

HOUSE BILL NO. 338

INTRODUCED BY ADDY, JONES, C. SMITH, LYNCH, HARP,
PAVLOVICH, MERCER, SCHULTZ, BRADLEY, DANIELS,
QUILICI, D. BROWN, KEATING, STIMATZ

IN THE HOUSE

| | |
|-------------------|--|
| January 22, 1985 | Introduced and referred to Committee on Business and Labor. |
| January 23, 1985 | Fiscal Note requested. |
| January 29, 1985 | Fiscal Note returned. |
| February 18, 1985 | Committee recommend bill do pass as amended. Report adopted. Bill printed and placed on members' desks. |
| February 20, 1985 | Second reading, do pass as amended. Correctly engrossed. |
| February 21, 1985 | Third reading, passed. Transmitted to Senate. |

IN THE SENATE

| | |
|-------------------|--|
| February 22, 1985 | Introduced and referred to Committee on Business and Industry. |
| March 27, 1985 | Committee recommend bill be concurrent in as amended. Report adopted. |
| March 29, 1985 | Second reading, concurred in. |
| April 1, 1985 | Third reading, concurred in. Ayes, 36; Noes, 11. Returned to House with amendments. |

IN THE HOUSE

April 2, 1985

Received from Senate.

April 4, 1985

Second reading, amendments
concurrent in.

April 5, 1985

Third reading, amendments
concurrent in.

Sent to enrolling.

Reported correctly enrolled.

1 HOUSE BILL NO. 338
 2 INTRODUCED BY Alley James Smith, Susan HARP
Pauline Mercer, Johnnie Smith, Dan Bram

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE Statute
 5 LAWS RELATING TO TITLE INSURANCE; PROVIDING FOR THE Statute
 6 LICENSING AND REGULATION OF TITLE INSURANCE AGENTS, THE
 7 EXAMINATION OF TITLE INSURANCE PLANTS AND THE ISSUANCE OF
 8 CERTIFICATES OF AUTHORITY THEREFOR, AND THE REGULATION OF
 9 CONTROLLED BUSINESS IN THE TITLE INSURANCE INDUSTRY;
 10 AMENDING SECTIONS 33-2-108, 33-2-851, 33-17-212, 33-17-213,
 11 AND 33-17-1101, MCA; AND REPEALING SECTION 33-25-103, MCA."

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

14 NEW SECTION. Section 1. Short title. [Sections 1
 15 through 19], 33-25-101, and 33-25-102 may be cited as the
 16 "Montana Title Insurance Act".

17 NEW SECTION. Section 2. Definitions. As used in
 18 [sections 1 through 19], 33-25-101, and 33-25-102, the
 19 following definitions apply:

20 (1) "Abstract" means a written representation,
 21 provided pursuant to a contract and expected to be relied
 22 upon by the person who has contracted for the receipt of
 23 that representation, listing all recorded conveyances,
 24 instruments, or documents which, under the laws of this
 25 state, impart constructive notice regarding the chain of

1 title to real property described in the abstract. Abstract
 2 includes "abstract of title".

3 (2) "Applicant" means a person, whether or not a
 4 prospective insured, who applies to a title insurer or title
 5 agent for a title insurance policy, but does not include a
 6 title agent.

7 (3) "Approved attorney" means an attorney authorized
 8 to practice law in this state, except an agent or employee
 9 of a title insurer, whose certification as to the status of
 10 the title to real property a title insurer is willing to
 11 accept as the basis for issuance of a title insurance
 12 policy.

13 (4) "Associate" means a:

14 (a) corporation, partnership, or other business entity
 15 organized for profit, of which a producer of title business
 16 is a director, officer, partner, employee, or owner of 5% or
 17 more of its equity or capital;

18 (b) franchisor or franchisee of a producer of title
 19 business;

20 (c) spouse, parent, or child of a producer of title
 21 business;

22 (d) corporation, partnership, or other business entity
 23 that controls, is controlled by, or is under common control
 24 with a producer of title business; or

25 (e) person with whom a producer of title business or

1 an associate has an agreement, arrangement, understanding,
2 or course of conduct having the purpose or substantial
3 effect of evading the provisions of this title.

4 (5) "Controlled business" means that portion of the
5 business of title insurance in this state of a title insurer
6 or title agent that is referred to it by a producer or
7 associate having a financial interest in the title insurer
8 or title agent.

9 (6) "Financial interest" means a legal or beneficial
10 interest that entitles the holder, directly or indirectly,
11 to 1% or more of the net profits or net worth of the entity
12 in which the interest is held.

13 (7) "Preliminary report" means an offer to issue a
14 title insurance policy subject to any exceptions stated in
15 the report or other matters that may be incorporated by
16 reference therein. Preliminary report includes a commitment
17 or binder.

18 (8) (a) "Producer of title business" or "producer"
19 means a person, corporation, partnership, or other business
20 entity, including an officer, director, or owner of 5% or
21 more of the equity or capital thereof, engaged in this state
22 in the trade, business, occupation, or profession of:

- 23 (i) buying or selling interests in real property;
24 (ii) making loans secured by interests in real
25 property; or

1 (iii) acting as broker, agent, or representative of a
2 person described in subsection (8)(a)(i) or (8)(a)(ii).

3 (b) "Producer of title business" does not include an
4 attorney licensed to practice law in this state.

5 (9) "Rate" means fees for:

6 (a) issuing a title insurance policy, including any
7 service charge or fee for the issuance;

8 (b) abstracting, searching, and examining title to
9 real property when prepared or issued in contemplation of or
10 in conjunction with the issuance of a title insurance
11 policy; and

12 (c) preparing or issuing preliminary reports,
13 commitments, binders, or similar products prepared or issued
14 in contemplation of or in conjunction with the issuance of a
15 title insurance policy.

16 (10) "Refer" means to direct, cause to be directed, or
17 exercise an influence over the direction of title insurance
18 business, whether or not the consent or approval of another
19 person is sought or obtained with respect to the referral.

20 (11) (a) "Title agent" means a person who holds a valid
21 title agent's license and is authorized in writing by a
22 title insurer to:

23 (i) solicit title insurance business;

24 (ii) collect rates;

25 (iii) determine insurability in accordance with

1 underwriting rules and standards of the insurer; or
 2 (iv) issue policies of the title insurer.
 3 (b) "Title agent" does not include an approved
 4 attorney.
 5 (12) "Title insurance business" means:
 6 (a) issuing or offering to issue a title insurance
 7 policy as an insurer;
 8 (b) transacting or proposing to transact any of the
 9 following as a title insurer or title agent, in
 10 contemplation of or in conjunction with the issuance of a
 11 title insurance policy:
 12 (i) soliciting or negotiating the issuance of a title
 13 insurance policy;
 14 (ii) guaranteeing, warranting, or otherwise insuring
 15 the correctness of title searches;
 16 (iii) handling escrows, settlements, or closings;
 17 (iv) executing title insurance policies, reports,
 18 commitments, binders, and endorsements;
 19 (v) effecting contracts of reinsurance; or
 20 (vi) abstracting, searching, or examining titles;
 21 (c) transacting, as a title insurer or agent, matters
 22 subsequent to the issuance of a title insurance policy and
 23 arising out of the policy; or
 24 (d) doing or proposing to do business that, in
 25 substance, is equivalent to any of the activities described

1 in subsections (12)(a) through (12)(c) in a manner designed
 2 to evade the provisions of this title.
 3 (13) "Title insurance policy" means a contract by
 4 which, subject to its stated terms and conditions, a title
 5 insurer insures or indemnifies the insured against loss or
 6 damage sustained by reason of:
 7 (a) defects in or liens or encumbrances on the title
 8 to the stated property;
 9 (b) unmarketability of the title to the stated
 10 property; or
 11 (c) invalidity or unenforceability of liens or
 12 encumbrances on the stated property.
 13 (14) "Title insurer" means an insurer formed and
 14 authorized under the laws of this state to transact the
 15 business of title insurance in this state or a foreign or
 16 alien insurer so authorized.
 17 (15) "Title plant" means a set of privately maintained
 18 records in which entries have been made of documents
 19 imparting constructive notice, under the law, of matters
 20 affecting title to real property, an interest therein, or an
 21 encumbrance thereon, that have been filed or recorded in the
 22 jurisdiction for which the title plant is maintained and
 23 from which the ownership of real property within the
 24 jurisdiction can be ascertained and liens, encumbrances,
 25 defects, and clouds on title to the real property can be

1 determined.

2 NEW SECTION. Section 3. Application. (1) [Sections 1
3 through 19], 33-25-101, and 33-25-102 apply to all title
4 insurers, title insurance rating organizations, title
5 agents, applicants for title insurance, title insurance
6 policyholders, and all other persons engaged in title
7 insurance business in this state.

8 (2) [Sections 1 through 19], 33-25-101, and 33-25-102
9 do not authorize the practice of law by a person who is not
10 licensed to practice law in this state, and [sections 1
11 through 19], 33-25-101, and 33-25-102 do not authorize the
12 commissioner to regulate the practice of law.

13 NEW SECTION. Section 4. Abstracts of title
14 distinguished from title insurance policy and preliminary
15 report. (1) A title insurance policy is not an abstract of
16 title or representation as to the condition of title to the
17 stated property.

18 (2) A preliminary report is not an abstract of title.
19 The rights, duties, and liabilities applicable to the
20 preparation and issuance of an abstract of title are not
21 applicable to the issuance of a preliminary report. A
22 preliminary report does not constitute a representation as
23 to the condition of title to real property, but constitutes
24 a statement of the terms and conditions upon which the
25 issuer is willing to issue its title insurance policy.

1 NEW SECTION. Section 5. Limitations on authority. (1)
2 An insurer that transacts or is licensed to transact a class
3 or kind of insurance other than title insurance is not
4 eligible for the issuance or renewal of a license to
5 transact the business of title insurance in this state and
6 may not transact, underwrite, or issue title insurance.

7 (2) A title insurer may not engage in the business of
8 guaranteeing payment of the principal or interest of bonds
9 or mortgages.

10 (3) A title insurer may not engage in the business of
11 guaranteeing the obligations of other persons, except its
12 title agents or approved attorneys in the normal course of
13 its business.

14 NEW SECTION. Section 6. Underwriting standards --
15 record retention. (1) A title insurer may not issue a title
16 insurance policy unless it, its title agent, or an approved
17 attorney has conducted a reasonable search and examination
18 of the title and made a determination of insurability of
19 title in accordance with sound underwriting practices. The
20 title insurer or title agent must preserve and retain in its
21 files evidence of the examination of title and determination
22 of insurability. The title insurer or title agent may keep
23 original evidence or may establish in the regular course of
24 business a system of recording, copying, or reproducing
25 evidence by any process that accurately and legibly

1 reproduces, or forms a durable medium for reproducing, the
2 contents of the original.

3 (2) Subsection (1) does not apply to:

4 (a) a title insurer assuming liability through a
5 contract of reinsurance; or

6 (b) a title insurer acting as coinsurer if one of the
7 other coinsuring title insurers has complied with subsection
8 (1).

9 (3) Except as allowed by rules adopted by the
10 commissioner, no title insurer or title agent may knowingly
11 issue an owner's title insurance policy or commitment to
12 insure unless all outstanding enforceable recorded liens or
13 other interests against the property title to be insured are
14 shown.

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

19 NEW SECTION. Section 7. Escrow, closing, or
20 settlement services -- title indemnification -- maintenance
21 of accounts -- rules. (1) A title insurer or title agent may
22 provide escrow, settlement, or closing services, or any
23 combination thereof, and may operate as an escrow,
24 settlement, or closing agent, subject to the provisions of
25 subsections (2) and (3).

1 (2) A title insurer or title agent shall:

2 (a) deposit funds accepted in connection with an
3 escrow, settlement, closing, or title indemnification in a
4 separate fiduciary trust account in a bank or other
5 financial institution insured by an agency of the federal
6 government and segregate the funds by escrow, settlement,
7 closing, or title indemnification in its records. The funds
8 are the property of the person entitled thereto under the
9 terms of the escrow, settlement, closing, or title
10 indemnification and are not subject to debts of the title
11 insurer or title agent. A title insurer or agent may use
12 such funds only in accordance with the terms of the
13 individual escrow, settlement, closing, or title
14 indemnification under which the funds are accepted.

15 (b) pay interest on funds, deposited with it in
16 connection with an escrow, settlement, closing, or title
17 indemnification, to the depositing person or as otherwise
18 provided by the terms thereof;

19 (c) maintain separate records of all receipts and
20 disbursements of escrow, settlement, closing, or title
21 indemnification funds; and

22 (d) comply with rules adopted by the commissioner
23 pertaining to escrow, settlement, closing, or title
24 indemnification transactions.

25 (3) A title agent must keep books of account, records,

1 and vouchers pertaining to any escrow, closing, settlement,
 2 or title indemnification business transacted, in such a
 3 manner that the commissioner or his authorized
 4 representative may readily ascertain, under the authority of
 5 33-1-402, whether the title agent has complied with all
 6 applicable provisions of this title.

7 NEW SECTION. Section 8. Disapproval of agency
 8 contracts. (1) The commissioner may disapprove a title
 9 agency contract between a title agent and title insurer,
 10 upon appropriate notice to the parties to the contract, if
 11 he finds that the contract, together with all amendments and
 12 related documents:

13 (a) does not provide for adequate monitoring of the
 14 agent's financial transactions; or

15 (b) provides for inadequate, unreasonable, or
 16 excessive amounts to be paid to or retained by the title
 17 agent. Factors the commissioner may consider in this
 18 determination include but are not limited to the agent's
 19 duties under the contract and the general level of amounts
 20 paid to or retained by other title agents in the state
 21 performing or assuming comparable duties.

22 (2) No person may act as a title agent under an agency
 23 contract that has been disapproved by the commissioner.

24 NEW SECTION. Section 9. Report of claims. A title
 25 agent must immediately report every loss claim to the title

1 insurer that issued the policy against which the claim is
 2 presented.

3 NEW SECTION. Section 10. Refusal, suspension, or
 4 revocation of title agent's license. (1) In addition to the
 5 causes provided in 33-17-1001, the commissioner may refuse
 6 to license a person as a title agent or may suspend or
 7 revoke a title agent's license if, after a hearing held
 8 after notice as required in 33-17-1001, he finds that the
 9 license applicant or licensee has:

10 (a) made a material misstatement in an application for
 11 a title agent license;

12 (b) commingled funds belonging to applicants, escrow
 13 participants, or others;

14 (c) intentionally misrepresented the terms of a title
 15 insurance policy to an applicant or policyholder or has
 16 misrepresented material facts to, concealed material facts
 17 from, or made false statements to a party to an escrow,
 18 settlement, or closing transaction;

19 (d) in the conduct of his affairs under his title
 20 agent's license, used coercive practices or shown himself to
 21 be financially irresponsible;

22 (e) aided, abetted, or assisted another person in
 23 violating the provisions of this title or a rule adopted by
 24 the commissioner.

25 (2) The commissioner may impose any other appropriate

1 penalty provided for in this title.

2 (3) The commissioner may refuse, suspend, or revoke
3 the license of a firm, corporation, or other business entity
4 licensed as a title agent for the actions described in
5 subsection (1) of any individual designated in the license
6 to exercise its powers.

7 NEW SECTION. Section 11. Sharing of rate proceeds.
8 Title insurers and agents may share rate proceeds between or
9 among themselves in any combination and may exchange
10 business and share commissions as provided in 33-17-1103,
11 unless the sharing of rate proceeds is an unlawful rebate or
12 inducement under this title or is a payment of a forwarding
13 fee or finders fee.

14 NEW SECTION. Section 12. Prohibited practices --
15 referrals -- splitting charges -- exemptions. (1) Except as
16 provided in subsection (2), no person may:

17 (a) give or accept a fee, rebate, or thing of value
18 pursuant to an agreement or understanding that title
19 insurance business will be referred to a title agent; or

20 (b) give or accept a portion, split, or percentage of
21 a charge made or received for title insurance business in
22 connection with a transaction involving real property in
23 this state, other than for services actually performed.

24 (2) (a) A person may pay a return on an investment,
25 based on a percentage of an ownership interest in a title

1 insurance agent or franchise relationship, if:

2 (i) at or prior to the time of a referral a disclosure
3 of the existence of the arrangement is made to the person
4 being referred and, in connection with the referral, the
5 person is provided a written estimate of the charge or range
6 of charges generally made by the title agent to which the
7 person is referred; and

8 (ii) the person is not required to use a particular
9 agent.

10 (b) The following arrangements are not a violation of
11 subsection (2)(a)(ii):

12 (i) an arrangement that requires a buyer, borrower, or
13 seller to pay for the services of an attorney, credit
14 reporting agency, or real estate appraiser chosen by a
15 lender to represent the lender's interest in a real estate
16 transaction; or

17 (ii) an arrangement by which an attorney or law firm
18 represents a client in a real estate transaction and issues
19 or arranges for the issuance of a policy of title insurance
20 in the transaction directly as agent or through a separate
21 corporate title insurance agency that may be established by
22 that attorney or law firm and operated as an adjunct to his
23 or its law practice.

24 (c) Failure to disclose a controlled business
25 relationship is not a violation of subsection (2)(a)(i) if

1 the failure was not intentional and resulted from a bona
2 fide error, proven by a preponderance of the evidence.

3 (3) This section does not prohibit:

4 (a) the payment of a fee to an attorney for services
5 actually rendered or by a title agent for services actually
6 performed in the issuance of a title insurance policy; or

7 (b) payment of a bona fide salary, compensation, or
8 other payment for goods or facilities actually furnished or
9 for services actually performed.

10 NEW SECTION. Section 13. Prohibited practices --
11 penalties -- treble damages, court costs, and attorney fees --
12 -- injunction. (1) A person found to have violated the
13 provisions of [section 12] is jointly and severally liable
14 to the person charged for the title insurance business
15 involved in the violation for an amount equal to three times
16 the amount of the charge paid for the business.

17 (2) In a civil action based on [section 12] and this
18 section, the court may award to the prevailing party court
19 costs plus reasonable attorney fees.

20 (3) The commissioner may bring a civil action to
21 enjoin a violation of [section 12].

22 NEW SECTION. Section 14. Prohibited practices --
23 producer and associates -- prohibition of favored agent or
24 insurer. No producer or associate may, directly or
25 indirectly, require as a condition, agreement, or

1 understanding of providing another person a loan, loan
2 extension, credit, sale, property, contract, lease, or
3 service that the other person obtain title insurance of any
4 kind from a particular title insurer or title agent. No
5 title insurer or title agent may knowingly participate in a
6 plan or transaction prohibited by this section.

7 NEW SECTION. Section 15. Notice of issuance of
8 mortgagee policy. (1) A title insurer or title agent that
9 issues a mortgagee's policy of title insurance on a loan
10 made simultaneous to the purchase of all or part of the
11 property securing the loan, when no owner's policy has been
12 ordered, must inform the borrower in writing that the
13 mortgagee's policy is to be issued, that the mortgagee's
14 policy does not protect the borrower, and that the borrower
15 may obtain an owner's title insurance policy for his
16 protection. This notice must be provided, on a form
17 prescribed by the commissioner, before issuance of the
18 mortgagee's policy.

19 (2) If the borrower elects not to purchase an owner's
20 title insurance policy, the title insurer or title agent
21 must obtain from him a statement in writing that the notice
22 has been received and that the borrower waives the right to
23 purchase an owner's title insurance policy. If the buyer
24 refuses to provide the statement and waiver, the title
25 insurer or title agent must so note in the file. The

1 statement and waiver must be on a form prescribed by the
2 commissioner and must be retained by the title insurer or
3 title agent for at least 5 years after receipt.

4 NEW SECTION. Section 16. Title plants -- requirement
5 -- standards -- limitations on sale -- rules. (1) No person
6 may act as a title insurance agent and no title insurance
7 agent may transact the business of title insurance in this
8 state unless the agent maintains a title plant for which the
9 commissioner has issued a certificate of authority or a
10 permit without inspection under the provisions of [section
11 17 or 19].

12 (2) The commissioner shall adopt rules establishing
13 standards for operation of title plants in this state. The
14 rules may include standards for tract indices, general name
15 indices, maps, plats, and other organizing devices.

16 (3) Nothing in this section prevents two or more title
17 agents from owning and maintaining a title insurance plant
18 together for their joint use.

19 (4) No title agent may sell or otherwise transfer a
20 title plant unless the commissioner first inspects it and
21 determines it is in compliance with this title and the rules
22 of the commissioner. The commissioner shall conduct a
23 compliance inspection upon request.

24 NEW SECTION. Section 17. Title plants -- certificate
25 of authority -- inspections. (1) A title agent may apply for

1 a title plant certificate of authority on forms provided by
2 the commissioner.

3 (2) The commissioner must issue a title plant
4 certificate of authority to a title agent if, after
5 inspection of the plant, the commissioner finds the title
6 plant in compliance with this title and title plant
7 standards established by the commissioner.

8 (3) A certificate of authority continues from the date
9 issued until sale or other transfer of a plant unless sooner
10 revoked by the commissioner or relinquished by the holder

11 (4) The commissioner must inspect a title plant
12 required under [sections 16 and 19] and this section. The
13 commissioner may inspect a title plant at any time under the
14 authority of 33-1-402 and revoke the certificate of
15 authority of a title plant found to be not in compliance,
16 after a hearing held pursuant to this title.

17 (5) The commissioner may contract with a qualified
18 person, firm, or organization to conduct inspections under
19 this section.

20 NEW SECTION. Section 18. Costs of inspection of title
21 plants -- rules. A title agent shall pay the commissioner an
22 inspection fee based on the reasonable costs of inspection,
23 as established by rule by the commissioner. In establishing
24 an inspection fee, the commissioner may include such costs
25 as travel expenses, a reasonable expense allowance, and

1 compensation at reasonable rates of an inspector.

2 NEW SECTION. Section 19. Permit without inspection
3 for existing title plants -- application. (1) A title agent
4 transacting the business of title insurance on October 1,
5 1985, may apply for a title plant permit without inspection
6 by December 31, 1985, and may not transact the business of
7 title insurance after July 1, 1986, unless he has received a
8 temporary permit or certificate of authority from the
9 commissioner.

10 (2) A title agent shall apply for a temporary permit,
11 on forms provided by the commissioner, providing information
12 reasonably required by the commissioner that shows that the
13 agent maintains an adequate and complete title plant in the
14 county where he intends to do business. The title insurer
15 with whom the agent intends to do business must sign the
16 application certifying that the agent is known to have a
17 good reputation and is worthy of public trust and that the
18 insurer knows of no fact or condition that would disqualify
19 the agent from receiving the permit.

20 (3) If the commissioner denies an application for a
21 permit without inspection, the applicant may request an
22 inspection of his title plant and apply for a certificate of
23 authority as provided in [section 17].

24 (4) A title agent who receives a title plant permit
25 without inspection is not relieved of the requirement of

1 inspection upon sale or transfer of the title plant or as
2 required by the commissioner under 33-1-402.

3 (5) A permit without inspection continues from the
4 date issued until sale or other transfer of a plant, unless
5 sooner revoked by the commissioner.

6 (6) After inspection, the commissioner may revoke a
7 permit of a title plant found to be not in compliance, after
8 a hearing held pursuant to this title.

9 Section 20. Section 33-2-108, MCA, is amended to read:
10 "33-2-108. Combinations of insuring powers. (1) Except
11 as provided in subsections (2), (3), and (4) and [section
12 5], an insurer which otherwise qualifies therefor may be
13 authorized to transact any one kind or combination of kinds
14 of insurance as defined in 33-1-205 through 33-1-212.

15 (2) A life insurer may also grant annuities but shall
16 not be authorized to transact any other kind of insurance
17 other than disability, except that if the insurer is
18 otherwise qualified therefor, the commissioner shall
19 continue to so authorize any life insurer which, immediately
20 prior to January 1, 1961, was lawfully authorized to
21 transact in this state a kind or kinds of insurance in
22 addition to life and disability.

23 (3) A reciprocal insurer shall not transact life
24 insurance.

25 (4) A title insurer shall be a stock insurer."

Section 21. Section 33-2-851, MCA, is amended to read:

"33-2-851. Special investments by title insurer. (1)

In addition to other investments eligible under this part, a title insurer may invest and have invested an amount not exceeding 50% of its paid-in capital stock in its ~~abstract title plant, as defined in [section 2],~~ and equipment and, with the commissioner's consent, in stock of abstract companies and of title agents as defined in [section 2]. ~~If the insurer transacts kinds of insurance in addition to title insurance, for the purposes of this section its paid-in capital stock shall be prorated between title insurance and such other insurances upon the basis of the reserves maintained by the insurer for the various kinds of insurance, but the capital so assigned to title insurance shall in no event be less than \$100,000.~~

(2) Investments authorized by this section shall not be credited against the insurer's required unearned premium or guaranty fund reserve provided for under 33-2-517.

(3) Any such ~~abstract~~ title plant and equipment shall not be so allowed as an asset in any determination of the insurer's financial condition at a value greater than actual cost."

Section 22. Section 33-17-212, MCA, is amended to read:

"33-17-212. Examination required. (1) After completion

and filing of the application for license as required under 33-17-211, the commissioner shall subject each applicant for license as agent or solicitor, unless exempted therefrom under subsection (5) below, to a personal written examination as to his competence to act as such agent or solicitor.

(2) If the applicant is a firm or corporation, the examination shall be so taken by each individual who is to be named in the license as having authority to act for the applicant in its insurance transactions under the license.

(3) Examination of an applicant for an agent's license shall cover all of the kinds of insurance for which the applicant has applied to be licensed, as constituted by any one or more of the following classifications:

(a) life insurance;

(b) disability insurance;

(c) property insurance; for the purposes of this provision, "marine" insurance shall be deemed to be included in "property" insurance;

(d) casualty insurance;

(e) vehicle insurance;

(f) surety insurance;

(g) credit life and disability insurance;

(h) title insurance.

(4) Examination of an applicant for a solicitor's

1 license shall cover all the kinds of insurance, other than
2 life, as to which the appointing agent is licensed.

3 (5) This section shall not apply to, and no such
4 examination shall be required of:

5 (a) any individual lawfully licensed as an agent or
6 solicitor as to the kind or kinds of insurance to be
7 transacted as of or immediately prior to January 1, 1961,
8 and thereafter continuing to be so licensed;

9 (b) any applicant for license covering the same kind
10 or kinds of insurance as to which the applicant was licensed
11 in this state, other than under a temporary license, within
12 the 12 months next preceding date of application unless such
13 previous license was suspended, revoked, or continuation
14 thereof refused by the commissioner, except that the
15 provisions of this subsection (5)(b) do not apply to title
16 agents, as defined in [section 2];

17 (c) any applicant for license as nonresident agent,
18 subject to reciprocal arrangements as provided for in this
19 code;

20 (d) all applicants for license as agent for an insurer
21 that confines its business in this state substantially to
22 the insuring of the property, interests, and risks of
23 farmers, if exempted from examination by the commissioner,
24 in his discretion, upon written request of the insurer;

25 (e) transportation ticket agents of common carriers

1 applying for license to solicit and sell only:

2 (i) accident insurance ticket policies; or

3 (ii) insurance of personal effects while being carried
4 as baggage on such common carrier, as incidental to their
5 duties as such transportation ticket agents;

6 (f) agents' associations applying for license under
7 33-17-205;

8 ~~(g) title insurance agents;~~

9 ~~(h)(q) mechanical breakdown insurance agents."~~

10 Section 23. Section 33-17-213, MCA, is amended to
11 read:

12 "33-17-213. Conduct of examinations. (1) The
13 commissioner shall make any examination required under
14 33-17-212 available to applicants with reasonable frequency
15 and at a place in this state reasonably accessible to the
16 applicants. The commissioner shall make any such examination
17 available at his offices at Helena, Montana, at times within
18 his discretion but at least once a month.

19 (2) All the kinds of insurance or classes thereof, as
20 referred to in 33-17-212(3), which the applicant proposes to
21 transact under the license applied for shall be included in
22 the same examination.

23 (3) The commissioner shall give, conduct, and grade
24 all examinations in a fair and impartial manner and without
25 unfair discrimination as between individuals examined.

1 (4) The commissioner may require a reasonable waiting
2 period before reexamination of an applicant who has failed
3 to pass a previous examination covering the same kind or
4 kinds of insurance.

5 (5) The examination of a title agent, as defined in
6 [section 2], must include but is not limited to questions
7 pertaining to the search and examination of title to real
8 property, insurance principles relating to title insurance,
9 and the fiduciary duties and procedures of escrows,
10 settlements, and closings of real estate transactions."

11 Section 24. Section 33-17-1101, MCA, is amended to
12 read:

13 "33-17-1101. Place of business -- display of license
14 -- records. (1) Every agent shall have and maintain a place
15 of business accessible to the public. Such place of business
16 shall be that wherein the licensee principally conducts
17 transactions under his license. The address of such place
18 shall appear upon the license, and the licensee shall
19 promptly notify the commissioner of any change thereof.
20 Nothing in this section prohibits maintenance of such place
21 of business in the licensee's place of residence.

22 (2) The license of the licensee and the license of
23 each solicitor appointed by and representing the licensee
24 shall be conspicuously displayed in such place of business
25 in a part thereof customarily open to the public.

1 (3) The agent shall keep at his place of business
2 complete records pertaining to transactions under his
3 license and the licenses of his solicitors, for a period of
4 at least 3 years after completion of the respective
5 transactions, except that title agents, as defined in
6 [section 2], shall retain records as provided in [sections 6
7 and 15]."

8 NEW SECTION. Section 25. Repealer. Section 33-25-103,
9 MCA, is repealed.

10 NEW SECTION. Section 26. Extension of authority. Any
11 existing authority of the commissioner of insurance to make
12 rules on the subject of the provisions of this act is
13 extended to the provisions of this act.

14 NEW SECTION. Section 27. Codification instruction.
15 Sections 1 through 19 are intended to be codified as an
16 integral part of Title 33, and the provisions of Title 33
17 apply to sections 1 through 19.

18 NEW SECTION. Section 28. Severability. If a part of
19 this act is invalid, all valid parts that are severable from
20 the invalid part remain in effect. If a part of this act is
21 invalid in one or more of its applications, the part remains
22 in effect in all valid applications that are severable from
23 the invalid applications.

-End-

FISCAL NOTE

In compliance with a written request received January 23 19 85, there is hereby submitted a Fiscal Note for H.B. 338 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA). 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:

House Bill 338 is an act to revise the law relating to title insurance. The proposed law provides for the licensing and regulation of title insurance agents, the examination of title insurance plants and the issuance of certificates of authority.

ASSUMPTIONS:

1. This bill will reduce the number of agents that are licensed for title insurance.
2. Additional revenue raised from title plant inspections cannot be determined until rulemaking is completed.
3. Requirements of the bill for inspections of title plants, examinations for licensing of title insurance agents, issuance of certificates and regulation of title insurance will require additional expenditures.

FISCAL IMPACT:

| | <u>Fiscal 1986</u> | | <u>Fiscal 1987</u> | |
|--------------------------------|--------------------|---------------------|--------------------|---------------------|
| | <u>Current Law</u> | <u>Proposed Law</u> | <u>Current Law</u> | <u>Proposed Law</u> |
| Revenue | \$ 7,000 | \$ 4,800 | \$ 7,000 | \$ 1,600 |
| Expenditures | | | | |
| FTE | .25 | 1.25 | .25 | 1.25 |
| Personal Services | \$ 5,000 | \$32,008 | \$ 5,000 | \$32,525 |
| Operating | 2,000 | 18,660 | 2,000 | 7,860 |
| Equipment | -0- | -0- | -0- | -0- |
| Total Expenditures | \$ 7,000 | \$50,668 | \$ 7,000 | \$40,385 |
| Net Effect to the General Fund | -0- | \$45,868 | -0- | \$38,785 |

David L Hunter

BUDGET DIRECTOR
Office of Budget and Program Planning

Date: Jan 29, 1985

APPROVED BY COMM. ON
BUSINESS AND LABOR

HOUSE BILL NO. 338

INTRODUCED BY ADDY, JONES, C. SMITH, LYNCH, HARP,
PAVLOVICH, MERCER, SCHULTZ, BRADLEY, DANIELS,
QUILICI, D. BROWN, KEATING, STIMATZ

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
LAWS RELATING TO TITLE INSURANCE; PROVIDING FOR THE
LICENSING AND REGULATION OF TITLE INSURANCE AGENTS, ~~THE~~
~~EXAMINATION OF TITLE INSURANCE PLANTS AND THE ISSUANCE OF~~
~~CERTIFICATES OF AUTHORITY THEREFOR,~~ AND THE REGULATION OF
CONTROLLED BUSINESS IN THE TITLE INSURANCE INDUSTRY;
AMENDING SECTIONS 33-2-108, 33-2-851, 33-17-212, 33-17-213,
AND 33-17-1101, MCA; AND REPEALING SECTION 33-25-103, MCA."

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

NEW SECTION. Section 1. Short title. [Sections 1
through ~~19~~ 15], 33-25-101, and 33-25-102 may be cited as the
"Montana Title Insurance Act".

NEW SECTION. Section 2. Definitions. As used in
[sections 1 through ~~19~~ 15], 33-25-101, and 33-25-102, the
following definitions apply:

(1) "Abstract" means a written representation,
provided pursuant to a contract and expected to be relied
upon by the person who has contracted for the receipt of
that representation, listing all recorded conveyances,

instruments, or documents which, under the laws of this
state, impart constructive notice regarding the chain of
title to real property described in the abstract. Abstract
includes "abstract of title".

(2) "Applicant" means a person, whether or not a
prospective insured, who applies to a title insurer or title
agent for a title insurance policy, but does not include a
title agent.

(3) "Approved attorney" means an attorney authorized
to practice law in this state, except an agent or employee
of a title insurer, whose certification as to the status of
the title to real property a title insurer is willing to
accept as the basis for issuance of a title insurance
policy.

(4) "Associate" means a:

(a) corporation, partnership, or other business entity
organized for profit, of which a producer of title business
is a director, officer, partner, employee, or owner of 5% or
more of its equity or capital;

(b) franchisor or franchisee of a producer of title
business;

(c) spouse, parent, or child of a producer of title
business;

(d) corporation, partnership, or other business entity
that controls, is controlled by, or is under common control

1 with a producer of title business; or
 2 (e) person with whom a producer of title business or
 3 an associate has an agreement, arrangement, understanding,
 4 or course of conduct having the purpose or substantial
 5 effect of evading the provisions of this title.
 6 (5) "Controlled business" means that portion of the
 7 business of title insurance in this state of a title insurer
 8 or title agent that is referred to it by a producer or
 9 associate having a financial interest in the title insurer
 10 or title agent.
 11 (6) "Financial interest" means a legal or beneficial
 12 interest that entitles the holder, directly or indirectly,
 13 to 1% or more of the net profits or net worth of the entity
 14 in which the interest is held.
 15 (7) "Preliminary report" means an offer to issue a
 16 title insurance policy subject to any exceptions stated in
 17 the report or other matters that may be incorporated by
 18 reference therein. Preliminary report includes a commitment
 19 or binder.
 20 (8) (a) "Producer of title business" or "producer"
 21 means a person, corporation, partnership, or other business
 22 entity, including an officer, director, or owner of 5% or
 23 more of the equity or capital thereof, engaged in this state
 24 in the trade, business, occupation, or profession of:
 25 (i) buying or selling interests in real property;

1 (ii) making loans secured by interests in real
 2 property; or
 3 (iii) acting as broker, agent, or representative of a
 4 person described in subsection (8)(a)(i) or (8)(a)(ii).
 5 (b) "Producer of title business" does not include an
 6 attorney licensed to practice law in this state.
 7 (9) "Rate" means fees for:
 8 (a) issuing a title insurance policy, including any
 9 service charge or fee for the issuance;
 10 (b) abstracting, searching, and examining title to
 11 real property when prepared or issued in contemplation of or
 12 in conjunction with the issuance of a title insurance
 13 policy; and
 14 (c) preparing or issuing preliminary reports,
 15 commitments, binders, or similar products prepared or issued
 16 in contemplation of or in conjunction with the issuance of a
 17 title insurance policy.
 18 (10) "Refer" means to direct, cause to be directed, or
 19 exercise an influence over the direction of title insurance
 20 business, whether or not the consent or approval of another
 21 person is sought or obtained with respect to the referral.
 22 (11) (a) "Title agent" means a person who holds a valid
 23 title agent's license and is authorized in writing by a
 24 title insurer to:
 25 (i) solicit title insurance business;

1 (ii) collect rates;

2 (iii) determine insurability in accordance with

3 underwriting rules and standards of the insurer; or

4 (iv) issue policies of the title insurer.

5 (b) "Title agent" does not include an approved

6 attorney.

7 (12) "Title insurance business" means:

8 (a) issuing or offering to issue a title insurance

9 policy as an insurer;

10 (b) transacting or proposing to transact any of the

11 following as a title insurer or title agent, in

12 contemplation of or in conjunction with the issuance of a

13 title insurance policy:

14 (i) soliciting or negotiating the issuance of a title

15 insurance policy;

16 (ii) guaranteeing, warranting, or otherwise insuring

17 the correctness of title searches;

18 (iii) handling escrows, settlements, or closings;

19 (iv) executing title insurance policies, reports,

20 commitments, binders, and endorsements;

21 (v) effecting contracts of reinsurance; or

22 (vi) abstracting, searching, or examining titles;

23 (c) transacting, as a title insurer or agent, matters

24 subsequent to the issuance of a title insurance policy and

25 arising out of the policy; or

1 (d) doing or proposing to do business that, in

2 substance, is equivalent to any of the activities described

3 in subsections (12)(a) through (12)(c) in a manner designed

4 to evade the provisions of this title.

5 (13) "Title insurance policy" means a contract by

6 which, subject to its stated terms and conditions, a title

7 insurer insures or indemnifies the insured against loss or

8 damage sustained by reason of:

9 (a) defects in or liens or encumbrances on the title

10 to the stated property;

11 (b) unmarketability of the title to the stated

12 property; or

13 (c) invalidity or unenforceability of liens or

14 encumbrances on the stated property.

15 (14) "Title insurer" means an insurer formed and

16 authorized under the laws of this state to transact the

17 business of title insurance in this state or a foreign or

18 alien insurer so authorized.

19 (15) "Title plant" means a set of privately maintained

20 records in which entries have been made of documents

21 imparting constructive notice, under the law, of matters

22 affecting title to real property, an interest therein, or an

23 encumbrance thereon, that have been filed or recorded in the

24 jurisdiction for which the title plant is maintained and

25 from which the ownership of real property within the

1 jurisdiction can be ascertained and liens, encumbrances,
2 defects, and clouds on title to the real property can be
3 determined.

4 NEW SECTION. Section 3. Application. (1) [Sections 1
5 through ~~19~~ 15], 33-25-101, and 33-25-102 apply to all title
6 insurers, title insurance rating organizations, title
7 agents, applicants for title insurance, title insurance
8 policyholders, and all other persons engaged in title
9 insurance business in this state.

10 (2) [Sections 1 through ~~19~~ 15], 33-25-101, and
11 33-25-102 do not authorize the practice of law by a person
12 who is not licensed to practice law in this state, and
13 [sections 1 through ~~19~~ 15], 33-25-101, and 33-25-102 do not
14 authorize the commissioner to regulate the practice of law.

15 NEW SECTION. Section 4. Abstracts of title
16 distinguished from title insurance policy and preliminary
17 report. (1) A title insurance policy is not an abstract of
18 title or representation as to the condition of title to the
19 stated property.

20 (2) A preliminary report is not an abstract of title.
21 The rights, duties, and liabilities applicable to the
22 preparation and issuance of an abstract of title are not
23 applicable to the issuance of a preliminary report. A
24 preliminary report does not constitute a representation as
25 to the condition of title to real property; but constitutes

1 a statement of the terms and conditions upon which the
2 issuer is willing to issue its title insurance policy.

3 NEW SECTION. Section 5. Limitations on authority. (1)
4 An insurer that transacts or is licensed to transact a class
5 or kind of insurance other than title insurance is not
6 eligible for the issuance or renewal of a license to
7 transact the business of title insurance in this state and
8 may not transact, underwrite, or issue title insurance.

9 (2) A title insurer may not engage in the business of
10 guaranteeing payment of the principal or interest of bonds
11 or mortgages.

12 (3) A title insurer may not engage in the business of
13 guaranteeing the obligations of other persons, except its
14 title agents or approved attorneys in the normal course of
15 its business.

16 NEW SECTION. Section 6. Underwriting standards --
17 record retention. (1) A title insurer may not issue a title
18 insurance policy unless it, its title agent, or an approved
19 attorney has conducted a reasonable search and examination
20 of the title and made a determination of insurability of
21 title in accordance with sound underwriting practices. The
22 title insurer or title agent must preserve and retain in its
23 files evidence of the examination of title and determination
24 of insurability. The title insurer or title agent may keep
25 original evidence or may establish in the regular course of

1 business a system of recording, copying, or reproducing
 2 evidence by any process that accurately and legibly
 3 reproduces, or forms a durable medium for reproducing, the
 4 contents of the original.

5 (2) Subsection (1) does not apply to:

6 (a) a title insurer assuming liability through a
 7 contract of reinsurance; or

8 (b) a title insurer acting as coinsurer if one of the
 9 other coinsuring title insurers has complied with subsection
 10 (1).

11 (3) Except as allowed by rules adopted by the
 12 commissioner, no title insurer or title agent may knowingly
 13 issue an owner's title insurance policy or commitment to
 14 insure unless all outstanding enforceable recorded liens or
 15 other interests against the property title to be insured are
 16 shown.

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

21 NEW SECTION. Section 7. Escrow, closing, or
 22 settlement services -- title indemnification -- maintenance
 23 of accounts -- rules. (1) A title insurer or title agent may
 24 provide escrow, settlement, or closing services, or any
 25 combination thereof, and may operate as an escrow,

1 settlement, or closing agent, subject to the provisions of
 2 subsections (2) and (3).

3 (2) A title insurer or title agent shall:

4 (a) deposit funds accepted in connection with an
 5 escrow, settlement, closing, or title indemnification in a
 6 separate fiduciary trust account in a bank or other
 7 financial institution insured by an agency of the federal
 8 government and segregate the funds by escrow, settlement,
 9 closing, or title indemnification in its records. The funds
 10 are the property of the person entitled thereto under the
 11 terms of the escrow, settlement, closing, or title
 12 indemnification and are not subject to debts of the title
 13 insurer or title agent. A title insurer or agent may use
 14 such funds only in accordance with the terms of the
 15 individual escrow, settlement, closing, or title
 16 indemnification under which the funds are accepted.

17 (b) pay interest on funds, deposited with it in
 18 connection with an escrow, settlement, closing, or title
 19 indemnification, to the depositing person or as otherwise
 20 provided by the terms thereof;

21 (c) maintain separate records of all receipts and
 22 disbursements of escrow, settlement, closing, or title
 23 indemnification funds; and

24 (d) comply with rules adopted by the commissioner
 25 pertaining to escrow, settlement, closing, or title

1 indemnification transactions.

2 (3) A title agent must keep books of account, records,
3 and vouchers pertaining to any escrow, closing, settlement,
4 or title indemnification business transacted, in such a
5 manner that the commissioner or his authorized
6 representative may readily ascertain, under the authority of
7 33-1-402, whether the title agent has complied with all
8 applicable provisions of this title.

9 NEW SECTION. Section 8. Disapproval of agency
10 contracts. (1) The commissioner may disapprove a title
11 agency contract between a title agent and title insurer,
12 upon appropriate notice to the parties to the contract, if
13 he finds that the contract, together with all amendments and
14 related documents:

15 (a) does not provide for adequate monitoring of the
16 agent's financial transactions; or

17 (b) provides for inadequate, unreasonable, or
18 excessive amounts to be paid to or retained by the title
19 agent. Factors the commissioner may consider in this
20 determination include but are not limited to the agent's
21 duties under the contract and the general level of amounts
22 paid to or retained by other title agents in the state
23 performing or assuming comparable duties.

24 (2) No person may act as a title agent under an agency
25 contract that has been disapproved by the commissioner.

1 NEW SECTION. Section 9. Report of claims. A title
2 agent must immediately report every loss claim to the title
3 insurer that issued the policy against which the claim is
4 presented.

5 NEW SECTION. Section 10. Refusal, suspension, or
6 revocation of title agent's license. (1) In addition to the
7 causes provided in 33-17-1001, the commissioner may refuse
8 to license a person as a title agent or may suspend or
9 revoke a title agent's license if, after a hearing held
10 after notice as required in 33-17-1001, he finds that the
11 license applicant or licensee has:

12 (a) made a material misstatement in an application for
13 a title agent license;

14 (b) commingled funds belonging to applicants, escrow
15 participants, or others;

16 (c) intentionally misrepresented the terms of a title
17 insurance policy to an applicant or policyholder or has
18 misrepresented material facts to, concealed material facts
19 from, or made false statements to a party to an escrow,
20 settlement, or closing transaction;

21 (d) in the conduct of his affairs under his title
22 agent's license, used coercive practices or shown himself to
23 be financially irresponsible;

24 (e) aided, abetted, or assisted another person in
25 violating the provisions of this title or a rule adopted by

1 the commissioner.

2 (2) The commissioner may impose any other appropriate
3 penalty provided for in this title.

4 (3) The commissioner may refuse, suspend, or revoke
5 the license of a firm, corporation, or other business entity
6 licensed as a title agent for the actions described in
7 subsection (1) of any individual designated in the license
8 to exercise its powers.

9 NEW SECTION. Section 11. Sharing of rate proceeds.
10 Title insurers and agents may share rate proceeds between or
11 among themselves in any combination and may exchange
12 business and share commissions as provided in 33-17-1103,
13 unless the sharing of rate proceeds is an unlawful rebate or
14 inducement under this title or is a payment of a forwarding
15 fee or finders fee.

16 NEW SECTION. Section 12. Prohibited practices --
17 referrals -- splitting charges -- exemptions. (1) Except as
18 provided in subsection (2), no person may:

19 (a) give or accept a fee, rebate, or thing of value
20 pursuant to an agreement or understanding that title
21 insurance business will be referred to a title agent; or

22 (b) give or accept a portion, split, or percentage of
23 a charge made or received for title insurance business in
24 connection with a transaction involving real property in
25 this state, other than for services actually performed.

1 (2) (a) A person may pay a return on an investment,
2 based on a percentage of an ownership interest in a title
3 insurance agent or franchise relationship, if:

4 (i) at or prior to the time of a referral a disclosure
5 of the existence of the arrangement is made to the person
6 being referred and, in connection with the referral, the
7 person is provided a written estimate of the charge or range
8 of charges generally made by the title agent to which the
9 person is referred; and

10 (ii) the person is not required to use a particular
11 agent.

12 (b) The following arrangements are not a violation
13 subsection (2)(a)(ii):

14 (i) an arrangement that requires a buyer, borrower, or
15 seller to pay for the services of an attorney, credit
16 reporting agency, or real estate appraiser chosen by a
17 lender to represent the lender's interest in a real estate
18 transaction; or

19 (ii) an arrangement by which an attorney or law firm
20 represents a client in a real estate transaction and issues
21 or arranges for the issuance of a policy of title insurance
22 in the transaction directly as agent or through a separate
23 corporate title insurance agency that may be established by
24 that attorney or law firm and operated as an adjunct to his
25 or its law practice.

1 (c) Failure to disclose a controlled business
 2 relationship is not a violation of subsection (2)(a)(i) if
 3 the failure was not intentional and resulted from a bona
 4 fide error, proven by a preponderance of the evidence.

5 (3) This section does not prohibit:

6 (a) the payment of a fee to an attorney for services
 7 actually rendered or by a title agent for services actually
 8 performed in the issuance of a title insurance policy; or

9 (b) payment of a bona fide salary, compensation, or
 10 other payment for goods or facilities actually furnished or
 11 for services actually performed.

12 NEW SECTION. Section 13. Prohibited practices --
 13 penalties -- treble damages, court costs, and attorney fees
 14 -- injunction. (1) A person found to have violated the
 15 provisions of [section 12] is jointly and severally liable
 16 to the person charged for the title insurance business
 17 involved in the violation for an amount equal to three times
 18 the amount of the charge paid for the business.

19 (2) In a civil action based on [section 12] and this
 20 section, the court may award to the prevailing party court
 21 costs plus reasonable attorney fees.

22 (3) The commissioner may bring a civil action to
 23 enjoin a violation of [section 12].

24 NEW SECTION. Section 14. Prohibited practices --
 25 producer and associates -- prohibition of favored agent or

1 insurer. No producer or associate may, directly or
 2 indirectly, require as a condition, agreement, or
 3 understanding of providing another person a loan, loan
 4 extension, credit, sale, property, contract, lease, or
 5 service that the other person obtain title insurance of any
 6 kind from a particular title insurer or title agent. No
 7 title insurer or title agent may knowingly participate in a
 8 plan or transaction prohibited by this section.

9 NEW SECTION. Section 15. Notice of issuance of
 10 mortgagee policy. (1) A title insurer or title agent that
 11 issues a mortgagee's policy of title insurance on a loan
 12 made simultaneous to the purchase of all or part of the
 13 property securing the loan, when no owner's policy has been
 14 ordered, must inform the borrower in writing that the
 15 mortgagee's policy is to be issued, that the mortgagee's
 16 policy does not protect the borrower, and that the borrower
 17 may obtain an owner's title insurance policy for his
 18 protection. This notice must be provided, on a form
 19 prescribed by the commissioner, before issuance of the
 20 mortgagee's policy.

21 (2) If the borrower elects not to purchase an owner's
 22 title insurance policy, the title insurer or title agent
 23 must obtain from him a statement in writing that the notice
 24 has been received and that the borrower waives the right to
 25 purchase an owner's title insurance policy. If the buyer

1 refuses to provide the statement and waiver, the title
 2 insurer or title agent must so note in the file. The
 3 statement and waiver must be on a form prescribed by the
 4 commissioner and must be retained by the title insurer or
 5 title agent for at least 5 years after receipt.

6 NEW-SECTION:--Section-16:--Title-plants-----requirement
 7 ---standards---limitations-on-sale---rules:--(1)--No-person
 8 may--act--as--a--title-insurance-agent-and-no-title-insurance
 9 agent-may-transact-the-business-of-title-insurance--in--this
 10 state-unless-the-agent-maintains-a-title-plant-for-which-the
 11 commissioner--has--issued--a--certificate--of-authority-or-a
 12 permit-without-inspection-under-the-provisions--of--(section
 13 17-or-19):

14 (2)--The--commissioner--shall--adopt-rules-establishing
 15 standards-for-operation-of-title-plants-in-this-state:--The
 16 rules--may-include-standards-for-tract-indices,--general-name
 17 indices,--maps,--plats,--and-other-organizing-devices:

18 (3)--Nothing-in-this-section-prevents-two-or-more-title
 19 agents-from-owning-and-maintaining-a-title--insurance--plant
 20 together-for-their-joint-use:

21 (4)--No--title--agent--may--sell--or--otherwise--transfer--a
 22 title-plant-unless-the-commissioner-first--inspects--it--and
 23 determines-it-is-in-compliance-with-this-title-and-the-rules
 24 of--the--commissioner:--The--commissioner--shall--conduct-a
 25 compliance-inspection-upon-request:

1 NEW-SECTION:--Section-17:--Title-plants-----certificate
 2 of--authority-----inspections:--(1)--A-title-agent-may-apply
 3 for-a-title-plant-certificate-of-authority-on-forms-provided
 4 by-the-commissioner:

5 (2)--The--commissioner--must--issue--a--title--plant
 6 certificate--of--authority--to--a--title--agent--if,--after
 7 inspection-of-the-plant,--the-commissioner--finds--the--title
 8 plant--in--compliance--with--this--title--and--title--plant
 9 standards-established-by-the-commissioner:

10 (3)--A-certificate-of-authority-continues-from-the-date
 11 issued-until-sale-or-other-transfer-of-a-plant-unless-sooner
 12 revoked-by-the-commissioner-or-relinquished-by--the--holder:

13 (4)--The--commissioner--must-inspect-a-title-plant-when
 14 required-under-(sections-16-and-19)-and-this-section:--The
 15 commissioner-may-inspect-a-title-plant-at-any-time-under-the
 16 authority--of--33-1-402--and--revoke--the--certificate--of
 17 authority-of-a-title-plant-found-to-be--not--in--compliance,
 18 after-a-hearing-held-pursuant-to-this-title:

19 (5)--The--commissioner--may--contract--with-a-qualified
 20 person,--firm,--or-organization-to-conduct--inspections--under
 21 this-section:

22 NEW-SECTION:--Section-18:--Costs-of-inspection-of-title
 23 plants-----rules:--A-title-agent-shall-pay-the-commissioner
 24 an-inspection-fee-based-on-the-reasonable---costs---of
 25 inspection,--as-established-by-rule-by-the-commissioner:--in

1 establishing an inspection fee; the commissioner may include
2 such costs as travel expenses; a reasonable expense
3 allowance; and compensation at reasonable rates of an
4 inspector;

5 NEW SECTION. Section 19. Permit without inspection
6 for existing title plants. (1) A title agent
7 transacting the business of title insurance on October 1,
8 1985, may apply for a title plant permit without inspection
9 by December 31, 1985, and may not transact the business of
10 title insurance after July 1, 1986, unless he has received a
11 temporary permit or certificate of authority from the
12 commissioner.

13 (2) A title agent shall apply for a temporary permit
14 on forms provided by the commissioner, providing information
15 reasonably required by the commissioner that shows that the
16 agent maintains an adequate and complete title plant in the
17 county where he intends to do business. The title insurer
18 with whom the agent intends to do business must sign the
19 application certifying that the agent is known to have a
20 good reputation and is worthy of public trust and that the
21 insurer knows of no fact or condition that would disqualify
22 the agent from receiving the permit.

23 (3) If the commissioner denies an application for a
24 permit without inspection, the applicant may request an
25 inspection of his title plant and apply for a certificate of

1 authority as provided in [section 17].

2 (4) A title agent who receives a title plant permit
3 without inspection is not relieved of the requirement of
4 inspection upon sale or transfer of the title plant or as
5 required by the commissioner under 33-1-402.

6 (5) A permit without inspection continues from the
7 date issued until sale or other transfer of a plant, unless
8 sooner revoked by the commissioner.

9 (6) After inspection, the commissioner may revoke a
10 permit of a title plant found to be not in compliance, after
11 a hearing held pursuant to this title.

12 Section 16. Section 33-2-108, MCA, is amended to read:

13 "33-2-108. Combinations of insuring powers. (1) Except
14 as provided in subsections (2), (3), and (4) and [section
15 5], an insurer which otherwise qualifies therefor may be
16 authorized to transact any one kind or combination of kinds
17 of insurance as defined in 33-1-205 through 33-1-212.

18 (2) A life insurer may also grant annuities but shall
19 not be authorized to transact any other kind of insurance
20 other than disability, except that if the insurer is
21 otherwise qualified therefor, the commissioner shall
22 continue to so authorize any life insurer which, immediately
23 prior to January 1, 1961, was lawfully authorized to
24 transact in this state a kind or kinds of insurance in
25 addition to life and disability.

1 (3) A reciprocal insurer shall not transact life
2 insurance.

3 (4) A title insurer shall be a stock insurer."

4 Section 17. Section 33-2-851, MCA, is amended to read:

5 "33-2-851. Special investments by title insurer. (1)
6 In addition to other investments eligible under this part, a
7 title insurer may invest and have invested an amount not
8 exceeding 50% of its paid-in capital stock in its ~~abstract~~
9 ~~title plant, as defined in [section 2], and equipment and,~~
10 ~~with the commissioner's consent, in stock of abstract~~
11 ~~companies and of title agents as defined in [section 2]. #f~~
12 ~~the--insurer--transacts--kinds--of--insurance--in--addition--to~~
13 ~~title--insurance,--for--the--purposes--of--this--section--its~~
14 ~~paid-in--capital--stock--shall--be--prorated--between--title~~
15 ~~insurance--and--such--other--insurances--upon--the--basis--of--the~~
16 ~~reserves--maintained--by--the--insurer--for--the--various--kinds--of~~
17 ~~insurance,--but--the--capital--so--assigned--to--title--insurance~~
18 ~~shall--in--no--event--be--less--than--\$100,000.~~

19 (2) Investments authorized by this section shall not
20 be credited against the insurer's required unearned premium
21 or guaranty fund reserve provided for under 33-2-517.

22 (3) Any such ~~abstract title~~ plant and equipment shall
23 not be so allowed as an asset in any determination of the
24 insurer's financial condition at a value greater than actual
25 cost."

1 Section 18. Section 33-17-212, MCA, is amended to
2 read:

3 "33-17-212. Examination required. (1) After completion
4 and filing of the application for license as required under
5 33-17-211, the commissioner shall subject each applicant for
6 license as agent or solicitor, unless exempted therefrom
7 under subsection (5) below, to a personal written
8 examination as to his competence to act as such agent or
9 solicitor.

10 (2) If the applicant is a firm or corporation, the
11 examination shall be so taken by each individual who is to
12 be named in the license as having authority to act for the
13 applicant in its insurance transactions under the license.

14 (3) Examination of an applicant for an agent's license
15 shall cover all of the kinds of insurance for which the
16 applicant has applied to be licensed, as constituted by any
17 one or more of the following classifications:

- 18 (a) life insurance;
- 19 (b) disability insurance;
- 20 (c) property insurance; for the purposes of this
- 21 provision, "marine" insurance shall be deemed to be included
- 22 in "property" insurance;
- 23 (d) casualty insurance;
- 24 (e) vehicle insurance;
- 25 (f) surety insurance;

1 (g) credit life and disability insurance;

2 (h) title insurance.

3 (4) Examination of an applicant for a solicitor's
4 license shall cover all the kinds of insurance, other than
5 life, as to which the appointing agent is licensed.

6 (5) This section shall not apply to, and no such
7 examination shall be required of:

8 (a) any individual lawfully licensed as an agent or
9 solicitor as to the kind or kinds of insurance to be
10 transacted as of or immediately prior to January 1, 1961,
11 and thereafter continuing to be so licensed;

12 (b) any applicant for license covering the same kind
13 or kinds of insurance as to which the applicant was licensed
14 in this state, other than under a temporary license, within
15 the 12 months next preceding date of application unless such
16 previous license was suspended, revoked, or continuation
17 thereof refused by the commissioner, except that the
18 provisions of this subsection (5)(b) do not apply to title
19 agents, as defined in [section 2];

20 (c) any applicant for license as nonresident agent,
21 subject to reciprocal arrangements as provided for in this
22 code;

23 (d) all applicants for license as agent for an insurer
24 that confines its business in this state substantially to
25 the insuring of the property, interests, and risks of

1 farmers, if exempted from examination by the commissioner,
2 in his discretion, upon written request of the insurer;

3 (e) transportation ticket agents of common carriers
4 applying for license to solicit and sell only:

5 (i) accident insurance ticket policies; or

6 (ii) insurance of personal effects while being carried
7 as baggage on such common carrier, as incidental to their
8 duties as such transportation ticket agents;

9 (f) agents' associations applying for license under
10 33-17-205;

11 ~~(g)--title-insurance-agents;~~

12 ~~(h)(g)~~ mechanical breakdown insurance agents."

13 Section 19. Section 33-17-213, MCA, is amended to
14 read:

15 "33-17-213. Conduct of examinations. (1) The
16 commissioner shall make any examination required under
17 33-17-212 available to applicants with reasonable frequency
18 and at a place in this state reasonably accessible to the
19 applicants. The commissioner shall make any such examination
20 available at his offices at Helena, Montana, at times within
21 his discretion but at least once a month.

22 (2) All the kinds of insurance or classes thereof, as
23 referred to in 33-17-212(3), which the applicant proposes to
24 transact under the license applied for shall be included in
25 the same examination.

1 (3) The commissioner shall give, conduct, and grade
2 all examinations in a fair and impartial manner and without
3 unfair discrimination as between individuals examined.

4 (4) The commissioner may require a reasonable waiting
5 period before reexamination of an applicant who has failed
6 to pass a previous examination covering the same kind or
7 kinds of insurance.

8 (5) The examination of a title agent, as defined in
9 [section 2], must include but is not limited to questions
10 pertaining to the search and examination of title to real
11 property, insurance principles relating to title insurance,
12 and the fiduciary duties and procedures of escrows,
13 settlements, and closings of real estate transactions."

14 Section 20. Section 33-17-1101, MCA, is amended to
15 read:

16 "33-17-1101. Place of business -- display of license
17 -- records. (1) Every agent shall have and maintain a place
18 of business accessible to the public. Such place of business
19 shall be that wherein the licensee principally conducts
20 transactions under his license. The address of such place
21 shall appear upon the license, and the licensee shall
22 promptly notify the commissioner of any change thereof.
23 Nothing in this section prohibits maintenance of such place
24 of business in the licensee's place of residence.

25 (2) The license of the licensee and the license of

1 each solicitor appointed by and representing the licensee
2 shall be conspicuously displayed in such place of business
3 in a part thereof customarily open to the public.

4 (3) The agent shall keep at his place of business
5 complete records pertaining to transactions under his
6 license and the licenses of his solicitors, for a period of
7 at least 3 years after completion of the respective
8 transactions, except that title agents, as defined in
9 [section 2], shall retain records as provided in [sections 6
10 and 15]."

11 NEW SECTION. Section 21. Repealer. Section 33-25-103,
12 MCA, is repealed.

13 NEW SECTION. Section 22. Extension of authority. Any
14 existing authority of the commissioner of insurance to make
15 rules on the subject of the provisions of this act is
16 extended to the provisions of this act.

17 NEW SECTION. Section 23. Codification instruction.
18 Sections 1 through ~~19~~ 15 are intended to be codified as an
19 integral part of Title 33, and the provisions of Title 33
20 apply to sections 1 through ~~19~~ 15.

21 NEW SECTION. Section 24. Severability. If a part of
22 this act is invalid, all valid parts that are severable from
23 the invalid part remain in effect. If a part of this act is
24 invalid in one or more of its applications, the part remains
25 in effect in all valid applications that are severable from

1 the invalid applications.

-End-

HOUSE BILL NO. 338

INTRODUCED BY ADDY, JONES, C. SMITH, LYNCH, HARP,
PAVLOVICH, MERCER, SCHULTZ, BRADLEY, DANIELS,
QUILICI, D. BROWN, KEATING, STIMATZ

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAWS RELATING TO TITLE INSURANCE; PROVIDING FOR THE LICENSING AND REGULATION OF TITLE INSURANCE AGENTS; ~~THE EXAMINATION OF TITLE INSURANCE PLANTS AND THE ISSUANCE OF CERTIFICATES OF AUTHORITY THEREFOR~~, AND THE REGULATION OF CONTROLLED BUSINESS IN THE TITLE INSURANCE INDUSTRY; AMENDING SECTIONS 33-2-108, 33-2-851, 33-17-212, 33-17-213, AND 33-17-1101, MCA; AND REPEALING SECTION 33-25-103, MCA."

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

NEW SECTION. Section 1. Short title. [Sections 1 through ~~19~~ 15], 33-25-101, and 33-25-102 may be cited as the "Montana Title Insurance Act".

NEW SECTION. Section 2. Definitions. As used in [sections 1 through ~~19~~ 15], 33-25-101, and 33-25-102, the following definitions apply:

(1) "Abstract" means a written representation, provided pursuant to a contract and expected to be relied upon by the person who has contracted for the receipt of that representation, listing all recorded conveyances,

instruments, or documents which, under the laws of this state, impart constructive notice regarding the chain of title to real property described in the abstract. Abstract includes "abstract of title".

(2) "Applicant" means a person, whether or not a prospective insured, who applies to a title insurer or title agent for a title insurance policy, but does not include a title agent.

(3) "Approved attorney" means an attorney authorized to practice law in this state, except an agent or employee of a title insurer, whose certification as to the status of the title to real property a title insurer is willing to accept as the basis for issuance of a title insurance policy.

(4) "Associate" means a:

(a) corporation, partnership, or other business entity organized for profit, of which a producer of title business is a director, officer, partner, employee, or owner of 5% or more of its equity or capital;

(b) franchisor or franchisee of a producer of title business;

(c) spouse, parent, or child of a producer of title business;

(d) corporation, partnership, or other business entity that controls, is controlled by, or is under common control



1 with a producer of title business; or

2 (e) person with whom a producer of title business or
3 an associate has an agreement, arrangement, understanding,
4 or course of conduct having the purpose or substantial
5 effect of evading the provisions of this title.

6 (5) "Controlled business" means that portion of the
7 business of title insurance in this state of a title insurer
8 or title agent that is referred to it by a producer or
9 associate having a financial interest in the title insurer
10 or title agent.

11 (6) "Financial interest" means a legal or beneficial
12 interest that entitles the holder, directly or indirectly,
13 to 1% or more of the net profits or net worth of the entity
14 in which the interest is held.

15 (7) "Preliminary report" means an offer to issue a
16 title insurance policy subject to any exceptions stated in
17 the report or other matters that may be incorporated by
18 reference therein. Preliminary report includes a commitment
19 or binder.

20 (8) (a) "Producer of title business" or "producer"
21 means a person, corporation, partnership, or other business
22 entity, including an officer, director, or owner of 5% or
23 more of the equity or capital thereof, engaged in this state
24 in the trade, business, occupation, or profession of:

25 (i) buying or selling interests in real property;

1 (ii) making loans secured by interests in real
2 property; or

3 (iii) acting as broker, agent, or representative of a
4 person described in subsection (8)(a)(i) or (8)(a)(ii).

5 (b) "Producer of title business" does not include an
6 attorney licensed to practice law in this state.

7 (9) "Rate" means fees for:

8 (a) issuing a title insurance policy, including any
9 service charge or fee for the issuance;

10 (b) abstracting, searching, and examining title to
11 real property when prepared or issued in contemplation of or
12 in conjunction with the issuance of a title insurance
13 policy; and

14 (c) preparing or issuing preliminary reports,
15 commitments, binders, or similar products prepared or issued
16 in contemplation of or in conjunction with the issuance of a
17 title insurance policy.

18 (10) "Refer" means to direct, cause to be directed, or
19 exercise an influence over the direction of title insurance
20 business, whether or not the consent or approval of another
21 person is sought or obtained with respect to the referral.

22 (11) (a) "Title agent" means a person who holds a valid
23 title agent's license and is authorized in writing by a
24 title insurer to:

25 (i) solicit title insurance business;

1 (ii) collect rates;

2 (iii) determine insurability in accordance with

3 underwriting rules and standards of the insurer; or

4 (iv) issue policies of the title insurer.

5 (b) "Title agent" does not include an approved

6 attorney.

7 (12) "Title insurance business" means:

8 (a) issuing or offering to issue a title insurance

9 policy as an insurer;

10 (b) transacting or proposing to transact any of the

11 following as a title insurer or title agent, in

12 contemplation of or in conjunction with the issuance of a

13 title insurance policy:

14 (i) soliciting or negotiating the issuance of a title

15 insurance policy;

16 (ii) guaranteeing, warranting, or otherwise insuring

17 the correctness of title searches;

18 (iii) handling escrows, settlements, or closings;

19 (iv) executing title insurance policies, reports,

20 commitments, binders, and endorsements;

21 (v) effecting contracts of reinsurance; or

22 (vi) abstracting, searching, or examining titles;

23 (c) transacting, as a title insurer or agent, matters

24 subsequent to the issuance of a title insurance policy and

25 arising out of the policy; or

1 (d) doing or proposing to do business that, in

2 substance, is equivalent to any of the activities described

3 in subsections (12)(a) through (12)(c) in a manner designed

4 to evade the provisions of this title.

5 (13) "Title insurance policy" means a contract by

6 which, subject to its stated terms and conditions, a title

7 insurer insures or indemnifies the insured against loss or

8 damage sustained by reason of:

9 (a) defects in or liens or encumbrances on the title

10 to the stated property;

11 (b) unmarketability of the title to the stated

12 property; or

13 (c) invalidity or unenforceability of liens or

14 encumbrances on the stated property.

15 (14) "Title insurer" means an insurer formed and

16 authorized under the laws of this state to transact the

17 business of title insurance in this state or a foreign or

18 alien insurer so authorized.

19 (15) "Title plant" means a set of privately maintained

20 records in which entries have been made of documents

21 imparting constructive notice, under the law, of matters

22 affecting title to real property, an interest therein, or an

23 encumbrance thereon, that have been filed or recorded in the

24 jurisdiction for which the title plant is maintained and

25 from which the ownership of real property within the

1 jurisdiction can be ascertained and liens, encumbrances,
 2 defects, and clouds on title to the real property can be
 3 determined.

4 NEW SECTION. Section 3. Application. (1) [Sections 1
 5 through ~~19~~ 15], 33-25-101, and 33-25-102 apply to all title
 6 insurers, title insurance rating organizations, title
 7 agents, applicants for title insurance, title insurance
 8 policyholders, and all other persons engaged in title
 9 insurance business in this state.

10 (2) [Sections 1 through ~~19~~ 15], 33-25-101, and
 11 33-25-102 do not authorize the practice of law by a person
 12 who is not licensed to practice law in this state, and
 13 [sections 1 through ~~19~~ 15], 33-25-101, and 33-25-102 do not
 14 authorize the commissioner to regulate the practice of law.

15 NEW SECTION. Section 4. Abstracts of title
 16 distinguished from title insurance policy and preliminary
 17 report. (1) A title insurance policy is not an abstract of
 18 title or representation as to the condition of title to the
 19 stated property.

20 (2) A preliminary report is not an abstract of title.
 21 The rights, duties, and liabilities applicable to the
 22 preparation and issuance of an abstract of title are not
 23 applicable to the issuance of a preliminary report. A
 24 preliminary report does not constitute a representation as
 25 to the condition of title to real property, but constitutes

1 a statement of the terms and conditions upon which the
 2 issuer is willing to issue its title insurance policy.

3 NEW SECTION. Section 5. Limitations on authority. (1)
 4 An insurer that transacts or is licensed to transact a class
 5 or kind of insurance other than title insurance is not
 6 eligible for the issuance or renewal of a license to
 7 transact the business of title insurance in this state and
 8 may not transact, underwrite, or issue title insurance.

9 (2) A title insurer may not engage in the business of
 10 guaranteeing payment of the principal or interest of bonds
 11 or mortgages.

12 (3) A title insurer may not engage in the business of
 13 guaranteeing the obligations of other persons, except its
 14 title agents or approved attorneys in the normal course of
 15 its business.

16 NEW SECTION. Section 6. Underwriting standards --
 17 record retention. (1) A title insurer may not issue a title
 18 insurance policy unless it, its title agent, or an approved
 19 attorney has conducted a reasonable search and examination
 20 of the title and made a determination of insurability of
 21 title in accordance with sound underwriting practices. The
 22 title insurer or title agent must preserve and retain in its
 23 files evidence of the examination of title and determination
 24 of insurability. The title insurer or title agent may keep
 25 original evidence or may establish in the regular course of

1 business a system of recording, copying, or reproducing
 2 evidence by any process that accurately and legibly
 3 reproduces, or forms a durable medium for reproducing, the
 4 contents of the original.

5 (2) Subsection (1) does not apply to:

6 (a) a title insurer assuming liability through a
 7 contract of reinsurance; or

8 (b) a title insurer acting as coinsurer if one of the
 9 other coinsuring title insurers has complied with subsection
 10 (1).

11 (3) Except as allowed by rules adopted by the
 12 commissioner, no title insurer or title agent may knowingly
 13 issue an owner's title insurance policy or commitment to
 14 insure unless all outstanding enforceable recorded liens or
 15 other interests against the property title to be insured are
 16 shown.

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

21 NEW SECTION. Section 7. Escrow, closing, or
 22 settlement services -- title indemnification -- maintenance
 23 of accounts -- rules. (1) A title insurer or title agent may
 24 provide escrow, settlement, or closing services, or any
 25 combination thereof, and may operate as an escrow,

1 settlement, or closing agent, subject to the provisions of
 2 subsections (2) and (3).

3 (2) A title insurer or title agent shall:

4 (a) deposit funds accepted in connection with an
 5 escrow, settlement, closing, or title indemnification in a
 6 separate fiduciary trust account in a bank or other
 7 financial institution insured by an agency of the federal
 8 government and segregate the funds by escrow, settlement,
 9 closing, or title indemnification in its records. The funds
 10 are the property of the person entitled thereto under the
 11 terms of the escrow, settlement, closing, or title
 12 indemnification and are not subject to debts of the title
 13 insurer or title agent. A title insurer or agent may use
 14 such funds only in accordance with the terms of the
 15 individual escrow, settlement, closing, or title
 16 indemnification under which the funds are accepted.

17 (b) pay interest on funds, deposited with it in
 18 connection with an escrow, settlement, closing, or title
 19 indemnification, to the depositing person or as otherwise
 20 provided by the terms thereof;

21 (c) maintain separate records of all receipts and
 22 disbursements of escrow, settlement, closing, or title
 23 indemnification funds; and

24 (d) comply with rules adopted by the commissioner
 25 pertaining to escrow, settlement, closing, or title

1 indemnification transactions.

2 (3) A title agent must keep books of account, records,
3 and vouchers pertaining to any escrow, closing, settlement,
4 or title indemnification business transacted, in such a
5 manner that the commissioner or his authorized
6 representative may readily ascertain, under the authority of
7 33-1-402, whether the title agent has complied with all
8 applicable provisions of this title.

9 NEW SECTION. Section 8. Disapproval of agency
10 contracts. (1) The commissioner may disapprove a title
11 agency contract between a title agent and title insurer,
12 upon appropriate notice to the parties to the contract, if
13 he finds that the contract, together with all amendments and
14 related documents:

15 (a) does not provide for adequate monitoring of the
16 agent's financial transactions; or

17 (b) provides for inadequate, unreasonable, or
18 excessive amounts to be paid to or retained by the title
19 agent. Factors the commissioner may consider in this
20 determination include but are not limited to the agent's
21 duties under the contract and the general level of amounts
22 paid to or retained by other title agents in the state
23 performing or assuming comparable duties.

24 (2) No person may act as a title agent under an agency
25 contract that has been disapproved by the commissioner.

1 NEW SECTION. Section 9. Report of claims. A title
2 agent must immediately report every loss claim to the title
3 insurer that issued the policy against which the claim is
4 presented.

5 NEW SECTION. Section 10. Refusal, suspension, or
6 revocation of title agent's license. (1) In addition to the
7 causes provided in 33-17-1001, the commissioner may refuse
8 to license a person as a title agent or may suspend or
9 revoke a title agent's license if, after a hearing held
10 after notice as required in 33-17-1001, he finds that the
11 license applicant or licensee has:

12 (a) made a material misstatement in an application for
13 a title agent license;

14 (b) commingled funds belonging to applicants, escrow
15 participants, or others;

16 (c) intentionally misrepresented the terms of a title
17 insurance policy to an applicant or policyholder or has
18 misrepresented material facts to, concealed material facts
19 from, or made false statements to a party to an escrow,
20 settlement, or closing transaction;

21 (d) in the conduct of his affairs under his title
22 agent's license, used coercive practices or shown himself to
23 be financially irresponsible;

24 (e) aided, abetted, or assisted another person in
25 violating the provisions of this title or a rule adopted by

1 the commissioner.

2 (2) The commissioner may impose any other appropriate
3 penalty provided for in this title.

4 (3) The commissioner may refuse, suspend, or revoke
5 the license of a firm, corporation, or other business entity
6 licensed as a title agent for the actions described in
7 subsection (1) of any individual designated in the license
8 to exercise its powers.

9 NEW SECTION. Section 11. Sharing of rate proceeds.
10 Title insurers and agents may share rate proceeds between or
11 among themselves in any combination and may exchange
12 business and share commissions as provided in 33-17-1103,
13 unless the sharing of rate proceeds is an unlawful rebate or
14 inducement under this title or is a payment of a forwarding
15 fee or finders fee.

16 NEW SECTION. Section 12. Prohibited practices --
17 referrals -- splitting charges -- exemptions. (1) Except as
18 provided in subsection (2), no person may:

19 (a) give or accept a fee, rebate, or thing of value
20 pursuant to an agreement or understanding that title
21 insurance business will be referred to a title agent; or

22 (b) give or accept a portion, split, or percentage of
23 a charge made or received for title insurance business in
24 connection with a transaction involving real property in
25 this state, other than for services actually performed.

1 (2) (a) A person may pay a return on an investment,
2 based on a percentage of an ownership interest in a title
3 insurance agent or franchise relationship, if:

4 (i) at or prior to the time of a referral a disclosure
5 of the existence of the arrangement is made to the person
6 being referred and, in connection with the referral, the
7 person is provided a written estimate of the charge or range
8 of charges generally made by the title agent to which the
9 person is referred; and

10 (ii) the person is not required to use a particular
11 agent.

12 (b) The following arrangements are not a violation of
13 subsection (2)(a)(ii):

14 (i) an arrangement that requires a buyer, borrower, or
15 seller to pay for the services of an attorney, credit
16 reporting agency, or real estate appraiser chosen by a
17 lender to represent the lender's interest in a real estate
18 transaction; or

19 (ii) an arrangement by which an attorney or law firm
20 represents a client in a real estate transaction and issues
21 or arranges for the issuance of a policy of title insurance
22 in the transaction directly as agent or through a separate
23 corporate title insurance agency that may be established by
24 that attorney or law firm and operated as an adjunct to his
25 or its law practice.

1 (c) Failure to disclose a controlled business
2 relationship is not a violation of subsection (2)(a)(i) if
3 the failure was not intentional and resulted from a bona
4 fide error, proven by a preponderance of the evidence.

5 (3) This section does not prohibit:

6 (a) the payment of a fee to an attorney for services
7 actually rendered or by a title agent for services actually
8 performed in the issuance of a title insurance policy; or

9 (b) payment of a bona fide salary, compensation, or
10 other payment for goods or facilities actually furnished or
11 for services actually performed.

12 NEW SECTION. Section 13. Prohibited practices --
13 penalties -- treble damages, court costs, and attorney fees
14 -- injunction. (1) A person found to have violated the
15 provisions of [section 12] is jointly and severally liable
16 to the person charged for the title insurance business
17 involved in the violation for an amount equal to three times
18 the amount of the charge paid for the business.

19 (2) In a civil action based on [section 12] and this
20 section, the court may award to the prevailing party court
21 costs plus reasonable attorney fees.

22 (3) The commissioner may bring a civil action to
23 enjoin a violation of [section 12].

24 NEW SECTION. Section 14. Prohibited practices --
25 producer and associates -- prohibition of favored agent or

1 insurer. No producer or associate may, directly or
2 indirectly, require as a condition, agreement, or
3 understanding of providing another person a loan, loan
4 extension, credit, sale, property, contract, lease, or
5 service that the other person obtain title insurance of any
6 kind from a particular title insurer or title agent. No
7 title insurer or title agent may knowingly participate in a
8 plan or transaction prohibited by this section.

9 NEW SECTION. Section 15. Notice of issuance of
10 mortgagee policy. (1) A title insurer or title agent that
11 issues a mortgagee's policy of title insurance on a loan
12 made simultaneous to the purchase of all or part of the
13 property securing the loan, when no owner's policy has been
14 ordered, must inform the borrower in writing that the
15 mortgagee's policy is to be issued, that the mortgagee's
16 policy does not protect the borrower, and that the borrower
17 may obtain an owner's title insurance policy for his
18 protection. This notice must be provided, on a form
19 prescribed by the commissioner, before issuance of the
20 mortgagee's policy.

21 (2) If the borrower elects not to purchase an owner's
22 title insurance policy, the title insurer or title agent
23 must obtain from him a statement in writing that the notice
24 has been received and that the borrower waives the right to
25 purchase an owner's title insurance policy. If the buyer

1 refuses to provide the statement and waiver, the title
 2 insurer or title agent must so note in the file. The
 3 statement and waiver must be on a form prescribed by the
 4 commissioner and must be retained by the title insurer or
 5 title agent for at least 5 years after receipt.

6 NEW-SECTION:--Section-16:--Title-plants-----requirement
 7 ---standards---limitations-on-sale---rules---(1)--No-person
 8 may-act-as-a-title-insurance-agent-and-no-title-insurance
 9 agent-may-transact-the-business-of-title-insurance--in--this
 10 state-unless-the-agent-maintains-a-title-plant-for-which-the
 11 commissioner--has--issued--a--certificate--of-authority-or-a
 12 permit-without-inspection-under-the-provisions--of--(section
 13 17-or-19):

14 (2)--The--commissioner--shall--adopt-rules-establishing
 15 standards-for-operation-of-title-plants-in-this-state,---The
 16 rules--may-include-standards-for-tract-indices,--general-name
 17 indices,--maps,--plats,--and-other-organizing-devices:

18 (3)--Nothing-in-this-section-prevents-two-or-more-title
 19 agents-from-owning-and-maintaining-a-title--insurance--plant
 20 together-for-their-joint-use:

21 (4)--No--title--agent--may-sell-or-otherwise-transfer-a
 22 title-plant-unless-the-commissioner-first--inspects--it--and
 23 determines-it-is-in-compliance-with-this-title-and-the-rules
 24 of--the--commissioner,---The--commissioner--shall--conduct-a
 25 compliance-inspection-upon-request:

1 NEW-SECTION:--Section-17:--Title-plants-----certificate
 2 of--authority-----inspections---(1)--A-title-agent-may-apply
 3 for-a-title-plant-certificate-of-authority-on-forms-provided
 4 by-the-commissioner:

5 (2)--The--commissioner--must--issue---a---title---plant
 6 certificate---of--authority--to--a--title--agent--if,--after
 7 inspection-of-the-plant,--the-commissioner--finds--the--title
 8 plant---in--compliance--with--this--title--and--title--plant
 9 standards-established-by-the-commissioner:

10 (3)--A-certificate-of-authority-continues-from-the-date
 11 issued-until-sale-or-other-transfer-of-a-plant-unless-sooner
 12 revoked-by-the-commissioner-or-relinquished-by--the--holder:

13 (4)--The--commissioner--must-inspect-a-title-plant-when
 14 required-under-(sections-16-and-19)-and-this--section,---The
 15 commissioner-may-inspect-a-title-plant-at-any-time-under-the
 16 authority---of---33-1-402--and--revoke--the--certificate--of
 17 authority-of-a-title-plant-found-to-be--not--in--compliance,
 18 after-a-hearing-held-pursuant-to-this-title:

19 (5)--The--commissioner--may--contract--with-a-qualified
 20 person,--firm,--or-organization-to-conduct--inspections--under
 21 this-section:

22 NEW-SECTION:--Section-18:--Costs-of-inspection-of-title
 23 plants-----rules:--A-title-agent-shall-pay-the-commissioner
 24 an--inspection--fee--based--on--the--reasonable---costs---of
 25 inspection,--as-established-by-rule-by-the-commissioner,---in

1 establishing an inspection fee, the commissioner may include
2 such costs as travel expenses, a reasonable expense
3 allowance, and compensation at reasonable rates of an
4 inspector.

5 NEW SECTION. Section 19. Permit without inspection
6 for existing title plants. (1) A title agent
7 transacting the business of title insurance on October 1,
8 1985, may apply for a title plant permit without inspection
9 by December 31, 1985, and may not transact the business of
10 title insurance after July 1, 1986, unless he has received a
11 temporary permit or certificate of authority from the
12 commissioner.

13 (2) A title agent shall apply for a temporary permit,
14 on forms provided by the commissioner, providing information
15 reasonably required by the commissioner that shows that the
16 agent maintains an adequate and complete title plant in the
17 county where he intends to do business. The title insurer
18 with whom the agent intends to do business must sign the
19 application certifying that the agent is known to have a
20 good reputation and is worthy of public trust and that the
21 insurer knows of no fact or condition that would disqualify
22 the agent from receiving the permit.

23 (3) If the commissioner denies an application for a
24 permit without inspection, the applicant may request an
25 inspection of his title plant and apply for a certificate of

1 authority as provided in {section 17}.

2 (4) A title agent who receives a title plant permit
3 without inspection is not relieved of the requirement of
4 inspection upon sale or transfer of the title plant or as
5 required by the commissioner under 33-1-402.

6 (5) A permit without inspection continues from the
7 date issued until sale or other transfer of a plant, unless
8 sooner revoked by the commissioner.

9 (6) After inspection, the commissioner may revoke a
10 permit of a title plant found to be not in compliance, after
11 a hearing held pursuant to this title.

12 Section 16. Section 33-2-108, MCA, is amended to read:

13 "33-2-108. Combinations of insuring powers. (1) Except
14 as provided in subsections (2), (3), and (4) and [section
15 5], an insurer which otherwise qualifies therefor may be
16 authorized to transact any one kind or combination of kinds
17 of insurance as defined in 33-1-205 through 33-1-212.

18 (2) A life insurer may also grant annuities but shall
19 not be authorized to transact any other kind of insurance
20 other than disability, except that if the insurer is
21 otherwise qualified therefor, the commissioner shall
22 continue to so authorize any life insurer which, immediately
23 prior to January 1, 1961, was lawfully authorized to
24 transact in this state a kind or kinds of insurance in
25 addition to life and disability.

1 (3) A reciprocal insurer shall not transact life
2 insurance.

3 (4) A title insurer shall be a stock insurer."

4 Section 17. Section 33-2-851, MCA, is amended to read:

5 "33-2-851. Special investments by title insurer. (1)
6 In addition to other investments eligible under this part, a
7 title insurer may invest and have invested an amount not
8 exceeding 50% of its paid-in capital stock in its ~~abstract~~
9 title plant, as defined in [section 2], and equipment and,
10 with the commissioner's consent, in stock of abstract
11 companies and of title agents as defined in [section 2]. ~~if~~
12 ~~the--insurer--transacts--kinds--of--insurance--in--addition--to~~
13 ~~title--insurance--for--the--purposes--of--this--section--its~~
14 ~~paid-in--capital--stock--shall--be--prorated--between--title~~
15 ~~insurance--and--such--other--insurances--upon--the--basis--of--the~~
16 ~~reserves--maintained--by--the--insurer--for--the--various--kinds--of~~
17 ~~insurance--but--the--capital--so--assigned--to--title--insurance~~
18 ~~shall--in--no--event--be--less--than--\$100,000.~~

19 (2) Investments authorized by this section shall not
20 be credited against the insurer's required unearned premium
21 or guaranty fund reserve provided for under 33-2-517.

22 (3) Any such abstract title plant and equipment shall
23 not be so allowed as an asset in any determination of the
24 insurer's financial condition at a value greater than actual
25 cost."

1 Section 18. Section 33-17-212, MCA, is amended to
2 read:

3 "33-17-212. Examination required. (1) After completion
4 and filing of the application for license as required under
5 33-17-211, the commissioner shall subject each applicant for
6 license as agent or solicitor, unless exempted therefrom
7 under subsection (5) (6) below, to a personal written
8 examination as to his competence to act as such agent or
9 solicitor.

10 (2) If the applicant is a firm or corporation, the
11 examination shall be so taken by each individual who is to
12 be named in the license as having authority to act for the
13 applicant in its insurance transactions under the license.

14 (3) Examination of an applicant for an agent's license
15 shall cover all of the kinds of insurance for which the
16 applicant has applied to be licensed, as constituted by any
17 one or more of the following classifications:

- 18 (a) life insurance;
- 19 (b) disability insurance;
- 20 (c) property insurance; for the purposes of this
- 21 provision, "marine" insurance shall be deemed to be included
- 22 in "property" insurance;
- 23 (d) casualty insurance;
- 24 (e) vehicle insurance;
- 25 (f) surety insurance;

1 (g) credit life and disability insurance;

2 (h) title insurance.

3 (4) Examination of an applicant for a solicitor's
4 license shall cover all the kinds of insurance, other than
5 life, as to which the appointing agent is licensed.

6 (5) THE COMMISSIONER SHALL ASSESS A FEE FOR
7 ADMINISTERING THE EXAMINATION TO AN APPLICANT FOR A TITLE
8 INSURANCE AGENT'S LICENSE THAT IS CALCULATED TO COVER THE
9 COST OF ADMINISTRATION OF THE EXAMINATION.

10 †5)†6) This section shall not apply to, and no such
11 examination shall be required of:

12 (a) any individual lawfully licensed as an agent or
13 solicitor as to the kind or kinds of insurance to be
14 transacted as of or immediately prior to January 1, 1961,
15 and thereafter continuing to be so licensed;

16 (b) any applicant for license covering the same kind
17 or kinds of insurance as to which the applicant was licensed
18 in this state, other than under a temporary license, within
19 the 12 months next preceding date of application unless such
20 previous license was suspended, revoked, or continuation
21 thereof refused by the commissioner, except that the
22 provisions of this subsection †5)†6)(b) do not apply to
23 title agents, as defined in [section 2];

24 (c) any applicant for license as nonresident agent,
25 subject to reciprocal arrangements as provided for in this

1 code;

2 (d) all applicants for license as agent for an insurer
3 that confines its business in this state substantially to
4 the insuring of the property, interests, and risks of
5 farmers, if exempted from examination by the commissioner,
6 in his discretion, upon written request of the insurer;

7 (e) transportation ticket agents of common carriers
8 applying for license to solicit and sell only:

9 (i) accident insurance ticket policies; or

10 (ii) insurance of personal effects while being carried
11 as baggage on such common carrier, as incidental to their
12 duties as such transportation ticket agents;

13 (f) agents' associations applying for license under
14 33-17-205;

15 ~~†g) title insurance agents;~~

16 †h)†g) mechanical breakdown insurance agents."

17 Section 19. Section 33-17-213, MCA, is amended to
18 read:

19 "33-17-213. Conduct of examinations. (1) The
20 commissioner shall make any examination required under
21 33-17-212 available to applicants with reasonable frequency
22 and at a place in this state reasonably accessible to the
23 applicants. The commissioner shall make any such examination
24 available at his offices at Helena, Montana, at times within
25 his discretion but at least once a month.

1 (2) All the kinds of insurance or classes thereof, as
 2 referred to in 33-17-212(3), which the applicant proposes to
 3 transact under the license applied for shall be included in
 4 the same examination.

5 (3) The commissioner shall give, conduct, and grade
 6 all examinations in a fair and impartial manner and without
 7 unfair discrimination as between individuals examined.

8 (4) The commissioner may require a reasonable waiting
 9 period before reexamination of an applicant who has failed
 10 to pass a previous examination covering the same kind or
 11 kinds of insurance.

12 (5) The examination of a title agent, as defined in
 13 [section 2], must include but is not limited to questions
 14 pertaining to the search and examination of title to real
 15 property, insurance principles relating to title insurance,
 16 and the fiduciary duties and procedures of escrows,
 17 settlements, and closings of real estate transactions."

18 Section 20. Section 33-17-1101, MCA, is amended to
 19 read:

20 "33-17-1101. Place of business -- display of license
 21 -- records. (1) Every agent shall have and maintain a place
 22 of business accessible to the public. Such place of business
 23 shall be that wherein the licensee principally conducts
 24 transactions under his license. The address of such place
 25 shall appear upon the license, and the licensee shall

1 promptly notify the commissioner of any change thereof.
 2 Nothing in this section prohibits maintenance of such place
 3 of business in the licensee's place of residence.

4 (2) The license of the licensee and the license of
 5 each solicitor appointed by and representing the licensee
 6 shall be conspicuously displayed in such place of business
 7 in a part thereof customarily open to the public.

8 (3) The agent shall keep at his place of business
 9 complete records pertaining to transactions under his
 10 license and the licenses of his solicitors, for a period of
 11 at least 3 years after completion of the respective
 12 transactions, except that title agents, as defined in
 13 [section 2], shall retain records as provided in [sections 6
 14 and 15]."

15 NEW SECTION. Section 21. Repealer. Section 33-25-103,
 16 MCA, is repealed.

17 NEW SECTION. Section 22. Extension of authority. Any
 18 existing authority of the commissioner of insurance to make
 19 rules on the subject of the provisions of this act is
 20 extended to the provisions of this act.

21 NEW SECTION. Section 23. Codification instruction.
 22 Sections 1 through ~~19~~ 15 are intended to be codified as an
 23 integral part of Title 33, and the provisions of Title 33
 24 apply to sections 1 through ~~19~~ 15.

25 NEW SECTION. Section 24. Severability. If a part of

1 this act is invalid, all valid parts that are severable from
2 the invalid part remain in effect. If a part of this act is
3 invalid in one or more of its applications, the part remains
4 in effect in all valid applications that are severable from
5 the invalid applications.

-End-

SENATE

STANDING COMMITTEE REPORT

MARCH 27 1985

Page 1 of 3

Page 2 of 3
House Bill 338
Business & Industry

MARCH 27 1985

MR. PRESIDENT

We, your committee on BUSINESS & INDUSTRY

having had under consideration HOUSE BILL No. 338

third reading copy (blue color)

GENERALLY REVISE TITLE INSURANCE LAWS

HOUSE BILL 338

Respectfully report as follows: That No.

be amended as follows:

1. Title, line 13.
Following: line 12
Strike: "AND"
Following: "33-17-1101,"
Insert: "AND 33-17-1102,"

2. Page 3, line 20.
Following: "(8)"
Strike: "(a)"

3. Page 3, line 25.
Following: line 25
Strike: "(i)"
Insert: "(a)"

4. Page 4, line 1.
Following: page 3
Strike: "(ii)"
Insert: "(b)"

5. Page 4, line 3.
Following: line 2
Strike: "(iii)"
Insert: "(c)"

(continued)

XXXXXX

XXXXXXXXXX

MJA

Chairman.

6. Page 4, lines 5 and 6.
Strike: subsection (b) in its entirety

7. Page 8, line 8.
Following: "insurance."
Insert: "An insurer authorized to transact any combination of kinds of insurance, including title insurance, under an existing certificate of authority may continue to do so until the certificate of authority is renewed effective June 1, 1986."

8. Page 9, line 20.
Following: "insured"
Strike: "or assigns"

9. Page 10, line 17.
Following: "pay"
Insert: "any"
Following: "interest"
Insert: "received"
Following: "funds"
Strike: ",,"

10. Page 14, line 3.
Following: "insurance"
Strike: "agent or franchise relationship"
Insert: "agency"

11. Page 22, line 7.
Following: "45"
Strike: "(6)"
Insert: "(5)"

12. Page 23, lines 6 through 9.
Strike: subsection 5 in its entirety
Renumber: subsequent subsection

13. Page 23, line 22.
Following: "45"
Strike: "(6)"
Insert: "(5)"

(continued on page 3)

MJA


14. Page 26, line 15.

Following: line 14

Insert: "Section 21. Section 33-17-1102, MCA, is amended to read:
"33-17-1102. Reporting and accounting for premiums. (1) All premiums
or return premiums received by an agent or solicitor shall be trust
funds so received by the licensee in a fiduciary capacity, and the
agent or solicitor shall in the applicable regular course of business
account for and pay the same to the insured, insurer, or agent
entitled thereto.~~3~~ Except for a title agent as defined in [section 21,
if the licensee establishes a separate deposit for funds so belonging
to others in order to avoid a commingling of such fiduciary funds
with his own funds, he may deposit and commingle in the same such
separate deposit all such funds belonging to others so long as the
amount of such deposit so held for each respective other person is
reasonably ascertainable from the records and accounts of the
licensee. (2) Any agent or solicitor who, not being lawfully
entitled thereto, diverts or appropriates such funds or any portion
thereof to his own use is, upon conviction, guilty of theft and
shall be punished as provided by law." "

Renumber: subsequent sections

AND AS AMENDED
BE CONCURRED IN


Sen. Mike Halligan

1 HOUSE BILL NO. 338

2 INTRODUCED BY ADDY, JONES, C. SMITH, LYNCH, HARP,
3 PAVLOVICH, MERCER, SCHULTZ, BRADLEY, DANIELS,
4 QUILICI, D. BROWN, KEATING, STIMATZ

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
7 LAWS RELATING TO TITLE INSURANCE; PROVIDING FOR THE
8 LICENSING AND REGULATION OF TITLE INSURANCE AGENTS, ~~THE~~
9 ~~EXAMINATION OF TITLE INSURANCE PLANTS AND THE ISSUANCE OF~~
10 ~~CERTIFICATES OF AUTHORITY THEREFOR,~~ AND THE REGULATION OF
11 CONTROLLED BUSINESS IN THE TITLE INSURANCE INDUSTRY;
12 AMENDING SECTIONS 33-2-108, 33-2-851, 33-17-212, 33-17-213,
13 ANB 33-17-1101, AND 33-17-1102, MCA; AND REPEALING SECTION
14 33-25-103, MCA."

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17 NEW SECTION. Section 1. Short title. [Sections 1
18 through 19 15], 33-25-101, and 33-25-102 may be cited as the
19 "Montana Title Insurance Act".

20 NEW SECTION. Section 2. Definitions. As used in
21 [sections 1 through 19 15], 33-25-101, and 33-25-102, the
22 following definitions apply:

23 (1) "Abstract" means a written representation,
24 provided pursuant to a contract and expected to be relied
25 upon by the person who has contracted for the receipt of

1 that representation, listing all recorded conveyances,
2 instruments, or documents which, under the laws of this
3 state, impart constructive notice regarding the chain of
4 title to real property described in the abstract. Abstract
5 includes "abstract of title".

6 (2) "Applicant" means a person, whether or not a
7 prospective insured, who applies to a title insurer or title
8 agent for a title insurance policy, but does not include a
9 title agent.

10 (3) "Approved attorney" means an attorney authorized
11 to practice law in this state, except an agent or employee
12 of a title insurer, whose certification as to the status of
13 the title to real property a title insurer is willing to
14 accept as the basis for issuance of a title insurance
15 policy.

16 (4) "Associate" means a:

17 (a) corporation, partnership, or other business entity
18 organized for profit, of which a producer of title business
19 is a director, officer, partner, employee, or owner of 5% or
20 more of its equity or capital;

21 (b) franchisor or franchisee of a producer of title
22 business;

23 (c) spouse, parent, or child of a producer of title
24 business;

25 (d) corporation, partnership, or other business entity

1 that controls, is controlled by, or is under common control
2 with a producer of title business; or

3 (e) person with whom a producer of title business or
4 an associate has an agreement, arrangement, understanding,
5 or course of conduct having the purpose or substantial
6 effect of evading the provisions of this title.

7 (5) "Controlled business" means that portion of the
8 business of title insurance in this state of a title insurer
9 or title agent that is referred to it by a producer or
10 associate having a financial interest in the title insurer
11 or title agent.

12 (6) "Financial interest" means a legal or beneficial
13 interest that entitles the holder, directly or indirectly,
14 to 1% or more of the net profits or net worth of the entity
15 in which the interest is held.

16 (7) "Preliminary report" means an offer to issue a
17 title insurance policy subject to any exceptions stated in
18 the report or other matters that may be incorporated by
19 reference therein. Preliminary report includes a commitment
20 or binder.

21 (8) ~~(a)~~ "Producer of title business" or "producer"
22 means a person, corporation, partnership, or other business
23 entity, including an officer, director, or owner of 5% or
24 more of the equity or capital thereof, engaged in this state
25 in the trade, business, occupation, or profession of:

1 ~~(i)~~(A) buying or selling interests in real property;
2 ~~(ii)~~(B) making loans secured by interests in real
3 property; or

4 ~~(iii)~~(C) acting as broker, agent, or representative of
5 a person described in subsection (8)(a)(i) or (8)(a)(ii).

6 ~~(b) "Producer of title business" does not include an~~
7 ~~attorney licensed to practice law in this state.~~

8 (9) "Rate" means fees for:

9 (a) issuing a title insurance policy, including any
10 service charge or fee for the issuance;

11 (b) abstracting, searching, and examining title to
12 real property when prepared or issued in contemplation of or
13 in conjunction with the issuance of a title insurance
14 policy; and

15 (c) preparing or issuing preliminary reports,
16 commitments, binders, or similar products prepared or issued
17 in contemplation of or in conjunction with the issuance of a
18 title insurance policy.

19 (10) "Refer" means to direct, cause to be directed, or
20 exercise an influence over the direction of title insurance
21 business, whether or not the consent or approval of another
22 person is sought or obtained with respect to the referral.

23 (11) (a) "Title agent" means a person who holds a valid
24 title agent's license and is authorized in writing by a
25 title insurer to:

1 (i) solicit title insurance business;
 2 (ii) collect rates;
 3 (iii) determine insurability in accordance with
 4 underwriting rules and standards of the insurer; or
 5 (iv) issue policies of the title insurer.
 6 (b) "Title agent" does not include an approved
 7 attorney.
 8 (12) "Title insurance business" means:
 9 (a) issuing or offering to issue a title insurance
 10 policy as an insurer;
 11 (b) transacting or proposing to transact any of the
 12 following as a title insurer or title agent, in
 13 contemplation of or in conjunction with the issuance of a
 14 title insurance policy:
 15 (i) soliciting or negotiating the issuance of a title
 16 insurance policy;
 17 (ii) guaranteeing, warranting, or otherwise insuring
 18 the correctness of title searches;
 19 (iii) handling escrows, settlements, or closings;
 20 (iv) executing title insurance policies, reports,
 21 commitments, binders, and endorsements;
 22 (v) effecting contracts of reinsurance; or
 23 (vi) abstracting, searching, or examining titles;
 24 (c) transacting, as a title insurer or agent, matters
 25 subsequent to the issuance of a title insurance policy and

1 arising out of the policy; or
 2 (d) doing or proposing to do business that, in
 3 substance, is equivalent to any of the activities described
 4 in subsections (12)(a) through (12)(c) in a manner designed
 5 to evade the provisions of this title.
 6 (13) "Title insurance policy" means a contract by
 7 which, subject to its stated terms and conditions, a title
 8 insurer insures or indemnifies the insured against loss or
 9 damage sustained by reason of:
 10 (a) defects in or liens or encumbrances on the title
 11 to the stated property;
 12 (b) unmarketability of the title to the stated
 13 property; or
 14 (c) invalidity or unenforceability of liens or
 15 encumbrances on the stated property.
 16 (14) "Title insurer" means an insurer formed and
 17 authorized under the laws of this state to transact the
 18 business of title insurance in this state or a foreign or
 19 alien insurer so authorized.
 20 (15) "Title plant" means a set of privately maintained
 21 records in which entries have been made of documents
 22 imparting constructive notice, under the law, of matters
 23 affecting title to real property, an interest therein, or an
 24 encumbrance thereon, that have been filed or recorded in the
 25 jurisdiction for which the title plant is maintained and

1 from which the ownership of real property within the
2 jurisdiction can be ascertained and liens, encumbrances,
3 defects, and clouds on title to the real property can be
4 determined.

5 NEW SECTION. Section 3. Application. (1) [Sections 1
6 through 19 15], 33-25-101, and 33-25-102 apply to all title
7 insurers, title insurance rating organizations, title
8 agents, applicants for title insurance, title insurance
9 policyholders, and all other persons engaged in title
10 insurance business in this state.

11 (2) [Sections 1 through 19 15], 33-25-101, and
12 33-25-102 do not authorize the practice of law by a person
13 who is not licensed to practice law in this state, and
14 [sections 1 through 19 15], 33-25-101, and 33-25-102 do not
15 authorize the commissioner to regulate the practice of law.

16 NEW SECTION. Section 4. Abstracts of title
17 distinguished from title insurance policy and preliminary
18 report. (1) A title insurance policy is not an abstract of
19 title or representation as to the condition of title to the
20 stated property.

21 (2) A preliminary report is not an abstract of title.
22 The rights, duties, and liabilities applicable to the
23 preparation and issuance of an abstract of title are not
24 applicable to the issuance of a preliminary report. A
25 preliminary report does not constitute a representation as

1 to the condition of title to real property, but constitutes
2 a statement of the terms and conditions upon which the
3 issuer is willing to issue its title insurance policy.

4 NEW SECTION. Section 5. Limitations on authority. (1)
5 An insurer that transacts or is licensed to transact a class
6 or kind of insurance other than title insurance is not
7 eligible for the issuance or renewal of a license to
8 transact the business of title insurance in this state and
9 may not transact, underwrite, or issue title insurance. AN
10 INSURER AUTHORIZED TO TRANSACT ANY COMBINATION OF KINDS OF
11 INSURANCE, INCLUDING TITLE INSURANCE, UNDER AN EXISTING
12 CERTIFICATE OF AUTHORITY MAY CONTINUE TO DO SO UNTIL THE
13 CERTIFICATE OF AUTHORITY IS RENEWED EFFECTIVE JUNE 1, 1986.

14 (2) A title insurer may not engage in the business of
15 guaranteeing payment of the principal or interest of bonds
16 or mortgages.

17 (3) A title insurer may not engage in the business of
18 guaranteeing the obligations of other persons, except its
19 title agents or approved attorneys in the normal course of
20 its business.

21 NEW SECTION. Section 6. Underwriting standards --
22 record retention. (1) A title insurer may not issue a title
23 insurance policy unless it, its title agent, or an approved
24 attorney has conducted a reasonable search and examination
25 of the title and made a determination of insurability of

1 title in accordance with sound underwriting practices. The
 2 title insurer or title agent must preserve and retain in its
 3 files evidence of the examination of title and determination
 4 of insurability. The title insurer or title agent may keep
 5 original evidence or may establish in the regular course of
 6 business a system of recording, copying, or reproducing
 7 evidence by any process that accurately and legibly
 8 reproduces, or forms a durable medium for reproducing, the
 9 contents of the original.

10 (2) Subsection (1) does not apply to:

11 (a) a title insurer assuming liability through a
 12 contract of reinsurance; or

13 (b) a title insurer acting as coinsurer if one of the
 14 other coinsuring title insurers has complied with subsection
 15 (1).

16 (3) Except as allowed by rules adopted by the
 17 commissioner, no title insurer or title agent may knowingly
 18 issue an owner's title insurance policy or commitment to
 19 insure unless all outstanding enforceable recorded liens or
 20 other interests against the property title to be insured are
 21 shown.

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

1 NEW SECTION. Section 7. Escrow, closing, or
 2 settlement services -- title indemnification -- maintenance
 3 of accounts -- rules. (1) A title insurer or title agent may
 4 provide escrow, settlement, or closing services, or any
 5 combination thereof, and may operate as an escrow,
 6 settlement, or closing agent, subject to the provisions of
 7 subsections (2) and (3).

8 (2) A title insurer or title agent shall:

9 (a) deposit funds accepted in connection with an
 10 escrow, settlement, closing, or title indemnification in a
 11 separate fiduciary trust account in a bank or other
 12 financial institution insured by an agency of the federal
 13 government and segregate the funds by escrow, settlement,
 14 closing, or title indemnification in its records. The funds
 15 are the property of the person entitled thereto under the
 16 terms of the escrow, settlement, closing, or title
 17 indemnification and are not subject to debts of the title
 18 insurer or title agent. A title insurer or agent may use
 19 such funds only in accordance with the terms of the
 20 individual escrow, settlement, closing, or title
 21 indemnification under which the funds are accepted.

22 (b) pay ANY interest RECEIVED on funds deposited with
 23 it in connection with an escrow, settlement, closing, or
 24 title indemnification, to the depositing person or as
 25 otherwise provided by the terms thereof;

1 (c) maintain separate records of all receipts and
 2 disbursements of escrow, settlement, closing, or title
 3 indemnification funds; and

4 (d) comply with rules adopted by the commissioner
 5 pertaining to escrow, settlement, closing, or title
 6 indemnification transactions.

7 (3) A title agent must keep books of account, records,
 8 and vouchers pertaining to any escrow, closing, settlement,
 9 or title indemnification business transacted, in such a
 10 manner that the commissioner or his authorized
 11 representative may readily ascertain, under the authority of
 12 33-1-402, whether the title agent has complied with all
 13 applicable provisions of this title.

14 NEW SECTION. Section 8. Disapproval of agency
 15 contracts. (1) The commissioner may disapprove a title
 16 agency contract between a title agent and title insurer,
 17 upon appropriate notice to the parties to the contract, if
 18 he finds that the contract, together with all amendments and
 19 related documents:

20 (a) does not provide for adequate monitoring of the
 21 agent's financial transactions; or

22 (b) provides for inadequate, unreasonable, or
 23 excessive amounts to be paid to or retained by the title
 24 agent. Factors the commissioner may consider in this
 25 determination include but are not limited to the agent's

1 duties under the contract and the general level of amounts
 2 paid to or retained by other title agents in the state
 3 performing or assuming comparable duties.

4 (2) No person may act as a title agent under an agency
 5 contract that has been disapproved by the commissioner.

6 NEW SECTION. Section 9. Report of claims. A title
 7 agent must immediately report every loss claim to the title
 8 insurer that issued the policy against which the claim is
 9 presented.

10 NEW SECTION. Section 10. Refusal, suspension, or
 11 revocation of title agent's license. (1) In addition to the
 12 causes provided in 33-17-1001, the commissioner may refuse
 13 to license a person as a title agent or may suspend or
 14 revoke a title agent's license if, after a hearing held
 15 after notice as required in 33-17-1001, he finds that the
 16 license applicant or licensee has:

17 (a) made a material misstatement in an application for
 18 a title agent license;

19 (b) commingled funds belonging to applicants, escrow
 20 participants, or others;

21 (c) intentionally misrepresented the terms of a title
 22 insurance policy to an applicant or policyholder or has
 23 misrepresented material facts to, concealed material facts
 24 from, or made false statements to a party to an escrow,
 25 settlement, or closing transaction;

1 (d) in the conduct of his affairs under his title
 2 agent's license, used coercive practices or shown himself to
 3 be financially irresponsible;

4 (e) aided, abetted, or assisted another person in
 5 violating the provisions of this title or a rule adopted by
 6 the commissioner.

7 (2) The commissioner may impose any other appropriate
 8 penalty provided for in this title.

9 (3) The commissioner may refuse, suspend, or revoke
 10 the license of a firm, corporation, or other business entity
 11 licensed as a title agent for the actions described in
 12 subsection (1) of any individual designated in the license
 13 to exercise its powers.

14 NEW SECTION. Section 11. Sharing of rate proceeds.
 15 Title insurers and agents may share rate proceeds between or
 16 among themselves in any combination and may exchange
 17 business and share commissions as provided in 33-17-1103,
 18 unless the sharing of rate proceeds is an unlawful rebate or
 19 inducement under this title or is a payment of a forwarding
 20 fee or finders fee.

21 NEW SECTION. Section 12. Prohibited practices --
 22 referrals -- splitting charges -- exemptions. (1) Except as
 23 provided in subsection (2), no person may:

24 (a) give or accept a fee, rebate, or thing of value
 25 pursuant to an agreement or understanding that title

1 insurance business will be referred to a title agent; or

2 (b) give or accept a portion, split, or percentage of
 3 a charge made or received for title insurance business in
 4 connection with a transaction involving real property in
 5 this state, other than for services actually performed.

6 (2) (a) A person may pay a return on an investment,
 7 based on a percentage of an ownership interest in a title
 8 insurance agent-or-franchise-relationship AGENCY, if:

9 (i) at or prior to the time of a referral a disclosure
 10 of the existence of the arrangement is made to the person
 11 being referred and, in connection with the referral, the
 12 person is provided a written estimate of the charge or range
 13 of charges generally made by the title agent to which the
 14 person is referred; and

15 (ii) the person is not required to use a particular
 16 agent.

17 (b) The following arrangements are not a violation of
 18 subsection (2)(a)(ii):

19 (i) an arrangement that requires a buyer, borrower, or
 20 seller to pay for the services of an attorney, credit
 21 reporting agency, or real estate appraiser chosen by a
 22 lender to represent the lender's interest in a real estate
 23 transaction; or

24 (ii) an arrangement by which an attorney or law firm
 25 represents a client in a real estate transaction and issues

1 or arranges for the issuance of a policy of title insurance
 2 in the transaction directly as agent or through a separate
 3 corporate title insurance agency that may be established by
 4 that attorney or law firm and operated as an adjunct to his
 5 or its law practice.

6 (c) Failure to disclose a controlled business
 7 relationship is not a violation of subsection (2)(a)(i) if
 8 the failure was not intentional and resulted from a bona
 9 fide error, proven by a preponderance of the evidence.

10 (3) This section does not prohibit:

11 (a) the payment of a fee to an attorney for services
 12 actually rendered or by a title agent for services actually
 13 performed in the issuance of a title insurance policy; or

14 (b) payment of a bona fide salary, compensation, or
 15 other payment for goods or facilities actually furnished or
 16 for services actually performed.

17 NEW SECTION. Section 13. Prohibited practices --
 18 penalties -- treble damages, court costs, and attorney fees
 19 -- injunction. (1) A person found to have violated the
 20 provisions of [section 12] is jointly and severally liable
 21 to the person charged for the title insurance business
 22 involved in the violation for an amount equal to three times
 23 the amount of the charge paid for the business.

24 (2) In a civil action based on [section 12] and this
 25 section, the court may award to the prevailing party court

1 costs plus reasonable attorney fees.

2 (3) The commissioner may bring a civil action to
 3 enjoin a violation of [section 12].

4 NEW SECTION. Section 14. Prohibited practices --
 5 producer and associates -- prohibition of favored agent or
 6 insurer. No producer or associate may, directly or
 7 indirectly, require as a condition, agreement, or
 8 understanding of providing another person a loan, loan
 9 extension, credit, sale, property, contract, lease, or
 10 service that the other person obtain title insurance of any
 11 kind from a particular title insurer or title agent. No
 12 title insurer or title agent may knowingly participate in a
 13 plan or transaction prohibited by this section.

14 NEW SECTION. Section 15. Notice of issuance of
 15 mortgagee policy. (1) A title insurer or title agent that
 16 issues a mortgagee's policy of title insurance on a loan
 17 made simultaneous to the purchase of all or part of the
 18 property securing the loan, when no owner's policy has been
 19 ordered, must inform the borrower in writing that the
 20 mortgagee's policy is to be issued, that the mortgagee's
 21 policy does not protect the borrower, and that the borrower
 22 may obtain an owner's title insurance policy for his
 23 protection. This notice must be provided, on a form
 24 prescribed by the commissioner, before issuance of the
 25 mortgagee's policy.

1 (2) If the borrower elects not to purchase an owner's
 2 title insurance policy, the title insurer or title agent
 3 must obtain from him a statement in writing that the notice
 4 has been received and that the borrower waives the right to
 5 purchase an owner's title insurance policy. If the buyer
 6 refuses to provide the statement and waiver, the title
 7 insurer or title agent must so note in the file. The
 8 statement and waiver must be on a form prescribed by the
 9 commissioner and must be retained by the title insurer or
 10 title agent for at least 5 years after receipt.

11 NEW-SECTION: ~~Section 16, Title plants --- requirement~~
 12 ~~--- standards --- limitations on sale --- rules: (1) No person~~
 13 ~~may act as a title insurance agent and no title insurance~~
 14 ~~agent may transact the business of title insurance in this~~
 15 ~~state unless the agent maintains a title plant for which the~~
 16 ~~commissioner has issued a certificate of authority or a~~
 17 ~~permit without inspection under the provisions of {section~~
 18 ~~17 or 19}.~~

19 (2) ~~The commissioner shall adopt rules establishing~~
 20 ~~standards for operation of title plants in this state. The~~
 21 ~~rules may include standards for tract indices, general name~~
 22 ~~indices, maps, plats, and other organizing devices.~~

23 (3) ~~Nothing in this section prevents two or more title~~
 24 ~~agents from owning and maintaining a title insurance plant~~
 25 ~~together for their joint use.~~

1 (4) ~~No title agent may sell or otherwise transfer a~~
 2 ~~title plant unless the commissioner first inspects it and~~
 3 ~~determines it is in compliance with this title and the rules~~
 4 ~~of the commissioner. The commissioner shall conduct a~~
 5 ~~compliance inspection upon request.~~

6 NEW-SECTION: ~~Section 17, Title plants --- certificate~~
 7 ~~of authority --- inspections: (1) A title agent may apply~~
 8 ~~for a title plant certificate of authority on forms provided~~
 9 ~~by the commissioner.~~

10 (2) ~~The commissioner must issue a title plant~~
 11 ~~certificate of authority to a title agent if, after~~
 12 ~~inspection of the plant, the commissioner finds the title~~
 13 ~~plant in compliance with this title and title plant~~
 14 ~~standards established by the commissioner.~~

15 (3) ~~A certificate of authority continues from the date~~
 16 ~~issued until sale or other transfer of a plant unless sooner~~
 17 ~~revoked by the commissioner or relinquished by the holder.~~

18 (4) ~~The commissioner must inspect a title plant when~~
 19 ~~required under {sections 16 and 19} and this section. The~~
 20 ~~commissioner may inspect a title plant at any time under the~~
 21 ~~authority of --- 33-1-402 and revoke the certificate of~~
 22 ~~authority of a title plant found to be not in compliance,~~
 23 ~~after a hearing held pursuant to this title.~~

24 (5) ~~The commissioner may contract with a qualified~~
 25 ~~person, firm, or organization to conduct inspections under~~

1 this section.

2 ~~NEW SECTION. Section 18. Costs of inspection of title~~
 3 ~~plants. rules. A title agent shall pay the commissioner~~
 4 ~~an inspection fee based on the reasonable costs of~~
 5 ~~inspection, as established by rule by the commissioner. In~~
 6 ~~establishing an inspection fee, the commissioner may include~~
 7 ~~such costs as travel expenses, a reasonable expense~~
 8 ~~allowance, and compensation at reasonable rates of an~~
 9 ~~inspector.~~

10 ~~NEW SECTION. Section 19. Permit without inspection~~
 11 ~~for existing title plants. application. (1) A title agent~~
 12 ~~transacting the business of title insurance on October 1,~~
 13 ~~1985, may apply for a title plant permit without inspection~~
 14 ~~by December 31, 1985, and may not transact the business of~~
 15 ~~title insurance after July 1, 1986, unless he has received a~~
 16 ~~temporary permit or certificate of authority from the~~
 17 ~~commissioner.~~

18 ~~(2) A title agent shall apply for a temporary permit,~~
 19 ~~on forms provided by the commissioner, providing information~~
 20 ~~reasonably required by the commissioner that shows that the~~
 21 ~~agent maintains an adequate and complete title plant in the~~
 22 ~~county where he intends to do business. The title insurer~~
 23 ~~with whom the agent intends to do business must sign the~~
 24 ~~application certifying that the agent is known to have a~~
 25 ~~good reputation and is worthy of public trust and that the~~

1 insurer knows of no fact or condition that would disqualify

2 the agent from receiving the permit.

3 (3) If the commissioner denies an application for a

4 permit without inspection, the applicant may request an

5 inspection of his title plant and apply for a certificate of

6 authority as provided in (section 17).

7 (4) A title agent who receives a title plant permit

8 without inspection is not relieved of the requirement of

9 inspection upon sale or transfer of the title plant or as

10 required by the commissioner under 33-1-402.

11 (5) A permit without inspection continues from the

12 date issued until sale or other transfer of a plant, unless

13 sooner revoked by the commissioner.

14 (6) After inspection, the commissioner may revoke a

15 permit of a title plant found to be not in compliance, after

16 a hearing held pursuant to this title.

17 Section 16. Section 33-2-108, MCA, is amended to read:

18 "33-2-108. Combinations of insuring powers. (1) Except

19 as provided in subsections (2), (3), and (4) and [section

20 5], an insurer which otherwise qualifies therefor may be

21 authorized to transact any one kind or combination of kinds

22 of insurance as defined in 33-1-205 through 33-1-212.

23 (2) A life insurer may also grant annuities but shall

24 not be authorized to transact any other kind of insurance

25 other than disability, except that if the insurer is

1 otherwise qualified therefor, the commissioner shall
 2 continue to so authorize any life insurer which, immediately
 3 prior to January 1, 1961, was lawfully authorized to
 4 transact in this state a kind or kinds of insurance in
 5 addition to life and disability.

6 (3) A reciprocal insurer shall not transact life
 7 insurance.

8 (4) A title insurer shall be a stock insurer."

9 Section 17. Section 33-2-851, MCA, is amended to read:

10 "33-2-851. Special investments by title insurer. (1)
 11 In addition to other investments eligible under this part, a
 12 title insurer may invest and have invested an amount not
 13 exceeding 50% of its paid-in capital stock in its abstract
 14 title plant, as defined in [section 2], and equipment and,
 15 with the commissioner's consent, in stock of abstract
 16 companies and of title agents as defined in [section 2]. ~~If~~
 17 ~~the--insurer--transacts--kinds--of--insurance--in--addition--to~~
 18 ~~title--insurance,--for--the--purposes--of--this--section--its~~
 19 ~~paid-in--capital--stock--shall--be--prorated--between--title~~
 20 ~~insurance--and--such--other--insurances--upon--the--basis--of--the~~
 21 ~~reserves--maintained--by--the--insurer--for--the--various--kinds--of~~
 22 ~~insurance,--but--the--capital--so--assigned--to--title--insurance~~
 23 ~~shall--in--no--event--be--less--than--\$100,000.~~

24 (2) Investments authorized by this section shall not
 25 be credited against the insurer's required unearned premium

1 or guaranty fund reserve provided for under 33-2-517.

2 (3) Any such abstract title plant and equipment shall
 3 not be so allowed as an asset in any determination of the
 4 insurer's financial condition at a value greater than actual
 5 cost."

6 Section 18. Section 33-17-212, MCA, is amended to
 7 read:

8 "33-17-212. Examination required. (1) After completion
 9 and filing of the application for license as required under
 10 33-17-211, the commissioner shall subject each applicant for
 11 license as agent or solicitor, unless exempted therefrom
 12 under subsection ~~(5)~~ ~~(6)~~ (5) below, to a personal written
 13 examination as to his competence to act as such agent or
 14 solicitor.

15 (2) If the applicant is a firm or corporation, the
 16 examination shall be so taken by each individual who is to
 17 be named in the license as having authority to act for the
 18 applicant in its insurance transactions under the license.

19 (3) Examination of an applicant for an agent's license
 20 shall cover all of the kinds of insurance for which the
 21 applicant has applied to be licensed, as constituted by any
 22 one or more of the following classifications:

- 23 (a) life insurance;
- 24 (b) disability insurance;
- 25 (c) property insurance; for the purposes of this

1 provision, "marine" insurance shall be deemed to be included
2 in "property" insurance;

- 3 (d) casualty insurance;
- 4 (e) vehicle insurance;
- 5 (f) surety insurance;
- 6 (g) credit life and disability insurance;
- 7 (h) title insurance.

8 (4) Examination of an applicant for a solicitor's
9 license shall cover all the kinds of insurance, other than
10 life, as to which the appointing agent is licensed.

11 ~~{5}--THE--COMMISSIONER--SHALL--ASSESS--A--FEE--FOR~~
12 ~~ADMINISTERING--THE--EXAMINATION--TO--AN--APPLICANT--FOR--A--TITLE~~
13 ~~INSURANCE--AGENT'S--LICENSE--THAT--IS--CALCULATED--TO--COVER--THE~~
14 ~~COST--OF--ADMINISTRATION--OF--THE--EXAMINATION.~~

15 {5}{6}{5} This section shall not apply to, and no such
16 examination shall be required of:

17 (a) any individual lawfully licensed as an agent or
18 solicitor as to the kind or kinds of insurance to be
19 transacted as of or immediately prior to January 1, 1961,
20 and thereafter continuing to be so licensed;

21 (b) any applicant for license covering the same kind
22 or kinds of insurance as to which the applicant was licensed
23 in this state, other than under a temporary license, within
24 the 12 months next preceding date of application unless such
25 previous license was suspended, revoked, or continuation

1 thereof refused by the commissioner, except that the
2 provisions of this subsection {5}{6}{5}(b) do not apply to
3 title agents, as defined in [section 2];

4 (c) any applicant for license as nonresident agent,
5 subject to reciprocal arrangements as provided for in this
6 code;

7 (d) all applicants for license as agent for an insurer
8 that confines its business in this state substantially to
9 the insuring of the property, interests, and risks of
10 farmers, if exempted from examination by the commissioner,
11 in his discretion, upon written request of the insurer;

12 (e) transportation ticket agents of common carriers
13 applying for license to solicit and sell only:

- 14 (i) accident insurance ticket policies; or
- 15 (ii) insurance of personal effects while being carried
16 as baggage on such common carrier, as incidental to their
17 duties as such transportation ticket agents;

18 (f) agents' associations applying for license under
19 33-17-205;

20 ~~{g}--title-insurance-agents;~~

21 ~~{h}{g} mechanical breakdown insurance agents."~~

22 Section 19. Section 33-17-213, MCA, is amended to
23 read:

24 "33-17-213. Conduct of examinations. (1) The
25 commissioner shall make any examination required under

1 33-17-212 available to applicants with reasonable frequency
2 and at a place in this state reasonably accessible to the
3 applicants. The commissioner shall make any such examination
4 available at his offices at Helena, Montana, at times within
5 his discretion but at least once a month.

6 (2) All the kinds of insurance or classes thereof, as
7 referred to in 33-17-212(3), which the applicant proposes to
8 transact under the license applied for shall be included in
9 the same examination.

10 (3) The commissioner shall give, conduct, and grade
11 all examinations in a fair and impartial manner and without
12 unfair discrimination as between individuals examined.

13 (4) The commissioner may require a reasonable waiting
14 period before reexamination of an applicant who has failed
15 to pass a previous examination covering the same kind or
16 kinds of insurance.

17 (5) The examination of a title agent, as defined in
18 [section 2], must include but is not limited to questions
19 pertaining to the search and examination of title to real
20 property, insurance principles relating to title insurance,
21 and the fiduciary duties and procedures of escrows,
22 settlements, and closings of real estate transactions."

23 Section 20. Section 33-17-1101, MCA, is amended to
24 read:

25 "33-17-1101. Place of business -- display of license

1 -- records. (1) Every agent shall have and maintain a place
2 of business accessible to the public. Such place of business
3 shall be that wherein the licensee principally conducts
4 transactions under his license. The address of such place
5 shall appear upon the license, and the licensee shall
6 promptly notify the commissioner of any change thereof.
7 Nothing in this section prohibits maintenance of such place
8 of business in the licensee's place of residence.

9 (2) The license of the licensee and the license of
10 each solicitor appointed by and representing the licensee
11 shall be conspicuously displayed in such place of business
12 in a part thereof customarily open to the public.

13 (3) The agent shall keep at his place of business
14 complete records pertaining to transactions under his
15 license and the licenses of his solicitors, for a period of
16 at least 3 years after completion of the respective
17 transactions, except that title agents, as defined in
18 [section 2], shall retain records as provided in [sections 6
19 and 15]."

20 SECTION 21. SECTION 33-17-1102, MCA, IS AMENDED TO
21 READ:

22 "33-17-1102. Reporting and accounting for premiums.

23 (1) All premiums or return premiums received by an agent or
24 solicitor shall be trust funds so received by the licensee
25 in a fiduciary capacity, and the agent or solicitor shall in

1 the applicable regular course of business account for and
 2 pay the same to the insured, insurer, or agent entitled
 3 thereto. if Except for a title agent as defined in [section
 4 2], if the licensee establishes a separate deposit for funds
 5 so belonging to others in order to avoid a commingling of
 6 such fiduciary funds with his own funds, he may deposit and
 7 commingle in the same such separate deposit all such funds
 8 belonging to others so long as the amount of such deposit so
 9 held for each respective other person is reasonably
 10 ascertainable from the records and accounts of the licensee.

11 (2) Any agent or solicitor who, not being lawfully
 12 entitled thereto, diverts or appropriates such funds or any
 13 portion thereof to his own use is, upon conviction, guilty
 14 of theft and shall be punished as provided by law."

15 NEW SECTION. Section 22. Repealer. Section 33-25-103,
 16 MCA, is repealed.

17 NEW SECTION. Section 23. Extension of authority. Any
 18 existing authority of the commissioner of insurance to make
 19 rules on the subject of the provisions of this act is
 20 extended to the provisions of this act.

21 NEW SECTION. Section 24. Codification instruction.
 22 Sections 1 through ~~19~~ 15 are intended to be codified as an
 23 integral part of Title 33, and the provisions of Title 33
 24 apply to sections 1 through ~~19~~ 15.

25 NEW SECTION. Section 25. Severability. If a part of

1 this act is invalid, all valid parts that are severable from
 2 the invalid part remain in effect. If a part of this act is
 3 invalid in one or more of its applications, the part remains
 4 in effect in all valid applications that are severable from
 5 the invalid applications.

-End-

1 HOUSE BILL NO. 338

2 INTRODUCED BY ADDY, JONES, C. SMITH, LYNCH, HARP,

3 PAVLOVICH, MERCER, SCHULTZ, BRADLEY, DANIELS,

4 QUILICI, D. BROWN, KEATING, STIMATZ

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
7 LAWS RELATING TO TITLE INSURANCE; PROVIDING FOR THE
8 LICENSING AND REGULATION OF TITLE INSURANCE AGENTS, ~~THE~~
9 ~~EXAMINATION OF TITLE INSURANCE PLANTS AND THE ISSUANCE OF~~
10 ~~CERTIFICATES OF AUTHORITY THEREFOR~~, AND THE REGULATION OF
11 CONTROLLED BUSINESS IN THE TITLE INSURANCE INDUSTRY;
12 AMENDING SECTIONS 33-2-108, 33-2-851, 33-17-212, 33-17-213,
13 AND 33-17-1101, AND 33-17-1102, MCA; AND REPEALING SECTION
14 33-25-103, MCA."

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17 NEW SECTION. Section 1. Short title. [Sections 1
18 through 19 15], 33-25-101, and 33-25-102 may be cited as the
19 "Montana Title Insurance Act".

20 NEW SECTION. Section 2. Definitions. As used in
21 [sections 1 through 19 15], 33-25-101, and 33-25-102, the
22 following definitions apply:

23 (1) "Abstract" means a written representation,
24 provided pursuant to a contract and expected to be relied
25 upon by the person who has contracted for the receipt of

1 that representation, listing all recorded conveyances,
2 instruments, or documents which, under the laws of this
3 state, impart constructive notice regarding the chain of
4 title to real property described in the abstract. Abstract
5 includes "abstract of title".

6 (2) "Applicant" means a person, whether or not a
7 prospective insured, who applies to a title insurer or title
8 agent for a title insurance policy, but does not include a
9 title agent.

10 (3) "Approved attorney" means an attorney authorized
11 to practice law in this state, except an agent or employee
12 of a title insurer, whose certification as to the status of
13 the title to real property a title insurer is willing to
14 accept as the basis for issuance of a title insurance
15 policy.

16 (4) "Associate" means a:

17 (a) corporation, partnership, or other business entity
18 organized for profit, of which a producer of title business
19 is a director, officer, partner, employee, or owner of 5% or
20 more of its equity or capital;

21 (b) franchisor or franchisee of a producer of title
22 business;

23 (c) spouse, parent, or child of a producer of title
24 business;

25 (d) corporation, partnership, or other business entity

1 that controls, is controlled by, or is under common control
2 with a producer of title business; or

3 (e) person with whom a producer of title business or
4 an associate has an agreement, arrangement, understanding,
5 or course of conduct having the purpose or substantial
6 effect of evading the provisions of this title.

7 (5) "Controlled business" means that portion of the
8 business of title insurance in this state of a title insurer
9 or title agent that is referred to it by a producer or
10 associate having a financial interest in the title insurer
11 or title agent.

12 (6) "Financial interest" means a legal or beneficial
13 interest that entitles the holder, directly or indirectly,
14 to 1% or more of the net profits or net worth of the entity
15 in which the interest is held.

16 (7) "Preliminary report" means an offer to issue a
17 title insurance policy subject to any exceptions stated in
18 the report or other matters that may be incorporated by
19 reference therein. Preliminary report includes a commitment
20 or binder.

21 (8) (a) "Producer of title business" or "producer"
22 means a person, corporation, partnership, or other business
23 entity, including an officer, director, or owner of 5% or
24 more of the equity or capital thereof, engaged in this state
25 in the trade, business, occupation, or profession of:

1 (i)(A) buying or selling interests in real property;
2 (ii)(B) making loans secured by interests in real
3 property; or

4 (iii)(C) acting as broker, agent, or representative of
5 a person described in subsection (8)(a)(i) or (8)(a)(ii)(B).

6 (b) ~~"Producer of title business" does not include an~~
7 ~~attorney licensed to practice law in this state.~~

8 (9) "Rate" means fees for:

9 (a) issuing a title insurance policy, including any
10 service charge or fee for the issuance;

11 (b) abstracting, searching, and examining title to
12 real property when prepared or issued in contemplation of or
13 in conjunction with the issuance of a title insurance
14 policy; and

15 (c) preparing or issuing preliminary reports,
16 commitments, binders, or similar products prepared or issued
17 in contemplation of or in conjunction with the issuance of a
18 title insurance policy.

19 (10) "Refer" means to direct, cause to be directed, or
20 exercise an influence over the direction of title insurance
21 business, whether or not the consent or approval of another
22 person is sought or obtained with respect to the referral.

23 (11) (a) "Title agent" means a person who holds a valid
24 title agent's license and is authorized in writing by a
25 title insurer to: