

MINUTES OF THE MEETING  
BUSINESS AND LABOR COMMITTEE  
MONTANA STATE  
HOUSE OF REPRESENTATIVES

January 31, 1985

The meeting of the Business and Labor Committee was called to order by Chairman Bob Pavlovich on January 31, 1985 at 8:00 a.m. in Room 312-2 of the State Capitol.

ROLL CALL: All members were present.

HOUSE BILL 334: Hearing commenced on House Bill 334. Representative Bud Gould, District #61, sponsor of the bill, stated that the purpose of this bill is to allow bar wholesalers to rent portable equipment for cooling and dispensing draft beer to retailers for use in catering off the premises. Representative Gould distributed to committee members a Statement of Intent which is attached hereto as Exhibit 1.

Proponent Roger Tippy, representing the Montana Wine and Beer Wholesalers Association, offered his support of House Bill 334 as written. Mr. Tippy distributed to committee members Exhibit 2, which shows twenty-seven events in Missoula when equipment was rented in 1984.

Proponent Harold Zachariasen, representing Earl's Distributing Inc. in Missoula, quoted prices for equipment being rented presently. A draft trailer with a thirty keg capacity would be rented at \$25.00 per day. The self-contained picnic pumps and coolers are outdated and the sophisticated systems are needed to better service events.

Proponent Rick Day of the Department of Revenue offered his support of House Bill 334. Mr. Day explained his proposed amendment as shown on Exhibit 3 attached hereto. The changes would remove the need for additional regulations and eliminate the need for additional compliance work, added Mr. Day.

Representative Brandewie asked Mr. Tippy if he agreed to the amendments as proposed by the department. Mr. Tippy explained that the practice throughout the beer and wine industry is that a manufacturer not solicit retailers and thus the amendment is not necessary.

There being no further discussion by proponents or opponents all were excused by the chairman and the hearing on House Bill 334 was closed.

HOUSE BILL 309: Hearing commenced on House Bill 309. Representative Bob Gilbert, District #22, sponsor of the bill, explained that this bill would move from the Highway Patrol to the Public Service Commission the primary responsibility to enforce the motor carriers safety law. The Highway Patrol has numerous

responsibilities and this would free up additional patrol personnel and have the truck safety inspections under one roof.

Proponent Wayne Budt, representing the Montana Public Service Commission, supplied written testimony as presented on Exhibit 4 attached hereto.

Proponent Colonel R. W. Landon, representing the Montana Highway Patrol stated that eighty percent of his employees are trained to make said inspections and that these inspections are the same as would be performed by the Public Service Commission. The passing of House Bill 309 would relieve officers and allow them to be out on the road and visible, rather than in terminals inspecting.

Opponent Keith Olson, Executive Director of the Montana Logging Association, stated that another agency is not needed to regulate carriers. He is confident that the Public Service Commission would do an excellent job, but the highway patrol is doing the same, so why the need for the change, asked Mr. Olson.

In closing, Representative Gilbert explained that all motor carriers are under the Public Service Commission regulations.

Representative Schultz asked Mr. Wayne Budt to explain the soft match that he referred to. Mr. Budt explained that it is eighty percent federal money and twenty percent state money that is to be used for inspections only. There is \$337,000 of federal money that is funded from the federal gas tax fund. Representative Schultz then asked how many federal inspectors will be hired. There will be eighteen hired to serve throughout the state at approximately \$30,000.00 per year.

Representative Jones asked Mr. Budt if these inspectors will be allowed to carry a gun and how many highway patrolmen would be necessary to do the same job. Mr. Budt stated that these inspectors will not carry a gun and Colonel Landon explained that the patrol uses cadets rather than patrol officers. These cadets are less costly and approximately twelve cadets would be required to perform the same job. There are currently six full time inspectors that perform an estimate of 5,000 inspections per year of which approximately 400 are terminal inspections and the remainder are on the road inspections.

Representative Jones asked Mr. Budt if the Highway Patrol could receive the same federal funds as the Public Service Commission. Mr. Budt explained that if they made application and went through the process, they probably could.

There being no further discussion by proponents or opponents, all were excused by the chairman and the hearing on House Bill 334 was closed.

HOUSE BILL 338: Hearing commenced on House Bill 338. Representative Kelly Addy, District #94, sponsor of the bill explained that this bill would change the laws on title insurance. It provides a new body of law regulating title insurance, draws distinctions between title insurance policies and abstracts of title and amends existing law. Title insurance protects the largest investment most individuals will make. The county records can not be totally relied upon for establishing a chain of title, added Representative Addy. A Statement of Intent, attached as Exhibit 5 was distributed to committee members.

Proponent Richard Bach, representing the Montana Insurance Department, proposed three amendments that are attached hereto as Exhibit 6. Mr. Bach explained the amendments and supplied a Witness Statement that is attached hereto.

Proponent Gene Phillips of Kalispell, representing the Montana Land Title Association, offered his support of House Bill 338 and also the amendments as proposed by Mr. Bach of the insurance department.

Proponent Bill Gowen, President of the Montana Land Title Association and Helena Abstract and Title Company offered his support of the bill. Mr. Gowen distributed to committee members proposed amendments as shown on Exhibit 7 attached hereto.

Proponent Loren Solberg, representing County Guarantee Title in Kalispell, explained that it is necessary for title to be examined before issuing insurance and that it is important that a title plant be maintained.

Proponent Robert Mitchell of Boise, & Vice-pres. of Safeco Title Insurance, the most active underwriter in Montana, explained that it is costly to create and maintain a title plant. Claims may arise a long time after the issuance of a title policy and the policy holder is better served if the company is still in business. House Bill 338 would also insure the safety of funds while held by a title company. Mr. Mitchell supports House Bill 338 with the proposed amendments.

Proponent Robert Noe of Columbus and representing Stillwater Abstract Company and Carbon County Abstract and Title Company, suggested that on page 9, line 18, "or assigns" be deleted and on page 10, line 15, "any interest received on funds" be deleted.

Proponents John C. Smith of Denver and Vice-President of Stewart Title Guarantee, Norm Evilsizer of Minneapolis and

Vice-president of Minnesota Title Insurance Company, Terry Carmody of Helena, representing the Montana Association of Realtors, Rick Zanto of Fort Benton, representing Choteau County Abstract Company, Jack Johns of Great Falls, representing Mountain Title, Shelley Oertle of Hamilton, representing First Montana Title, Mike Kleese of Stevensville, representing 1st American Title and Brad Stratton of Bozeman, representing American Land Title Company, all offered their support of House Bill 338.

Opponent A. L. Craddock of Red Lodge, representing Carbon Title Guarantee, supplied written testimony which is attached hereto as Exhibits 8 and 9. Mr. Craddock also distributed Exhibit 10 to committee members.

Opponent Steve Strekall of Billings, representing American Title and Escrow, distributed to committee members Exhibit 11 attached hereto. Mr. Strekall explained that title insurance is risk elimination insurance and that risks are eliminated through examination. An agent is approved by an underwriter and House Bill 338 would move the responsibility from the underwriter to the state and thus eliminate competition in the title industry. An attorney would be prevented from writing a title opinion, added Mr. Strekall. He urged the committee to DO NOT PASS House Bill 338.

Opponent Teddy Annear of Bozeman, representing Teddy's Assist, stated that there are presently errors made by relying on title plants. A plant inspection is an unneeded expense, and by requiring all companies to have a title plant, smaller companies will be forced out of business and a monopoly will be created, explained Ms. Annear.

In closing, Representative Addy stated that laws are made to regulate those that don't know what they are doing. House Bill 338 would not be creating a monopoly, but a more professional industry with competent agents.

Representative Jones asked Mr. A. L. Craddock if this law would take away any rights of an attorney to perform title opinions, which was answered no.

Representative Jones asked Mr. Loren Solberg why agents need to be tested, and if this bill is enacted would it force all but one company per county out of business. Mr. Solberg explained that there are currently 700 licensed agents in the state, with testing requirements the figure would decrease to approximately 160 agents, and, no, this would not cause one company per county.

Representative Schultz asked Mr. Solberg the cost for starting a title plant. Mr. Solberg explained that it would vary from county to county depending on the size of the county and the number of transactions in the county with an average investment of approximately \$80,000.00.

Representative Simon asked Representative Addy what problem is trying to be solved by House Bill 338. Representative Addy referred the question to Mr. Jack Johns who explained that a responsibility to the public is needed and that there are incompetent employees performing title examinations.

Representative Bachini asked Representative Addy if this will come under the Montana Insurance Commission and if they have the expertise to admister the test. Representative Addy answered yes to both questions.

Representative Bachini then asked Rich Back how many additional employees will be needed. Mr. Bach stated the commission will need to hire 1 full time employee. Representative Bachini asked Mr. Bach how many complaints have been filed with the insurance commission. Mr. Bach explained that there have not been any complaints filed.

There being no further discussion by proponents or opponents all were excused by the chairman and the hearing on House Bill 338 was closed.

HOUSE BILL 450: Hearing commenced on House Bill 450. Representative Fred Thomas, District #62, sponsor of the bill stated that the bill would require the Division of Motor Vehicles to keep separate personal and commercial driving records of such persons to whom such distinctions are applicable. Information in the commercial record may not be used by an insurance company to rate the individual for personal insurance. For underwriting insurance of an employer, both personal and commercial driving records of each individual may be used. Representative Thomas explained that he has problems with this bill and would recommend that the committee TABLE House Bill 450.

There being no proponents or opponents to the bill, Representative Thomas was excused by the chairman and the hearing on House Bill 450 was closed.

ACTION ON HOUSE BILL 450: Representative Kitselman motioned that House Bill 450 be TABLED. Second was received and a unanimous vote resulted.

ADJOURN: There being no further business before the committee, the meeting was adjourned at 11:00 a.m.

  
Rep. Bob Pavlovich,  
Chairman

DAILY ROLL CALL  
 BUSINESS AND LABOR COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date January 31, 1985

NAME	PRESENT	ABSENT	EXCUSED
Bob Pavlovich	✓		
Les Kitselman	✓		
Bob Bachini	✓		
Ray Brandewie	✓		
Jan Brown	✓		
Jerry Driscoll	✓		
Robert Ellerd	✓		
William Glaser	✓		
Stella Jean Hansen	✓		
Marjorie Hart	✓		
Ramona Howe	✓		
Tom Jones	✓		
Mike Kadas	✓		
Vernon Keller	✓		
Lloyd McCormich	✓		
Jerry Nisbet	✓		
James Schultz	✓		
Bruce Simon	✓		
Fred Thomas	✓		
Norm Wallin	✓		

STATEMENT OF INTENT

House BILL NO. 334

A statement of intent is required for this bill because it grants the department of revenue authority to adopt rules for computing the rental charge for equipment. The rules should require that the rental charge be approximately that amount which will, if set aside, allow a wholesaler replacing the equipment when it wears out to use the set-aside charges to finance that percent of the cost of the new equipment that equals the percent of wear on the replaced equipment attributable to the rental.

**Roger Tippy**

Example:

\$10,000 Van

= 10 years useful life

\$1,000 / year amort.

\* 60% rental use

600 amort. charge to  
rental use

= 24 rental days / year =

\$25.00 / day

ZIP BEVERAGE INC.'S DRAFT VAN IS RENTED OUT AT A FEE OF \$25.00 PER DAY

THE FOLLOWING IS A LIST OF THE FUNCTIONS THAT HAVE RENTED THE VAN DURING 1984

1. Elks Club Picnic
2. Moose Club Picnic
3. Chamber of Commerce Annual Picnic
4. St Joseph School Alumni Party
5. St Francis BASH Promotion
6. Fort Missoula Historical Museum
7. Tripp Trucking Annual Picnic
8. Champion International Picnic
9. Missoula County Court House Picnic
10. Missoula County Tavern Association Picnic
11. Frenchtown 100 year Centennial Celebration
12. Charlie B's Bar Softball Tourney
13. Trails End Bar Softball Tourney
14. Grant Creek Ranch Branding Party
15. Drummond Rodeo
16. Helmville Rodeo
17. K-Mart Annual Picnic
18. Rosauer's Annual Picnic
19. Gay 90's Bar Picnic
20. Lily Restaurant for catering party
21. Boardroom Lounge for catering party
22. Corky's Lounge for Ball Tournament
23. Florence Rodeo
24. Ronan Rodeo
25. Missoula County Golf Tournament
26. Missoula J.C.'s Annual Picnic
27. 8-Ball Bar Annual Picnic

Department of Revenue  
Legal and Enforcement Division  
Investigations Program

The Program supports the concept but recommends amendment as indicated below. These changes would remove the need for additional regulations and eliminate the need for additional compliance work.

House Bill No. 334 introduced bill be amended as follows:

- (1) Page 2, line 18

Strike : "rent"

Insert: "furnish"

- (2) Page 2, line 21 thru line 23

Strike: "if the rental is at a fair market value computed under principles the department may define by rule."

Insert: " . "

HB309

The Montana Public Service Commission supports HB309.

This legislation would move the primary responsibility for terminal inspections from the highway patrol and place it in the Public Service Commission. This would result in the following benefits:

1. The PSC has been designated by the Governor as the lead agency in administering the Motor Carrier Safety Assistance Program which is an 80/20 federal/State truck inspection program. The transfer of this terminal inspection responsibility would allow us to use the full-time safety personnel we are hiring with the available federal funds to inspect Montana based carriers' equipment at their terminals. The PSC's proposed program would station safety inspectors throughout the State to allow access by all carriers.
2. This proposed change would allow for greater uniformity in inspections as the personnel making the terminal inspections will be the same as those doing the bulk of the inspections on the road.
3. This will allow the highway patrol to put their officers who are now doing these inspections on the road to make them more visable for enforcing general traffic regulations.

I want to make it clear that this bill does not remove any truck safety enforcement authority from the patrol or the Gross Vehicle Weight division who can now enforce the PSC's rules and regulations. In fact we would oppose any move to reduce the number of officers who can perform truck safety inspections.

This bill will allow the PSC to more efficiently use the full-time inspectors it hires with the available federal funds, and benefit the trucking industry by allowing them to have their vehicles inspected and to make necessary repairs at their terminals rather than on the road.

We urge you to support this bill which we feel would strengthen the truck safety program already being administered by the PSC.

49th Legislature

LC 277

STATEMENT OF INTENT

\_\_\_\_\_ Bill No. 277 [LC 277]

A statement of intent is required for this bill because it grants rulemaking authority to the commissioner of insurance regarding the issuance of title insurance policies, the handling of escrow, settlement, closing or title indemnification accounts that are handled in conjunction with the issuance of title insurance policies, and the organization, operation, and inspection of title plants. The rules are intended to protect the interests of those insured by title insurance policies issued in this state by providing uniform standards and procedures in the conduct of business by title insurers and agents. The legislature recognizes the unique nature of title insurance and the public good to be derived from its regulation by the state. It is intended that the regulation be adaptable to changing needs and procedures in the industry and the marketplace.

Section 8 allows the commissioner to adopt rules that would permit a title insurer or title agent to not disclose certain matters affecting title on an owner's title policy. The commissioner is not required to adopt such rules. It is contemplated that such rules, if adopted, would exempt disclosure of matters that are not likely to create the possibility of a failure of title or matters for which there is a preponderance of evidence to show that the matter does not affect title to the

property in question; these matters include but are not limited to prejudgment attachments for which a final judgment was never entered or mortgages that have expired by operation of law.

Section 9 allows the commissioner to adopt rules pertaining to escrow, settlement, closing or title indemnification transactions. The commissioner is not required to adopt such rules. It is contemplated that such rules, if adopted, will establish procedures, in conformance with good business practices, that will assure the protection of the client in these situations.

Amendments Proposed by the Montana Insurance Department

1. Amend Section 2 Subsection (8) as follows:

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

(i) buying or selling interests in real property;

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

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

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

2. Amend Section 5 Subsection (1) as follows:

NEW SECTION. Section 5. Limitations on authority.

(1) An insurer that transacts or is licensed to transact a class or kind of insurance other than title insurance is not eligible for the issuance or renewal of a license to transact the business of title insurance in this state and may not transact, underwrite, or issue title insurance. Any insurer authorized to transact any combination of kinds of insurance including title business under an existing certificate of authority may continue to do so until that certificate of authority is renewed effective June 1, 1986.

3. Add New Section between Section 24 and 25, renumbering Sections 25 through 28

Section 25. 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. Except for title agents as defined in [Section 2], ~~if~~ 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) Title agents, as defined in [Section 2], shall comply with [Section 7].

~~(2)~~(3) 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 by law.

AMENDMENTS TO HOUSE BILL NO. 338  
REQUESTED BY THE MONTANA LAND TITLE ASSOCIATION

NEW SECTION. Section 6. Underwriting standards --

record retention. (1) A title insurer may not issue a title insurance policy unless it, its agent, or an approved attorney has conducted a reasonable search and examination of the title and made a determination of insurability of title in accordance with sound underwriting practices. The title insurer or title agent must preserve and retain in its files evidence of the examination of title and determination of insurability. The title insurer or title agent may keep original evidence or may establish in the regular course of business a system of recording, copying or reproducing evidence by any process that accurately and legibly reproduces, or forms a durable medium for reproducing, the contents of the original.

(2) Subsection (1) does not apply to;

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

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

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

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

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

(2) A title insurer or title agent shall:

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

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

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

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

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

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

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

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

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

(i) at or prior to the time of a referral a disclosure of the existence of the arrangement is made to the person being referred and, in connection with the referral, the person is provided a written estimate of the charge or range

of charges generally made by the title agent to which the person is referred; and

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

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

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

or

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

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

(3) This section does not prohibit:

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

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

HOUSE BILL 338

PROPOSED "MONTANA TITLE INSURANCE ACT

STATEMENT IN OPPOSITION AND SUGGESTED AMENDMENTS

On behalf of the many individuals who are both licensed Montana attorneys and licensed Montana title insurance agents, it is contended that the present law of the State of Montana relative to title insurance, insurance agents and the insurance industry in general are adequate to properly regulate the title insurance industry. In addition, there are adequate Federal and Montana laws governing consumer protection in general.

House Bill 338, the proposed "Montana Title Insurance Act" is another attempt, in a historical series of attempts, by the Montana Land Title Association to limit the title insurance agency business to its members alone who are usually the possessors and maintainers of the only "title plant" in the individual county of each member.

This proposed legislation does not spring from a serious need for consumer protection, and thus it is not sponsored or proposed by Ralph Nader or any other consumer group.

This legislation is proposed by the Montana Land Title Association, which has described itself as being "...comprised of various profit-seeking land title and abstracting concerns who are members..." thereof. See Paragraph 2, COMPLAINT, Montana Land Title Association v. First American Title and Escrow of Billings, Civil Action No. 65024, Yellowstone County District Court, a copy of which is attached hereto.

The motivation and goal of the Montana Land Title Association in the court case above cited and its motivation and goal in House Bill 338 proposed by it are not the products of concern for consumer protection but are the products of avarice and greed and the desire to entirely eliminate all competition.

they now have or may have in the future.

Historically, under the law of the State of Montana, licensed Montana title insurance agents were usually either licensed Montana land title abstracters or licensed Montana attorneys at law.

By Section 16 of House Bill 338, the Montana Land Title Association is attempting to eliminate the licensed Montana attorney as a title insurance agent and from the business of title insurance by requiring that "no person may act as a title insurance agent and no title insurance agent may transact the business of title insurance in this state unless the agent maintains a title plant for which the commissioner has issued a certificate of authority..."

Those of us opposed to House Bill 338 and the position of the Montana Land Title Association believe that record title search and examination for the purpose of determining the marketability or insurability of a land title constitutes the practice of law and is solely within the educational and professional realm of the Montana licensed attorney.

However, we are willing to compromise, and seek only the amendment of the proposed House Bill 338 to truly provide for consumer protection by allowing the licensed attorney to continue to be licensed as a Montana title insurance agent without examination or the possession and maintenance of a title plant, thus insuring healthy competition and a choice of agents to the Montana consumer.

With the above thoughts in mind, we hereby submit the following suggestions for the amendment of House Bill 338.

A. Delete from Section 2 the following:

(1) "Abstract," as abstracting does not constitute a part of the title insurance business.

(3) "Approved attorney," as the ability of a licensed Montana attorney to engage in the title insurance industry should not be limited to the discretion of a title insurer.

(12) (b) (iii) handling escrows, settlements, or closings; as this does

not constitute part of the title insurance business as contended by the Federal Trade Commission.

(12) (b) (vi) abstracting, searching, or examining titles; as the same does not constitute part of the business of insuring titles, as contended by the Federal Trade Commission.

(15) "Title plant" as the private maintenance thereof is not necessary to the conduct of the business of a title insurance agent who is educationally and professionally qualified to examine directly from the public records.

- B. Delete Section 4 in its entirety, as abstracts of title do not constitute "title insurance."
- C. Amend Section 6 (1) by deleting the first sentence thereof and substituting therefor the following:

(1) A title insurer may not issue a title insurance policy unless such policy is based upon an opinion of title certified in writing as of the date of the policy by an attorney duly authorized to practice law in this state, following a review by such attorney of pertinent title records or abstracts. (The remainder of (1) to be the same as the original.)

This Amendment is suggested for the reason that the non-attorney title agent is normally not educationally or professionally qualified to examine land titles and to certify as to the marketability or insurability thereof.

- D. Delete Section 7 in its entirety, for the reason that escrow, closing or settlement services are not a part of the business of title insurance, as contended by the Federal Trade Commission.
- E. Delete Section 8 in its entirety, as such regulatory power is not necessary to protect the public health, safety, or welfare from significant and discernible harm or damage, and thus this Section violates 2-8-101, Montana Code Annotated.
- F. Delete Section 10 (b) for the reason that this language as stated is ambiguous and the escrow business is not a part of the title insurance industry as contended

by the Federal Trade Commission.

G. Delete Section 11, 12, 13 and 14 in their entirety, as these objectionable subjects and practices are adequately prohibited by the state insurance laws and the state and federal consumer protection laws.

H. Delete Section 16, 17, 18 and 19 in their entirety.

Amend Section 16 to read as follows:

Section 16. ~~requirement--standards~~. No person may act as a title insurance agent and no title insurance agent may transact the business of title insurance in this state unless the agent is also a licensed Montana attorney at law or unless said agent bases the issuance of all title insurance policies issued by said agent upon the opinion of title certified in writing as of the date of the policy by an attorney duly authorized to practice law in this state, following a review by such attorney of pertinent title records or abstracts. (End of Section 16)

I. Alternatives to the above suggested Amendment of Section 16.

Amend Section 16 to read as follows:

Section 16. ~~Title Plants--Requirement--Exception--Standards--Rules~~. (1) No person may act as a title insurance agent and no title insurance agent may transact the business of title insurance in this state unless:

(a) The agent maintains a title plant for which the commissioner has issued a certificate of authority or a permit without inspection under the provisions of [section 17 or 19],

or:

(b) The agent bases all policies of title insurance issued by such agent upon an opinion of title certified in writing as of the date of the policy by an attorney duly authorized to practice law in this state, following a review by such attorney of pertinent title records or abstracts.

(c) The provisions of subsections (1) (a), (2), (3) and (4) of this Section 16, and the provisions of Section 17, 18 and 19 of this act shall not apply to

title insurance agents licensed and operating under the provisions of subsection (b) of this Section 16.

(2) and following same as original text.

J. Amend Section 22 as follows:

(5) (b) Return language to original text by deleting ", except that the provisions of this subsection (5) (b) do not apply to title agents as defined in (section 2),"

(5) (g) ~~title-insurance-agents~~. Any individual lawfully licensed as a title insurance agent as of or immediately prior to January 1, 1985, and thereafter continuing to be so licensed;

(5) (h) mechanical breakdown insurance agents;

(5) (i) attorneys duly authorized to practice law in this state."

Respectfully submitted this 31st day of January, 1985.



A. L. Craddock  
Licensed Montana Attorney  
Licensed Montana Title Insurance Agent  
2 North Broadway - The Pollard  
P. O. Drawer 10  
Red Lodge, Montana 59068

Telephone: 446-2603

1 IN THE DISTRICT COURT OF THE THIRTEENTH  
2 JUDICIAL DISTRICT OF THE STATE OF MONTANA  
3 IN AND FOR THE COUNTY OF YELLOWSTONE

4 MONTANA LAND TITLE ASSOCIATION, )  
5 a Montana nonprofit corporation, )  
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No. 65024

Plaintiff,

vs.

8 FIRST AMERICAN TITLE AND ESCROW )  
9 OF BILLINGS, a limited partner- )  
10 ship doing business in the State )  
11 of Montana, and FIRST AMERICA )  
12 TITLE INSURANCE COMPANY, a Califor- )  
13 nia corporation doing business in )  
14 the State of Montana, )  
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C O M P L A I N T

Defendants.

Plaintiff alleges:

1. Plaintiff Montana Land Title Association is a nonprofit corporation incorporated under the laws of the State of Montana and has its principal place of business in Glendive, Montana; defendant First American Title and Escrow of Billings is a limited partnership in the State of Montana, having its principal place of business in Billings, Montana. Defendant First American Title Insurance Company is a California corporation, having its principal office located at 421 North Main Street, Santa Ana, California, and doing business as an underwriter for title insurance policies in the State of Montana.

2. Plaintiff Montana Land Title Association is comprised of various profit-seeking land title insurance and abstracting concerns who are members of said plaintiff. Each member of plaintiff Montana Land Title Association holds all licenses and/or certificates required by the laws of the State of Montana to transact business as title insurance and/or abstracting concerns.

3. Plaintiff Montana Land Title Association is organized to protect consumers of abstract concerns and title insurance concerns and the public generally from unlawful acts by title insurance

1 companies or abstracting companies. Plaintiff Montana Land Title  
2 Association is further organized for the purpose of protecting  
3 its members' reputations and protecting the reputation of abstract-  
4 ing concerns and title insurance concerns generally from unlawful  
5 acts of abstract concerns or title insurance concerns. Plaintiff  
6 Montana Land Title Association is further organized for the purpose  
7 of protecting its members' economic positions from the unlawful  
8 operation by a title insurance company without the necessary cer-  
9 tificates and/or licenses required to transact business, as a  
10 title insurer, in the State of Montana.

11 4. Defendant First American Title and Escrow of Billings is  
12 currently issuing title insurance without basing such policies  
13 upon evidence of the condition of title in writing as of the date  
14 of such policy, certified by some person, firm or corporation  
15 who holds a Certificate of Authority issued under Section 66-2111,  
16 R.C.M., 1947. Further, defendant First American Title and Escrow  
17 of Billings is currently issuing title insurance policies without  
18 issuing such policies through a licensed title insurance agent  
19 who was so licensed and regularly procuring title insurance  
20 policies upon the basis of the opinion of an attorney, duly  
21 authorized to practice law in the State of Montana, upon the  
22 effective date of Section 40-4601, R.C.M, 1947 -- July 1, 1961.  
23 Defendant First American Title Insurance Company is currently  
24 underwriting the policies referred to herein.

25 5. By the actions set forth in paragraph four of this  
26 complaint, defendant First American Title and Escrow of Billings  
27 is issuing title insurance policies in violation of Section 40-4601,  
28 R.C.M., 1947, and defendant First American Title Insurance Company  
29 is underwriting these policies.

30 6. As a result of defendant First American Title and Escrow  
31 of Billing's violation of Section 40-4601, R.C.M., 1947 and  
32 defendant First American Title Insurance Company's acts of

1 underwriting said policies, the members of plaintiff Montana Land  
2 Title Association have suffered material loss of business to the  
3 illegal operation of the defendants.

4 7. There exists no adequate remedy at law under the Revised  
5 Codes of Montana for the loss of business resulting from de-  
6 fendants' illegal operation.

7 WHEREFORE, PLAINTIFF PRAYS JUDGMENT AGAINST THE DEFENDANTS  
8 AS FOLLOWS:

9 1. That defendant First American Title and Escrow of Billings  
10 be temporarily enjoined from issuing title insurance policies in  
11 violation of Section 40-4601, R.C.M., 1947, pending the outcome  
12 of this litigation; and further be perpetually enjoined from  
13 issuing title insurance until it complies with the requirements  
14 of Section 40-4601, R.C.M., 1947. Further, that defendant First  
15 American Title Insurance Company be temporarily enjoined from  
16 underwriting title insurance policies which were issued by de-  
17 fendant First American Title and Escrow of Billings in violation  
18 of Section 40-4601, R.C.M., 1947 pending the outcome of this  
19 litigation; and further be perpetually enjoined from underwriting  
20 title insurance policies issued by First American Title and Es-  
21 crow of Billings until defendant First American Title and Escrow  
22 of Billings complies with the requirements of Section 40-4601,  
23 R.C.M., 1947.

24 2. That judgment be rendered against defendants First  
25 American Title and Escrow of Billings and First American Title  
26 Insurance Company for plaintiff's costs and disbursements in this  
27 action and its reasonable attorney's fees.

28 3. That plaintiff have such other and further relief as to  
29 the court may seem equitable and proper.  
30  
31  
32

1 DATED this 15<sup>th</sup> day of August, 1974.  
2

3 CROWLEY, KILBOURNE, HAUGHEY,  
4 HANSON & GALLAGHER

5 By: Stephen H. Foster  
6 P. O. box 2529  
7 Billings, Montana 59103  
8 Attorneys for Plaintiff  
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IN THE DISTRICT COURT OF THE THIRTEENTH  
JUDICIAL DISTRICT OF THE STATE OF MONTANA,  
IN AND FOR THE COUNTY OF YELLOWSTONE

MONTANA LAND TITLE ASSOCIATION, )  
A Montana nonprofit corporation, )  
Plaintiff, )

-vs-

FIRST AMERICAN TITLE AND ESCROW )  
OF BILLINGS, a limited partner- )  
ship doing business in the State )  
of Montana, and FIRST AMERICAN )  
TITLE INSURANCE COMPANY, a )  
California corporation doing )  
business in the State of Montana, )  
Defendants. )

No. 65024

10 00

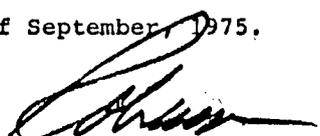
SEP - PAID JUDGMENT

Pursuant to the remittitur from the Supreme Court of the State of Montana, judgment is hereby rendered in favor of the defendants on their Motion to Dismiss.

The Temporary Restraining Order heretofore made is hereby dismissed, and the Complaint of the plaintiff is likewise dismissed.

Defendants are hereby allowed their costs and disbursements.

DATED this 24 day of September, 1975.

  
DISTRICT JUDGE

MF 76 FR161

MONTANA LAND TITLE ASSOCIATION,  
a Montana Nonprofit Corporation,  
Plaintiff and Respondent,

v.

FIRST AMERICAN TITLE and Escrow of  
Billings et al., Defendants  
and Appellants.

No. 12942.

Supreme Court of Montana.

Submitted June 18, 1975.

Decided Aug. 25, 1975.

Rehearing Denied Sept. 12, 1975.

The defendants appealed from a judgment of the Thirteenth District Court, Yellowstone County, Robert H. Wilson, J., which permanently enjoined defendants from issuing title insurance policies subject to certain exceptions. The Supreme Court, James T. Harrison, C. J., held that the statute which discriminates in favor of those agents who were writing title insurance on the basis of legal opinions on July 1, 1961, and against those licensed agents who later attempted to do so violates the guarantee of equal protection of the laws and is unconstitutional.

Reversed and remanded with direction.

1. Constitutional Law ⇨211

The constitutional guarantee of equal protection of the laws requires that all persons shall be treated alike under like circumstances and conditions, both in the privileges conferred and in liabilities imposed. Const.1972, art. 2, § 17; U.S.C.A. Const. Amend. 14.

2. Constitutional Law ⇨208(1)

Even though there may be classifications provided for by the laws, one of the essential requirements is that they shall not be capricious or arbitrary, and that they be reasonable and have a rational basis. Const.1972, art. 2, § 17; U.S.C.A. Const. Amend. 14.

3. Constitutional Law ⇨211

Equal protection of the laws means subjection to equal laws applying alike to

all in the same situation; while reasonable classification is permitted without doing violence to the equal protection of the laws, such classification must be based on some real and substantial distinction bearing a reasonable and just relation to the things in respect to which such classification is imposed; such classification cannot be arbitrarily made without any substantial basis; arbitrary selection cannot be justified by calling it classification. Const.1972, art. 2, § 17; U.S.C.A. Const. Amend. 14.

4. Constitutional Law ⇨240(2)  
Insurance ⇨4.1

The statute providing that title insurance companies may issue title policies on basis of legal opinion of a duly licensed Montana attorney if they were doing so regularly on July 1, 1961, the effective date of the statute, but that companies who were not doing so regularly on such date cannot issue title insurance based upon opinion of a duly licensed attorney discriminates in favor of those agents who were writing title insurance on basis of legal opinions on July 1, 1961, and against those licensed agents who later attempted to do so, and hence violates the guarantee of equal protection of the laws and is unconstitutional. R.C.M.1947, § 40-4601; Const.1972, art. 2, § 17; U.S.C.A. Const. Amend. 14.

Anderson, Symmes, Forbes, Peete & Brown, Billings, Benjamin N. Forbes argued, Billings, for appellants.

Crowley, Kilbourne, Haughey, Hanson & Gallagher, Billings, Stephen H. Foster argued, Billings, for respondent.

JAMES T. HARRISON, Chief Justice.

This is an appeal by defendants from a judgment entered in the district court, Yellowstone County, on December 16, 1974; which permanently enjoined defendants from issuing title insurance policies as to property in this state, subject to certain exceptions. The injunction was suspended during the pendency of this appeal.

# FTC charges title-search prices fixed

From Gazette Staff  
and News Service Reports

WASHINGTON D.C. — The Federal Trade Commission this week charged that six major title insurance firms illegally fixed prices on title search and examinations and on settlement services in Montana, Wyoming and 11 other states.

The commission charged that the companies used private ratings bureaus to fix prices for services provided by the insurance firms to real-estate purchasers, thus restraining competition in this business.

Title insurance protects property owners from any prior claims that may exist against real estate they buy, and before the insurance is issued the firms conduct a title search to make sure the seller has clear title to the property.

The ratings bureaus unlawfully fixed fees for those searches, the FTC charged, and also for other services provided at property settlements.

But, an attorney for one of the companies named in the complaint said the searches are a proper part of doing business.

"Our research holds that title search is one of the functions of insurance," said Richard Klavin, associate counsel for Safeco Title Insurance Co. of Los Angeles. "We maintain that what we did was not improper."

Wyoming Insurance Commissioner Robert W. Schrader said, while he

hasn't seen the FTC's complaint, it appears the commission is attempting to make inroads into state regulation of insurance companies.

Wyoming law allows title insurance companies to consult advisory bureaus, he said.

In addition to Safeco, the complaint named Ticor Title Insurance Co., of Los Angeles; Chicago Title Insurance Co., Chicago; First American Title Insurance Co., Santa Ana, Calif.; Lawyers Title Insurance Co., Richmond, Va.; and Stewart Title Guarantee Co., Galveston, Texas.

All six companies are registered to do business in Montana. All but Safeco Title of Los Angeles are registered in Wyoming.

The FTC staff says the six firms accounted for more than half of the title insurance business nationwide in 1983, with more than \$900 million in direct premiums written.

The complaint does not concern sales of title insurance itself, as the FTC is banned by law from investigating or regulating the insurance industry. However, the commission concluded that title search and examinations, and settlement assistance provided by the firms, are not actually part of the insurance business and so could face scrutiny by the commission.

Title search and examination services identify and describe the ownership of a particular piece of property as well as any actual or potential claims on or interests in the property.



# Policy of Title Insurance

**SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS CONTAINED IN SCHEDULE B AND THE PROVISIONS OF THE CONDITIONS AND STIPULATIONS HEREOF, TICOR TITLE INSURANCE COMPANY**, a California corporation, herein called the Company, insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the amount of insurance stated in Schedule A, and costs, attorney's fees and expenses which the Company may become obligated to pay hereunder, sustained or incurred by the insured by reason of:

1. Title to the estate or interest described in Schedule A being vested otherwise than as stated herein;
2. Any defect in or lien or encumbrance on such title;
3. Lack of a right of access to and from the land; or
4. Unmarketability of such title;

and in addition, if a mortgage is referred to in Schedule A as the insured mortgage, by reason of:

5. The invalidity or unenforceability of the lien of the insured mortgage upon said estate or interest except to the extent that such invalidity or unenforceability, or claim thereof, arises out of the transaction evidenced by the insured mortgage and is based upon
  - a. usury, or
  - b. any consumer credit protection or truth in lending law;
6. The priority of any lien or encumbrance over the lien of the insured mortgage;
7. Any statutory lien for labor or material which now has gained or hereafter may gain priority over the lien of the insured mortgage, except any such lien arising from an improvement on the land contracted for and commenced subsequent to Date of Policy not financed in whole or in part by proceeds of the indebtedness secured by the insured mortgage which at Date of Policy the insured has advanced or is obligated to advance; or
8. The invalidity or unenforceability of any assignment, shown in Schedule A, of the insured mortgage or the failure of said assignment to vest title to the insured mortgage in the named insured assignee free and clear of all liens.

This policy shall not be valid or binding until countersigned below by a validating signatory of the Company.

**TICOR TITLE INSURANCE COMPANY**

By  President

Attest  Secretary

Countersigned:

By \_\_\_\_\_  
Validating Signatory

February 8  
February 11, 1983  
House Bill 528  
Bill Number  
33000

UNNECESSARY LEGISLATION PROPOSED

for the

REGULATION AND CONTROL

of the

LAND TITLE INSURANCE INDUSTRY

\*\*\*\*\*

A COMMENTARY

by

A. L. CRADDOCK

Licensed Montana Attorney  
and  
Licensed Montana Title Agent

Exhibit 10  
January 31, 1985  
House Bill 338  
Submitted by: A. L.  
Craddock

UNITED STATES OF AMERICA

---

BEFORE

FEDERAL TRADE COMMISSION

DOCKET NO. 9190

IN THE MATTER OF:

TITLE INSURANCE

---

COMPLAINT

UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION

In the Matter of )  
TICOR TITLE INSURANCE COMPANY, )  
a corporation, )  
CHICAGO TITLE INSURANCE COMPANY, )  
a corporation, )  
SAFECO TITLE INSURANCE COMPANY, )  
a corporation, )  
FIRST AMERICAN TITLE INSURANCE COMPANY, )  
a corporation, )  
LAWYERS TITLE INSURANCE CORPORATION, )  
a corporation, and )  
STEWART TITLE GUARANTY COMPANY, )  
a corporation. )

DOCKET NO. 9190

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended (15 U.S.C. 41 et seq.), and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the respondents named in the caption hereof have violated the provisions of Section 5 of the Federal Trade Commission Act and that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint, stating its charges as follows:

DEFINITIONS

Paragraph 1. The following definitions shall apply in this complaint:

- a. "Title search and examination services" means all activities which are designed to identify and describe the ownership of a particular parcel of real property as well as any other actual or potential rights to, encumbrances on, or interests in the property.
- b. "Settlement services" means those services related to the closing of a real estate transaction, including but not limited to those services performed in connection with or in supervision of the execution, delivery or recording of transfer and lien documents, or the disbursement of funds.

## RESPONDENTS

Paragraph 2. Respondent Ticor Title Insurance Company is a corporation organized under the laws of the State of California, with its principal place of business at 6300 Wilshire Boulevard, Los Angeles, California 90048.

Paragraph 3. Respondent Chicago Title Insurance Company is a corporation organized under the laws of the State of Missouri, with its principal place of business at 111 W. Washington Street, Chicago, Illinois 60602.

Paragraph 4. Respondent Safeco Title Insurance Company is a corporation organized under the laws of the State of California, with its principal place of business at 13640 Roscoe Boulevard, Los Angeles, California 91409.

Paragraph 5. Respondent First American Title Insurance Company is a corporation organized under the laws of the State of California, with its principal place of business at 114 East 5th Street, Santa Ana, California 92701.

Paragraph 6. Respondent Lawyers Title Insurance Corporation is a corporation organized under the laws of the Commonwealth of Virginia, with its principal place of business at 6630 West Broad Street, Richmond, Virginia 23230.

Paragraph 7. Respondent Stewart Title Guaranty Company is a corporation organized under the laws of the State of Texas, with its principal offices at Stewart Building, Galveston, Texas 77550.

## JURISDICTION

Paragraph 8. Respondents maintain, and have maintained, a substantial course of business, including the acts and practices as hereinafter set forth, which are in or affect commerce within the meaning of the Federal Trade Commission Act.

Paragraph 9. Title search and examination services do not constitute the "business of insurance" within the meaning of the McCarran-Ferguson Act, 15 U.S.C. § 1012(b).

Paragraph 10. Settlement services do not constitute the "business of insurance" within the meaning of the McCarran-Ferguson Act, 15 U.S.C. § 1012(b).

## ANTICOMPETITIVE ACTS AND PRACTICES

Paragraph 11. Respondents have agreed on the prices to be charged for title search and examination services or settlement services through rating bureaus in various states. Examples of states in which one or more of the Respondents have fixed prices with other Respondents or other competitors for all or part of their search and examination services or settlement services are Arizona, Connecticut, Idaho, Louisiana, Montana, New Jersey, New Mexico, New York, Ohio, Oregon, Pennsylvania, Wisconsin and Wyoming.

## ANTICOMPETTIVE EFFECTS

Paragraph 12. As a result of the aforesaid acts and practices, competition in the sale of title search and examination services or settlement services has been restrained in various states.

Paragraph 13. The aforesaid acts and practices therefore constitute unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this 7th day of Jan, A.D., 1985, issues its complaint against said respondents.

### NOTICE

Notice is hereby given to each of the respondents hereinbefore named that the day of 20th A.D., Feb 85, at 10am o'clock is hereby fixed as the time and Federal Trade Commission Offices; The Gelman Building, 2120 L Street, N.W., Washington, D.C. 20037

as the place when and where a hearing will be had before an Administrative Law Judge of the Federal Trade Commission, on the charges set forth in this complaint, at which time and place you will have the right under said Act to appear and show cause why an order should not be entered requiring you to cease and desist from the violations of law charged in this complaint.

You are notified that the opportunity is afforded you to file with the Commission an answer to this complaint on or before the thirtieth (30th) day after service of it upon you. An answer in which the allegations of the complaint are contested shall contain a concise statement of the facts constituting each ground of defense; and specific admission, denial, or explanation of each fact alleged in the complaint or, if you are without knowledge thereof, a statement to that effect. Allegations of the complaint not thus answered shall be deemed to have been admitted.

If you elect not to contest the allegations of fact set forth in the complaint, the answer shall consist of a statement that you admit all of the material allegations to be true. Such an answer shall constitute a waiver of hearings as to the facts alleged in the complaint, and together with the complaint will provide a record basis on which the Administrative Law Judge shall file an initial decision containing appropriate findings and conclusions and an appropriate order disposing of the proceeding. In such answer you may, however, reserve the right to submit proposed findings and conclusions and the right to appeal the initial decision to the Commission under Section 3.52 of the Commission's Rules of Practice for Adjudicative Proceedings.

Failure to answer within the time above provided shall be deemed to constitute a waiver of your right to appear and contest the allegations of the complaint and shall authorize the Administrative Law Judge, without further notice to you, to find the facts to be as alleged in the complaint and to enter an initial decision containing such findings, appropriate conclusions and order.

NOTICE OF CONTEMPLATED RELIEF

Should the Commission conclude from the record developed in any adjudicative proceeding in this matter that the Respondents have violated Section 5 of the Federal Trade Commission Act as alleged in the Complaint, the Commission may order such relief as is supported by the record and is necessary and appropriate, including, but not limited to:

1. Rescinding in all respects all agreements which eliminate or restrict competition between and among Respondents and between Respondents and other competitors in the sale of title search and examination services or settlement services.
2. Prohibiting each of the Respondents in the future from entering into or maintaining any agreement which eliminates or restricts competition between and among themselves or with other competitors in the sale of search and examination services or settlement services.
3. Requiring Respondents, if they subsequently fix prices on the "business of insurance," not to consider expenses that are attributable, directly or indirectly, to search and examination services or settlement services; and in so ordering, the Commission may require that Respondents disclose the method used to allocate costs shared by insurance and noninsurance functions.
4. Requiring Respondents to file compliance reports with the Commission and to give prior notice of any changes in corporate form or organization which would affect compliance obligations under the order entered for a period of ten (10) years.
5. Publication of order to sales personnel and state insurance commissioners.

BY DIRECTION OF THE COMMISSION:

  
Emily H. Rock  
Secretary

SEAL:

ISSUED: January 7, 1985

## HIDDEN DEFECTS IN TITLE —HOW MANY?

Opinions have varied as to the number of possible hidden defects in real estate titles. The most extensive list which we have found includes the following fifty-five clouds on title:

1. False impersonation of the true owner of the land or of his consort;
2. Forged deeds, releases of mortgages and other instruments;
3. Instruments executed under fabricated or expired powers of attorney (death or insanity of principal);
4. Deeds apparently valid but actually delivered after death of grantor;
5. Deeds to or from corporations before incorporation or after surrender or forfeiture of charter;
6. Undisclosed heirs;
7. Misinterpretation of wills, deeds and other instruments;
8. Deeds by persons of unsound mind;
9. Deeds by minors;
10. Deeds by aliens;
11. Deeds by persons apparently single but actually married;
12. Birth or adoption of children after date of will;
13. Children living at date of will but not mentioned therein;
14. Mistakes in recording legal documents (incorrect indexing, errors and omissions in transcribing and failure to record or preserve original instruments);
15. Want of jurisdiction of persons in judicial proceedings;
16. Discovery of will of apparent intestate;
17. Discovery of later will after probate of first will;
18. Federal estate and gift tax liens;

19. State inheritance and gift tax liens;
20. Capacity of foreign personal representatives and trustees to act;
21. Failure to include necessary parties in judicial proceedings;
22. Claims of creditors against property conveyed by heirs or devisees within prescribed period after owner's death;
23. Deeds absolute on their faces but which are held to be equitable mortgages;
24. Deeds in lieu of foreclosure set aside as being given under duress;
25. Ultra vires deed given under falsified corporate resolution;
26. Outstanding prescriptive rights not of record and not disclosed by survey;
27. Conveyances and proceedings affecting rights of servicemen protected by Soldiers and Sailors Civil Relief Act;
28. Deed of property recited to be separate property of grantor which is in fact community property;
29. Errors in tax records (for example, listing payment against wrong property);
30. Deed from bigamous couple—prior existing marriage in another jurisdiction;
31. Deed from convicted felon;
32. Conveyance by heir, devisee or survivor of a joint estate who murdered the decedent;
33. Defective acknowledgement due to lack of authority of notary (acknowledgement taken before commission or after expiration of commission);
34. Federal condemnation without filing of notice (federal law does not require filing of notice of taking in local recording office);
35. Rights under financing statements filed under Uniform Commercial Code in the name of the debtor who may not be the owner of the property;
36. Record easement, but erroneous ancient location of pipe or sewer line which does not follow route of granted easement;

37. Demolition liens where city demolishes building under statutory authority which are not recorded or are not recorded against the true owner;

38. Descriptions apparently but not actually adequate;

39. Fraudulent charges in existing records by persons other than recording officials. Changes in record by recording official without authority upon oral request or upon being presented with instrument changed after execution and recordation;

40. Ineffective waiver of tax liens by tax or other government authorities repudiated later by successors;

41. Corporation franchise taxes as lien on all corporate assets, notice of which does not have to be recorded in the local recording office;

42. Wills revoked by marriage after execution when marriage not contemplated by terms of will;

43. Special assessment where they become lien upon passage of resolution and before recordation or commencement of improvements for which assessed;

44. Interest arising by deeds to fictitious characters to conceal illegal activities on the premises;

45. Erroneous reports furnished by tax officials but not binding on municipality;

46. Administration of estates and probate of wills of persons absent but not deceased;

47. Undisclosed divorce of spouse who conveys as sole heir of deceased consort;

48. Marital rights of spouse, purportedly but not legally divorced;

49. Tax homestead exemptions set aside as fraudulently claimed;

50. Break in chain of title beyond period of examination of public records where running of adverse possession statute has been suspended (true owner is incompetent, absent or incarcerated or title is held by the sovereign);

51. Deed from trustees of purported business trust which is in fact a partnership or joint stock association;

52. Deed of executor under nonintervention will when order of solvency has been fraudulently procured or entered;

53. Deed from record owner who has sold property to another purchaser on unrecorded land contract with the purchaser having taken possession of premises;

54. Void conveyances in violation of public policy, such as payment of gambling debt, payment for contract to commit crime or conveyance made in restraint of trade; and

55. Duress in execution of instruments.

ABA LTG-F Newsletter-August, 1978.

# APPRAISALS OF STOCK

FOR  
CLOSELY HELD COMPANIES

- EMPLOYEE STOCK OWNERSHIP PLANS (ESOTS)
- CORPORATE REORGANIZATIONS
- ESTATE AND GIFT TAXES

BACKED BY EXPERT TESTIMONY

CONTACT

WILLIAM K. SCHROFF  
CORPORATE FINANCE DEPT.

**R.G. DICKINSON & CO.**

310 GRAND AVE. DES MOINES, IOWA 50310

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WITNESS STATEMENT

NAME Harold Zachariasen BILL NO. 334  
ADDRESS Missoula Montana DATE 1/31/85  
WHOM DO YOU REPRESENT? Carla Distributing Inc  
SUPPORT  OPPOSE \_\_\_\_\_ AMEND \_\_\_\_\_

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

WITNESS STATEMENT

NAME Roger Tippy BILL NO. HB 339  
ADDRESS Box 124, Helena DATE \_\_\_\_\_  
WHOM DO YOU REPRESENT? Mont. Beer & Wine Wholesalers Assn.  
SUPPORT  OPPOSE \_\_\_\_\_ AMEND \_\_\_\_\_

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

WITNESS STATEMENT

NAME Wayne Budt BILL NO. 309  
ADDRESS 2701 Prospect Ave DATE 1-31-85  
WHOM DO YOU REPRESENT? Mont PSC  
SUPPORT X OPPOSE \_\_\_\_\_ AMEND \_\_\_\_\_

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

WITNESS STATEMENT

NAME Terry Carady BILL NO. 13338  
ADDRESS 910 Helena Ave Helena, mt DATE 1/31/85  
WHOM DO YOU REPRESENT? REACTORS  
SUPPORT X OPPOSE \_\_\_\_\_ AMEND \_\_\_\_\_

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

WITNESS STATEMENT

NAME RICHARD E. BACH BILL NO. <sup>H.</sup> 33P  
ADDRESS MT. INSURANCE DEPT., HELENA DATE \_\_\_\_\_  
WHOM DO YOU REPRESENT? SEE ABOVE  
SUPPORT  (WITH AMENDMENT) OPPOSE \_\_\_\_\_ AMEND \_\_\_\_\_

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

MONT. INS. DEPT. SUPPORTS THIS BILL AS  
AMENDED BECAUSE OF THE PRESENT LACK OF REGULATION  
REGULATING THIS INDUSTRY. THE BILL IS DERIVED FROM  
THE NATIONAL ASSOC. OF ~~STATE~~ INSURANCE COMMISSIONERS'  
MODEL TITLE INSURANCE BILL, AND WOULD ALLOW  
FOR GREATER CONSUMER PROTECTION WHILE PROVIDING  
THE INDUSTRY SET GUIDELINES UNDER WHICH THEY  
MAY OPERATE.

February 3, 1985

House Business & Labor Committee  
Main Capitol  
Helena, MT 59620

RE: House Bill 338 - Teddy Annear personally appeared at committee hearing January 31, 1985 and this is the prepared statement requested.

I'm Teddy Annear from Bozeman, Montana. I own and operate my own escrow company and have just recently started a separate title company.

I have had experience working with and in title companies; courthouse as a deputy assessor; and in lending institutions. I believe I am in a unique position to give an opinion on this house bill 338, as for the past two years I have done real estate closings using various title companies, all of which have plants.

I have taken time away from my business today to appear before this committee to oppose "house bill 338".

In this time of deregulation, here is an industry requesting to be regulated! Please take time to ask yourself why!! Read their bill carefully. Title insurance is an unusual and often times misunderstood profession.

Presently the substantial insurance companies apply to conduct business in Montana. Upon approval, it becomes their responsibility to choose agents and they bear the responsibility of the agents actions. As long as an agent is acting for an insurance company, the customer is protected and if an ex-agent falsely states he is acting for an insurance company, he faces civil action - - - which is what this bill proposes - - - but requests the commissioner to accept the burden.

Title Insurance is described as an examination of public records. This bill proposes all agents have a plant. I strongly oppose this for the following reasons:

1. Presently many errors are made due to agents relying too heavily on their plants; and in a rush do not show lien or mortgage releases, or worse yet not showing new liens and mortgages.
2. In various areas of the state, attorneys and other agents are quite adequate in examining from courthouse records.

Another portion of this bill indicates the commission will establish plant standards. How will the commission establish these standards? I for one intend to use new technology and see this as a drawback in serving the public quickly and accurately.

The bill also states that the commission will appoint representatives to examine such plants and the agent will pay for such an examination. I see this as an unneeded expense to

February 3, 1985

Teddy Annear's Comments on House Bill 338

the agent, because it is virtually impossible for someone to find errors in title plants. Also, since this is proposed, people will be hired to set standards, etc., and I believe tax payers will pay the unnecessary burdens.

Briefly opposing other portions of the bill: Upon careful review, you'll note:

- A. Very few can qualify to own a plant because they are limited not only by their occupation, but also that of their mother, brother, child or any other associate.
- B. Section six reads "financial interest" means a legal or beneficial interest that entitles the holder directly or indirectly, to 1% or more of the net profits or net worth of the entity in which the interest is held. In a small business, such as my own, that would include all employees.

My last, but certainly not final objection to this bill is "objection to an interest bearing trust account". As a sole proprietor, I was advised by my banker to have such an account. I pay tax on such interest earned as it's considered income. None other than a sole proprietor can have such an account, and as a sole proprietor, you are less likely to do anything wrong as there are no corporate laws to hide behind. Not only is a sole proprietor's business in jeopardy, in case of error, but also everything he owns, home, family, etc. Therefore, I am very careful to handle my business properly. Upon closing a transaction, to allow enough time for proper handling of recording, etc., all disbursements are handled within 24 hours, generally less. Therefore, you can see that interest earned does not belong to buyer, since he received property on payment, nor seller, since he receives funds immediately on transfer of property. The interest I earn, is on the time it takes the check to clear the banks. Without this interest bearing account I would be unable to compete today, as title companies keep the closing fee low to keep out competition, though they obviously can't handle all of the business to the customer's satisfaction. They are able to charge such low fees because they are compensated by the title insurance fees.

I have a growing business because customers are pleased with the unusual quick handling of their transaction. A buyer is able to get in a home more quickly and a seller pays less interest on loan pay-offs.

I object to other portions of this bill also, which will be voiced, if the bill continues further.

I hope after your careful review, you will see thru the voiced intent of this bill and recognize the true intention.

Sincerely,



Theodora Annear

TA/bgm

We the undersigned petition the House Business and Labor Committee to table house bill #338 for the following reasons:

- 1 - There are already laws that can handle disputes in the title industry or any other industry.
- 2 - The commissioner is unfamiliar with such handlings, therefore hurting the citizens as follows:
  - a - Costing the taxpayer money for office education, monitoring and enforcement and/or
  - b - Disregarding the rights of the citizens to fair competition by allowing someone from the title industry to review and approve confidential contract and operating proposals.

Attempting to monitor ethics is ideal but impossible. This can cost the taxpayer a fortune with no results.

Dated this 6th day of February, 1985.

*Ronda Richter*  
*Bernice Olson LW*  
*Alan Center*  
*Cindy Jacobs*  
*Hanna L. Keon*  
*Nicky J. Tong*  
*Marsha White*  
*Primo Carilli*

# **CARBON TITLE GUARANTY**

2 NORTH BROADWAY -- THE POLLARD  
P. O. DRAWER 10 -- RED LODGE, MONTANA 59068  
406-446-2603

February 3, 1985

Montana House of Representatives  
Business and Labor Committee  
Hon. Bob Pavlovich, Chairman  
State Capitol Building  
Capitol Station  
Helena, Montana 59620

Re: House Bill 338  
Montana Title Insurance Act

Dear Chairman Pavlovich and Committee Members:

I wish to thank you for the opportunity to be heard in opposition to House Bill 338 at the hearing thereon held January 31, 1985, and for the courtesy extended to me and my wife while in attendance.

From the nature of the questions asked after the close of the testimony by some members of the committee and the answers thereto from the proponents of the bill, it occurred to me that some misconceptions pertaining thereto had crept into the proceedings.

Therefore, I humbly submit the following observations in an attempt to clarify these points and respectfully request that you give them your earnest attention and consideration.

The most serious unanswered questions left hanging in abeyance were "What is the purpose of the proposed legislation?" "What social ills are to be cured--what evils banished--by House Bill 338?"

During the presentation of testimony by the proponents, not once was any fact, let alone proof, of dire need or necessity for such litigation uttered by the witnesses.

During the questioning of witness Rick Bach, a proponent of the bill from the office of the Commissioner of Insurance, it was conclusively proved that there were not now, nor had there been in the past, any consumer complaints relative to title insurance agents or the title insurance industry made to the office of the Commissioner of Insurance or by that office to the Attorney General for prosecution or litigation.



Montana House of Representatives  
Page 2  
February 3, 1985

This then gives rise to the more serious, weighty and deciding question, "Have the proponents of House Bill 338 presented conclusive evidence that indicates the necessity for the exercise of the state's police power in the regulation and control of title insurance agents and the title insurance business in the State of Montana?"

Those of us opposed to the bill respectfully submit that the answer to this question is a resounding "No!"

We further suggest with gravity and sincerity that the action of this honorable committee relative to House Bill 338 will put to the test whether the statement of legislative intent expressed so nobly in the strong and forceful words set forth in Title 2, Chapter 8, Section 101, Montana Code Annotated, a portion of which is hereinafter quoted, can be translated by this committee into rightful and honest action or whether these words will remain forgotten--only hollow utterances without meaning or effect, lying dormant and pressed between the pages of a dusty book.

Therefore, we humbly ask that as you deliberate this important matter, you remain mindful of the following commandments:

"2-8-101 (2) (c) Montana Code Annotated. No profession, occupation, business, industry or other endeavor is subject to the state's regulatory power unless the exercise of such power is necessary to protect the public health, safety, or welfare from significant and discernible harm or damage. The exercise of the state's police power shall be done only to the extent necessary for that purpose."

"2-8-101 (2) (e) Montana Code Annotated. The state may not regulate a profession, occupation, industry, business, or other endeavor in a manner which will unreasonably adversely affect the competitive market."

With the above in mind, we submit that the cost of building a "title plant" in today's market will approach from 43 cents to 47 cents a recorded document, which includes the cost of material, labor, indexing, microfilming, etc.

With over 1,350,000 recorded documents in Yellowstone County, the cost of building a new title plant there would exceed \$585,500.00. In Carbon or Stillwater Counties, the cost would approximate \$110,000.00.

Such costs are economically unfeasible from a business standpoint and constitute an impenetrable barrier to future competition to those in possession of existing and ancient abstract plants compiled over a period of 50 to 75 years at a much lesser cost.

The question then arises, "Is a 'title plant' absolutely necessary to the proper and accurate conduct of a title insurance agent?"

Again, the answer is a resounding "No!"

From the inception of the title insurance industry in the State of Montana in the 1950s to the present time, title agents, attorney and non-attorney alike, have been legally issuing policies of title insurance based on the opinion of a licensed Montana attorney as to the condition of the title following a review by such attorney of pertinent title records, whether such records are the public, courthouse records or privately maintained duplicates thereof.

The proponents of the bill cite State ex rel. Freeman v. Abstracters' Board of Examiners, which was decided by the Montana Supreme Court on May 9, 1935, a half century ago, as authority for the proposition that in the year 1985 and years following, there is an indisputable need for an "abstract" or "title plant" privately maintained by an agent issuing title insurance.

This proposition or contention cannot be supported in this day and age.

On May 9, 1935, the "Abstracters' Law" had barely been in existence 5 years. It is to be kept in mind that this law was proposed to the legislature by the same organization that is now proposing the adoption of House Bill 338.

At that time, due to relatively primitive methods of record keeping and reproduction, a privately maintained "abstract plant" was perhaps superior to some less sophisticated county courthouse systems.

With our present day methods of rapid reproduction of record documents and the extensive use of electronic devices in communications and record keeping, the antiquated need for "abstract" or "title plants" no longer exist.

This fact was recognized by the Supreme Court of the State of Montana in its holding in the 1975 case of Montana Land Title Association v. First American Title and Escrow of Billings, where it held unconstitutional the law that prevented the issuance of a policy of title insurance on the basis of an opinion of title by a licensed Montana attorney after the review of the pertinent title records, public or private, without the maintenance of an abstracting plant as required by the "Abstracters' Law."

Montana House of Representatives

Page 4

February 3, 1985

This fact was further recognized by the Legislature of the State of Montana, when, on July 1, 1979, it wisely abolished the "Board of Abstracters" and on May 1, 1981, it wisely repealed the entire "Abstracters' Law" including the law requiring the maintenance of an abstracting plant.

It has not been demonstrated or proven by the proponents of House Bill 338 that such actions by the Montana Supreme Court and the Montana Legislature were detrimental to the public health, safety or welfare or to the consumer in particular. Therefore, the present contention of the Montana Land Title Association is shown to be baseless.

We who oppose the adoption of House Bill 338 would further point out that to limit title agent licenses (by the economic barrier of the requirement of a "title plant" as a prerequisite to the licensing of a title insurance agent) to slightly more than 50 members of the Montana Land Title Association would be unconstitutionally discriminatory and subject to nullification by the Supreme Court of the State of Montana.

Furthermore, ponder the dilemma presented by the counties of Treasure and Garfield where we are informed that no title plants presently exist.

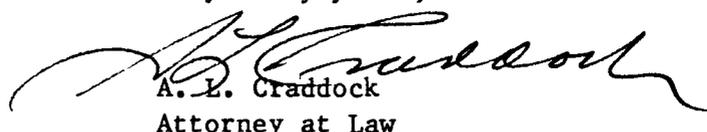
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Under the existing law in the State of Montana as the same relates to title insurance agents, any Montana citizen or business person, non-attorney as well as attorney, otherwise qualified as to financial ability, integrity, experience and knowledge, may be licensed as a Montana title insurance agent upon the application of that person after appointment by a qualified title insurance underwriter as its agent, and may thereafter issue policies of title insurance based on the opinion of title by a licensed Montana attorney after a review of pertinent title records, public or private.

Thus, the battle line is not drawn between the Montana Land Title Association members and the Montana attorneys, but is drawn between the citizens of the State of Montana as a whole and the relatively few members of the Montana Land Title Association.

If you should desire to direct any further questions to me relative to our opposition viewpoint, please dial me direct--collect at 0-446-2603.

Very truly yours,



A. L. Craddock  
Attorney at Law

# **CARBON** TITLE GUARANTY

2 NORTH BROADWAY --- THE POLLARD  
P. O. DRAWER 10 --- RED LODGE, MONTANA 59068  
406-446-2603

February 3, 1985

Montana House of Representatives  
Business and Labor Committee  
Hon. Bob Pavlovich, Chairman  
State Capitol Building  
Capitol Station  
Helena, Montana 59620

Re: House Bill 338  
Montana Title Insurance Act

Dear Chairman Pavlovich and Committee Members:

I wish to thank you for the opportunity to be heard in opposition to House Bill 338 at the hearing thereon held January 31, 1985, and for the courtesy extended to me and my wife while in attendance.

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February 3, 1985

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Montana House of Representatives

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February 3, 1985

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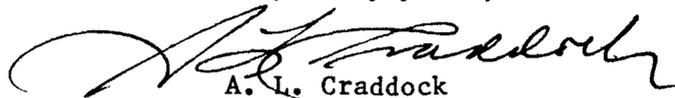
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If you should desire to direct any further questions to me relative to our opposition viewpoint, please dial me direct--collect at 0-446-2603.

Very truly yours,



A. L. Craddock  
Attorney at Law

A. L. CRADDOCK

ATTORNEY AT LAW

2 N. Broadway -- The Pollard

Red Lodge, Montana 59068

Phone: (406) 446-2603

P. O. Drawer 10

January 14, 1985

House of Representatives  
Business and Labor Committee  
Hon. Bob Pavlovich, Chairman  
State Capitol Building  
Capitol Station  
Helena, Montana 59620

Re: House Bill 338  
Montana Title Insurance Act

Dear Chairman Pavlovich and Committee Members:

In a long distance telephone conversation with Rep. Bruce Simon on February 13, 1985, relative to House Bill 338, I was surprised and distressed to learn that one or more of the proponents of the bill had told this Committee that any person applying to the insurance commissioner for any type of insurance agent's license could also obtain a title insurance agent's license merely by checking a box on the application form.

That statement absolutely is not true, and as I related to Rep. Simon, anyone who told this Committee that was not only reckless with the truth but was simply lying to the Committee.

First, it is impossible for anyone in the State of Montana to obtain an insurance agent's license of any type without first having been appointed as a specific type of insurance agent by a specific "Insurer" licensed or authorized to transact a specific type of insurance business in the State of Montana.

Thus, an "Insurer" (insurance company or underwriter) who is licensed only to write disability insurance in the State of Montana can appoint only disability insurance agents who in turn will be issued only disability insurance agents' licenses by the insurance commissioner.

The use of "boxes" on the "Appointment of Agent" forms and the "Insurance Agent's License" forms supplied by the insurance commissioner (copies of which are enclosed herewith) is to avoid the need for multiple forms and to allow the use of but one form for all types of insurance agents.

The office of the insurance commissioner would not, under any circumstances, issue a title insurance agent's license to an agent appointed by an insurer licensed in Montana to issue only insurance other than title insurance, no matter how many boxes were checked.

Montana House of Representatives  
Page 2  
January 13, 1985

Therefore, it is readily seen that the appointment and licensing of title insurance agents in the State of Montana is under the strict surveillance, regulation and control of the title insurer and the insurance commissioner.

A title insurer who is to be strictly liable for the payment of possibly millions of dollars in claims is not apt to appoint an incompetent, unqualified or dishonest person as its agent.

If the title insurance agent improperly insures a title in the State of Montana, it is not the consumer who is injured or damaged, it is the title insurer who loses, as the title insurer is obligated by state law to honor the policies of title insurance written by its agent and to pay the claims made against such policy.

For the reasons stated, it is respectfully submitted that there is no need for the expense and inconvenience of examinations as a prerequisite to the licensing of title insurance agents, as their appointment and licensing are adequately policed by the title insurers and the Montana Insurance Commissioner. This fact was realized by the framers of the present Montana Insurance Agency Licensing Law when they excluded title insurance agents from the examination requirement.

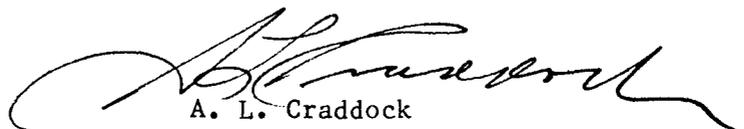
As related to Rep. Simon on February 13, 1985, we who are opposed to House Bill 338 believe that it is unconstitutional as written in that it would constitute and ex post facto application of regulatory law on those presently legally licensed as title insurance agents.

Therefore, in the event that some form of House Bill 338 is enacted into law, we respectfully and urgently suggest and request that a "grandfather clause" be included so as to avoid the ex post facto objection.

Such a clause is spelled out by me in the written "Statement In Opposition And Suggested Amendments" presented by us at the initial committee hearing on House Bill 338. See Paragraph "J" at Page 5 thereof.

Thank you for your further consideration.

Very truly yours,

  
A. L. Craddock  
Attorney at Law

AC:rc

# APPOINTMENT OF AGENT

TO THE INSURANCE COMMISSIONER OF THE STATE OF MONTANA,

Helena, Montana

(Both address blocks must be completed)

<b>CARON TITLE GUARANTY</b> (Agent/Agency name exactly as licensed)	(Zip Code)
<b>2 N. Broadway, Drawer 10</b> (Address)	
<b>Red Lodge, Montana 59068</b> (City and State)	

(Complete this for return of Company Copy of this form)

<b>TICOR TITLE INSURANCE COMPANY</b> (Name of Insurer)	(Zip Code)
<b>Suite 15 - 600 Central Plaza</b> (Address)	
<b>Great Falls, Montana 59401</b> (City and State)	

AGENT'S LICENSE NO. 7626

The above named is hereby appointed as an agent of the undersigned Insurer for the following kinds of insurance which the Insurer is authorized to transact in the State of Montana.

- (b) Disability  (c) Property  (d) Casualty  (e) Vehicle  (f) Surety  (g) Title  (h) Hail  (i) Mechanical Breakdown
- (m) Mechanical Breakdown

The appointment is subject to restrictions which may be placed upon the authority of the agent by the Insurer, and to the existence in the name of the appointee as licensee, of a valid agent's license issued by the Insurance Commissioner of the State of Montana.

**R. K. Craddock, Title Officer**

(Names of persons authorized on license if firm or partnership)

**A. L. Craddock, Attorney at Law, Chief Title Officer**

**C. R. Elton, Title Officer**

Note: Submit all 4 copies to the Ins. Dept.



TICOR TITLE INSURANCE COMPANY

(Insurer)

By J. L. Cady  
J. L. Cady, Assistant Secretary

FORM NO. 1037

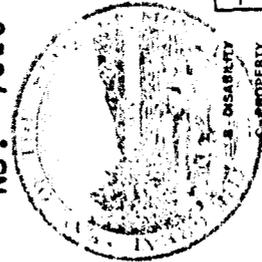
OFFICE OF STATE AUDITOR  
STATE OF MONTANA — INSURANCE DEPARTMENT  
INSURANCE AGENT'S LICENSE

2

NOT TRANSFERABLE

NO. 7026 AMENDED

THIS CERTIFIES THAT THE PERSON NAMED HEREON, SUBJECT TO THE PROVISIONS OF THE INSURANCE CODE, IS HEREBY LICENSED AS AN AGENT TO TRANSACT INSURANCE WITHIN THE STATE FOR SUCH INSURERS AS LAWFULLY APPOINT HIM AS AGENT, FOR THE KINDS OF INSURANCE AS INDICATED ON THIS LICENSE.



DATE RECEIPT NO.

AUG 24 84 219049

OTHER AUTHORIZED PERSONS

CARBON TITLE GUARANTY  
2 N. BROADWAY  
DRAWER 10.  
RED LODGE, MT. 59068

R. K. CRADDOCK, TITLE OFFICER  
A. L. CRADDOCK, CHIEF TITLE OFFICER  
C. R. ELION, TITLE OFFICER

- D - CASUALTY
- E - VEHICLE
- F - SURETY
- G - TITLE

THIS LICENSE MUST BE ON DISPLAY IN LICENSEE'S PLACE OF BUSINESS, AND SHALL AT ALL TIMES BE THE PROPERTY OF THE STATE OF MONTANA. MUST BE RETURNED TO THE COMMISSIONER UPON ANY EXPIRATION, TERMINATION, SUSPENSION OR REVOCATION.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal.

*E. V. Sandberg*

COMMISSIONER OF INSURANCE



**STATE OF MONTANA**

OFFICE OF  
**E. V. "SONNY" OMHOLT**

**STATE AUDITOR**  
COMMISSIONER OF INSURANCE  
INVESTMENT COMMISSIONER  
CENTRAL PAYROLL SYSTEM

**HELENA, MONTANA 59601**

TO: INSURANCE AGENCY ADDRESSED

RE: AMENDED LICENSE NO. 7026

Enclosed, please find your amended agency license showing that \_\_\_\_\_

C.R. Stone

has been (added) (~~deleted~~).

Your insurer's are no longer required to file amended appointments with this office but it is your responsibility to notify them of this change.

Sincerely,

E. V. "SONNY" OMHOLT  
State Auditor & Ex Officio  
Commissioner of Insurance

*Joyce A. Meagher*

Joyce A. Meagher, AFE  
Licensing Supervisor

JM/s  
Encls.

February 3, 1985

House Business & Labor Committee  
Main Capitol  
Helena, MT 59620

RE: House Bill 338 - Teddy Annear personally appeared at committee hearing January 31, 1985 and this is the prepared statement requested.

I'm Teddy Annear from Bozeman, Montana. I own and operate my own escrow company and have just recently started a separate title company.

I have had experience working with and in title companies; courthouse as a deputy assessor; and in lending institutions. I believe I am in a unique position to give an opinion on this house bill 338, as for the past two years I have done real estate closings using various title companies, all of which have plants.

I have taken time away from my business today to appear before this committee to oppose "house bill 338".

In this time of deregulation, here is an industry requesting to be regulated! Please take time to ask yourself why!! Read their bill carefully. Title insurance is an unusual and often times misunderstood profession.

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February 3, 1985

Teddy Annear's Comments on House Bill 338

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- A. Very few can qualify to own a plant because they are limited not only by their occupation, but also that of their mother, brother, child or any other associate.
- B. Section six reads "financial interest" means a legal or beneficial interest that entitles the holder directly or indirectly, to 1% or more of the net profits or net worth of the entity in which the interest is held. In a small business, such as my own, that would include all employees.

My last, but certainly not final objection to this bill is "objection to an interest bearing trust account". As a sole proprietor, I was advised by my banker to have such an account. I pay tax on such interest earned as it's considered income. None other than a sole proprietor can have such an account, and as a sole proprietor, you are less likely to do anything wrong as there are no corporate laws to hide behind. Not only is a sole proprietor's business in jeopardy, in case of error, but also everything he owns, home, family, etc. Therefore, I am very careful to handle my business properly. Upon closing a transaction, to allow enough time for proper handling of recording, etc., all disbursements are handled within 24 hours, generally less. Therefore, you can see that interest earned does not belong to buyer, since he received property on payment, nor seller, since he receives funds immediately on transfer of property. The interest I earn, is on the time it takes the check to clear the banks. Without this interest bearing account I would be unable to compete today, as title companies keep the closing fee low to keep out competition, though they obviously can't handle all of the business to the customer's satisfaction. They are able to charge such low fees because they are compensated by the title insurance fees.

I have a growing business because customers are pleased with the unusual quick handling of their transaction. A buyer is able to get in a home more quickly and a seller pays less interest on loan pay-offs.

I object to other portions of this bill also, which will be voiced, if the bill continues further.

I hope after your careful review, you will see thru the voiced intent of this bill and recognize the true intention.

Sincerely,



Theodora Annear

TA/bgm

We the undersigned petition the House Business and Labor Committee to table house bill #338 for the following reasons:

- 1 - There are already laws that can handle disputes in the title industry or any other industry.
- 2 - The commissioner is unfamiliar with such handlings, therefore hurting the citizens as follows:
  - a - Costing the taxpayer money for office education, monitoring and enforcement and/or
  - b - Disregarding the rights of the citizens to fair competition by allowing someone from the title industry to review and approve confidential contract and operating proposals.

Attempting to monitor ethics is ideal but impossible. This can cost the taxpayer a fortune with no results.

Dated this 6th day of February, 1985.

Brenda Manry  
Debra Manry

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Dated this 6th day of February, 1985.

Don R. J. Lt  
Harley Henderson  
Darby Zingelinger  
Pat Hawkins  
Connie Wallace  
Jamie Ray  
Kelly Evans

BEFORE THE COMMITTEE ON BUSINESS AND LABOR  
MONTANA HOUSE OF REPRESENTATIVES

House Bill 334 by Gould: ) MONTANA BEER & WINE WHOLESALERS  
Rental of Portable Draft ) ASSOCIATION -- STATEMENT IN  
Beer Equipment by Wholesalers ) SUPPORT

I am Roger Tippy, representing the beer and wine wholesalers association which asked Representative Gould to sponsor this bill. We support it as written, as a writing into law of some policies enforced by the Department of Revenue for some years and as a move to preserve the status quo. Beer wholesalers have responded to the Department's announcement that they could rent draft trailers, etc., at a reasonable or fair market value rental by keeping such equipment on hand and providing it to small town rodeos, company picnics, and similar events.

The Statement of Intent as drafted by Legislative Council clarifies that the Department's rule would not be a price list or anything more complicated than a short statement of an accounting principle. To give you an example of that principle, suppose a trailer costing \$6,000 has a useful life of eight years and 66 2/3% of its usage is as a rental for draft dispensing at these events. The total cost amortized each year is \$750 and the rental income should cover 2/3 of that, or \$500. If the unit is rented out a minimum of 20 days each year, the rental charge should be \$25 a day.

Dated January 31, 1985.





VISITORS' REGISTER

HOUSE BUSINESS AND LABOR COMMITTEE

BILL House Bill 338

Date January 31, 1985

SPONSOR Representative Addy

NAME	RESIDENCE	REPRESENTING	SUP- PORT	OP- POSE
AL Craddock	Red Lodge	Carbon Title Guaranty		X
GENE PHILLIPS	KALISPEL	MONTANA LAND TITLE ASSOC.	X	
WM. F. GOWEN	HELENA	HELENA ABSTRACT & TITLE CO. MONTANA LAND TITLE ASSN	X	
LAREN SCHIZERS	KALISPEL	County Guaranty Title MONTANA	X	
JOHN C SMITH	DENVER	STUART TITLE GUARANTY	X	
Robert Nos	Columbus,	Stillwater Abstract Co.	X	
Robert Nee	Columbus	Carbon County Abs'd & Title Co.	X	
BRAD STATION	Bozeman	American Land Title Co.	X	
Steve Strickland	Billings	AMERICAN TITLE & ESTATE		X
Mike Kleeze	Stevensville,	1 <sup>st</sup> American Title	X	
Shelley A. Corti	Hamilton	First Montana Title	X	
Archie Scott	Hamilton	First Montana title	X	
Jack Johns	Sunt Falls	Mountain Title	X	
Robert Mitchell	Boise, Idaho	SAFIZCO Title Insurance	X	
Terry Comodey	Helena	Mt. Assoc of REALTOR.	X	
TRICIA BACH	HELENA	MT. DEPT. OF INVS	X	
Norm Einbeiger	Minneapolis Minn	Minnesota Title	X	
Art Jost	FORT BENTON	Chippewa Co Abst Co.	X	
REN GRAND and	Minneapolis Minn	Title Ins. Co. of MINN	X	
Harvey Amundson	Bozeman, MT.	Guardian title		X
Eddylynne	Bozeman, MT.	Eddylynne		X

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

