that its records are  
24 complete for each county in which the plant is seeking  
25 licensure.

1 (2) The department shall inspect each plant at least  
2 every 3 years to insure that its records are current.

3 (3) The department shall charge a reasonable fee for  
4 each inspection.

5 (4) The department may revoke or suspend a license if  
6 the plant's records are not current or the license holder  
7 otherwise fails to comply with the department's rules.

8 (5) The department may publish rules establishing:

9 (a) reasonable fees for license application, license  
10 renewal, and inspection; and

11 (b) procedures it considers necessary to administer  
12 licensing and inspection of plants.

13 NEW SECTION. Section 6. Abstract prima facie evidence  
14 of its contents. An abstract of title to real estate issued  
15 by a licensed abstract plant shall be received by the courts  
16 of this state as prima facie evidence of its contents.

17 Section 7. Section 2-9-121, MCA, is amended to read:

18 "2-9-121. Effect of termination. Upon Unless otherwise  
19 provided, upon termination, each agency or unit shall  
20 continue in existence until July 1 of the next succeeding  
21 year for the purpose of winding up its affairs. During the  
22 windup period, termination does not reduce or otherwise  
23 limit the powers or authority of each respective agency  
24 except that no action may be taken which would continue in  
25 effect beyond the 1-year windup period. Upon the expiration

1 of the 1 year after termination, each agency not modified or  
2 reestablished shall be abolished and all unexpended balances  
3 of appropriations, allocations, or other funds shall revert  
4 to the fund from which they were appropriated or, if that  
5 fund is abolished, to the general fund."

6 Section 8. Section 33-17-202, MCA, is amended to read:

7 \*33-17-202. General qualifications of resident agents  
8 and solicitors other than life insurance agents. (1) For the  
9 protection of the people of this state the commissioner  
10 shall not issue, continue, or permit to exist any resident  
11 agent or solicitor license as to insurance other than life  
12 or disability, except in compliance with this chapter, or as  
13 to any individual not qualified therefor as follows:

- 14 (a) must be 18 years of age or more;
- 15 (b) must be a resident in and of this state;
- 16 (c) if for a resident agent's license, must have been  
17 appointed as agent by an authorized insurer, subject to  
18 issuance of the license;
- 19 (d) if for a solicitor's license, must have been  
20 appointed as solicitor by a licensed resident agent, subject  
21 to issuance of the license, and intend to make and make the  
22 soliciting of insurance a principal vocation;

23 ~~(e) if for a title insurance license, must certify to~~  
24 ~~the commissioner that he has access to a licensed plant, as~~  
25 ~~defined in [section 1], for each county in which he seeks to~~

1 be licensed to issue title insurance;

2 ~~(f)(f)~~ must be competent, trustworthy, and of good  
3 reputation;

4 ~~(f)(g)~~ must have had experience or training or be  
5 otherwise qualified in the kind or kinds of insurance as to  
6 which he is to be licensed and be reasonably familiar with  
7 the provisions of this code which govern his operations as  
8 an insurance agent or solicitor;

9 ~~(g)(h)~~ must pass any written examination for the  
10 license required under this chapter;

11 ~~(h)(i)~~ must intend in good faith to act as and must  
12 act as and hold himself out to be an agent or solicitor in  
13 the active solicitation and negotiation of insurance with  
14 the general public and not seek or use the license for the  
15 negotiation or effectuation of insurance on his own property  
16 or interests or those of his relatives or of his employer.  
17 If during any calendar year more than 35% of the commissions  
18 earned or prospectively to be earned by such an applicant or  
19 licensee have been or probably will be derived from  
20 insurance of his own property or interests and those of his  
21 relatives and of his employer, the license will be deemed to  
22 have been used or to be intended to be used in violation of  
23 this subsection ~~(h)~~.

24 (2) In determining the qualifications as to  
25 competence, training, experience, and knowledge of the

HB 774

1 provisions of this code governing his operations as a  
 2 resident insurance agent or solicitor, as provided for in  
 3 subsection (1) above, of applicant agents or solicitors  
 4 proposing to represent as such only insurers who confine  
 5 their business in this state substantially to the insuring  
 6 of the property, interests, and risks of farmers, the  
 7 commissioner shall relate such qualifications only to the  
 8 kinds of insurance policies which the applicant will handle  
 9 as such a licensee."

10 Section 9. Section 33-25-103, MCA, is amended to read:

11 "33-25-103. Policy based on title evidence. (1) No  
 12 title insurance policy as to property in this state shall be  
 13 issued by any insurer unless based upon evidence of the  
 14 condition of title certified in writing as of the date of  
 15 the policy by ~~some person, firm, or corporation holding a~~  
 16 ~~certificate of authority issued under 37-52-304 to engage in~~  
 17 ~~the title abstracting business in the county in which the~~  
 18 ~~property is located~~ a licensed abstract plant. This  
 19 provision shall not apply as to title insurance policies  
 20 issued upon the basis of an opinion of an attorney, duly  
 21 authorized to practice law in this state, as to the  
 22 condition of the title following a review by such attorney  
 23 of pertinent title records or abstracts and issued through a  
 24 licensed title insurance agent who was so licensed and was  
 25 regularly procuring title insurance policies issued upon

1 such basis up to January 1, 1961.

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

6 Section 10. Section 76-3-612, MCA, is amended to read:

7 "76-3-612. Abstract of title required for review  
 8 process. (1) The subdivider shall submit with the final plat  
 9 a certificate of ~~e-titled~~ abstracter prepared using  
 10 a licensed abstract or title insurance plant showing the  
 11 names of the owners of record of the land to be subdivided  
 12 and the names of lien holders or claimants of record against  
 13 the land and the written consent to the subdivision by the  
 14 owners of the land, if other than the subdivider, and any  
 15 lien holders or claimants of record against the land.

16 (2) The governing body may provide for the review of  
 17 the abstract or certificate of title of the land in question  
 18 by the county attorney where the land lies in an  
 19 unincorporated area or by the city or town attorney when the  
 20 land lies within the limits of a city or town."

21 Section 11. Transfer of funds. All unspent balances of  
 22 appropriations, allocations, or other funds of the board of  
 23 abstracters shall be transferred to the department of  
 24 business regulation on July 1, 1979, to be used for the  
 25 purpose of regulating abstract plants.

1           Section 12. Effect of termination. Section 2-8-121  
2 does not apply to the board of abstracters.

3           Section 13. Transition. The records and documents of  
4 the board of abstracters are transferred to the department  
5 of business regulation.

6           Section 14. Repealer. Sections 2-15-1643, 37-52-101,  
7 37-52-102, 37-52-201 through 37-52-203, 37-52-301 through  
8 37-52-306, 37-52-311, 37-52-312, 37-52-401, and 37-52-402,  
9 MCA, are repealed.

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