SHORT TITLE: Title insurance; modifying provisions relating to issuance of title insurance policy; requiring certain audits; effective date; emergency.

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

SENATE BILL NO. 641 By: Rabon

AS INTRODUCED

An Act relating to title insurance; amending 36 O.S. 1991, Section 5001, which relates to qualifications of title insurers; modifying qualifications of entities authorized to countersign title insurance policy or certificate of title; updating language; clarifying requirements for issuance of title insurance policy; prohibiting certain actions relating to countersigning or issuing policies of title insurance; requiring certain examination prior to issuance of title insurance; prohibiting issuance of commitment for title insurance unless abstract is certified within certain time period; defining term; requiring final title search and report prior to issuance of title insurance; requiring report show certain instruments; prohibiting issuance of policy unless commitment has certain effective date; construing provision; requiring policy to state premium on face; requiring agent submit certain information to insurer; requiring insurer pay certain tax within certain period; requiring insurer conduct certain audits and make report of audits to Insurance Department; requiring Insurance Department conduct certain audits; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 36 O.S. 1991, Section 5001, is amended to read as follows:

Section 5001. A. Any foreign or domestic stock insurer authorized by its corporate charter to engage in business as a title insurer shall be entitled to the issuance of a certificate of authority as a title insurer in this state upon meeting the applicable requirements of Article 6 (Authorization of Insurers and General Requirements), except that existing title insurers may have their certificate of authority renewed by maintaining surplus in regard to policyholders of not less than Five Hundred Thousand Dollars ($500,000.00).

B. A person engaged in the business of preparing or issuing abstracts of, but not guaranteeing or insuring, title to property, or a person acting only as agent for a title insurer, shall not be deemed to be a title insurer.

C. Every policy of title insurance or certificate of title issued by any company authorized to do business in this state shall be countersigned by ~~some~~ either:

1. A person, partnership, corporation ~~or~~, agency, or other legal entity actively engaged in the abstract of title business in ~~Oklahoma as defined and provided in Title 1~~ this state holding a certificate of authority as an abstractor under the Oklahoma Abstractors Law, Section 227.10 et seq. of Title 74 of the Oklahoma Statutes; or ~~by an~~

2. An attorney licensed to practice in ~~the State of Oklahoma~~ this state, duly appointed as an agent of a title ~~insurance company, provided that no policy of title insurance shall be issued in the State of Oklahoma except after examination of a duly certified~~

~~abstract of title prepared by a bonded and licensed abstracter as defined herein~~ insurer.

D. It is unlawful for the holder of an abstractors certificate of authority or attorney licensed to practice in this state authorized to countersign and issue policies of title insurance to:

1. Enter into any partnership, joint venture, or other type of business arrangement with any person or legal entity not holding an abstractors certificate of authority or a license to practice law in this state for the purpose of selling, countersigning, or issuing policies of title insurance; or

2. Divide or distribute the proceeds, fees, or commissions, or any part thereof, with such person or legal entity.

E. It is unlawful for any title insurer to appoint as an agent:

1. Any person or legal entity who or which is not holding an Oklahoma abstractors certificate of authority;

2. The holder of an individual abstractors license as defined under the Oklahoma Abstractors Law; or

3. An attorney who is not licensed to practice in this state.

F. No policy of title insurance shall be issued in this state except after examination of a duly certified abstract of title prepared by the holder of an abstractors certificate of authority as defined under the Oklahoma Abstractors Law and examination made by an attorney licensed to practice in this state. No commitment for title insurance shall be issued based upon an abstract which has last been certified more than sixty (60) days prior to the date of the issuance of the commitment. The commitment shall bear the effective date and time of the latest abstractors certificate contained in the abstract.

G. As used in this section, a "duly certified abstract of title" means an abstract certified from sovereignty to the latest certificate date prior to issuance of a commitment for title insurance which abstract contains all documents affecting the real

property covered thereby and concluding with a current abstractors certificate certifying its accuracy.

H. The abstract need only be prepared once prior to the issuance of the title insurance company's commitment. Prior to the issuance of a policy of title insurance pursuant to this commitment, a final title search shall be conducted and final title report prepared and submitted by the holder of an abstractors certificate of authority issued by the State Auditor and Inspector under the Oklahoma Abstractors Law for the county in which the real property is located. The report shall show all instruments filed of record or which have been recorded in the county in which the real property is located, which affect title to the real property, and any interests therein or encumbrances thereon including, but not limited to:

1. Instruments filed in the office of the county clerk;

2. The records of the district court clerk;

3. Court proceedings;

4. Pending suits;

5. Liens of any kind affecting the title to the real property;

6. Liens, judgments, or transcripts of judgments against any of the parties appearing in any chain of title shown therein;

7. All ad valorem taxes and tax liens due and unpaid against the real property, tax sales thereof unredeemed, tax deeds, unpaid special assessments certified to the office of the county treasurer of the county in which the real property is located, due and unpaid, and unpaid personal property taxes which are a lien on the real property; and

8. All documents and instruments filed of record subsequent to the issuance of the commitment.

I. No title insurance policy shall be issued upon any commitment having an effective date of more than one hundred eighty (180) days subsequent to the issuance of the commitment. Nothing in

this subsection shall be deemed to prohibit the issuance of a policy of title insurance upon examination of an abstract certified from sovereignty and based upon an opinion issued by an attorney licensed to practice in this state without the necessity of issuance of a commitment or a final title report, provided that the effective date of the policy of title insurance is the same as the last date of certification of the abstract examined.

J. Each policy of title insurance issued shall bear on its face the premium charged therefor. Each title insurance agent shall submit to the insurer a copy of the commitment, latest abstract certificate bearing the effective date of the commitment, attorney's title opinion showing the condition of the title from sovereignty to the date and time of the commitment, and final title report from the effective date of the commitment covering the real property described in the commitment to the effective date of the title insurance policy involved. Each insurer shall pay to the State of Oklahoma, the amount of tax due on the reported title insurance premium within sixty (60) days from the day of the issuance of the title insurance policy.

K. Title insurers shall conduct policy inventory audits and market conduct audits on each agent at least every two (2) years, beginning July 1, 1997. Title insurers shall make reports of the audits in writing to the Insurance Department on forms provided by the Insurance Commissioner. The Insurance Department shall perform a general audit and market conduct audit of each title insurer at least every two (2) years, beginning July 1, 1997.

SECTION 2. This act shall become effective July 1, 1997.

SECTION 3. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

46-1-0270 JY