

**EHB 3009**

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**THE STATE SENATE**  
**Wednesday, April 5, 2006**

**Committee Substitute for**  
**ENGROSSED**

**House Bill No. 3009**

ENGROSSED HOUSE BILL NO. 3009 - By: MORGAN (Fred) of the House and  
CRAIN of the Senate.

[ abstracting - amending 36 O.S., Section 5001 - Title  
Insurers - amending ten sections in Title 74 - Oklahoma  
Abstractors Law - repealing 74 O.S., Section 227.16 -  
codification - effective date ]

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

SECTION 1. AMENDATORY 36 O.S. 2001, 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)~~, of the Oklahoma Insurance Code, 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,

1 or a person acting only as agent for a title insurer, shall not be  
2 deemed to be a title insurer.

3 C. Every policy of title insurance or certificate of title  
4 issued by any company authorized to do business in this state shall  
5 be countersigned by some person, partnership, corporation or agency  
6 actively engaged in the abstract of title business in Oklahoma as  
7 defined and provided in ~~Title 1~~ the Oklahoma Abstractors Law or by  
8 an attorney licensed to practice in the State of Oklahoma duly  
9 appointed as agent of a title insurance company, provided that no  
10 policy of title insurance shall be issued in the State of Oklahoma  
11 except after:

12 1. After examination by an attorney licensed to practice in  
13 this state of a duly certified abstract of title prepared by a  
14 bonded and licensed abstractor as defined herein; or

15 2. After examination by an attorney licensed to practice in  
16 this state of a duly certified abstract extension or supplemental  
17 abstract prepared by an abstractor licensed in the county where the  
18 property is located, from a certified abstract plant in the county  
19 where the property is located or per a temporary certificate of  
20 authority as provided in Section 8 of this act, from the effective  
21 date of a prior owner's policy of title insurance provided by or  
22 with the permission of the insured under the policy, brought forward  
23 to the effective date of the abstract plant. Subject to the

1 exclusions from coverage, the exceptions from coverage, any  
2 endorsements and the conditions and stipulations contained therein,  
3 any policy issued from a prior owner's policy and supplemental  
4 abstract, as herein provided, shall insure the insured against loss  
5 or damage, not exceeding the amount of insurance stated in the  
6 policy, sustained or incurred by reason of unmarketability of title  
7 from sovereignty to the effective date of the policy.

8 SECTION 2. AMENDATORY 74 O.S. 2001, Section 227.10, is  
9 amended to read as follows:

10 Section 227.10 Sections ~~1 through 20~~ 227.10 through 227.30 of  
11 this ~~act~~ title shall be known and may be cited as the "Oklahoma  
12 Abstractors Law".

13 SECTION 3. AMENDATORY 74 O.S. 2001, Section 227.11, is  
14 amended to read as follows:

15 Section 227.11 As used in the Oklahoma Abstractors Law:

16 1. "Abstract of title" is a compilation in orderly arrangement  
17 of the materials and facts of record, in the office of the county  
18 clerk and court clerk, affecting the title to a specific tract of  
19 land issued pursuant to a certificate certifying to the matters  
20 therein contained.

21 2. "Abstract plant" shall consist of a set of records in which  
22 an entry has been made of all documents or matters which legally  
23 impart constructive notice of matters affecting title to real

1 property, any interest therein or encumbrances thereon, which are  
2 filed ~~or~~, recorded, and currently available for reproduction in the  
3 offices of the county clerk and the court clerk in the county for  
4 which such abstract plant is maintained. Such records shall consist  
5 of:

- 6 a. an index in which notations of or references to any  
7 documents that describe the property affected are  
8 included, according to the property described or in  
9 which copies or briefs of all such documents that  
10 describe the property affected are sorted and filed  
11 according to the property described, which is compiled  
12 from the instruments of record affecting real property  
13 in the county offices and not copied or reproduced  
14 from any county index; and
- 15 b. an index or files in which all other documents,  
16 pending suits affecting real property and liens,  
17 except ad valorem taxes and special assessments, are  
18 posted, entered, or otherwise included, according to  
19 the name of the parties whose title to real property  
20 or any interest therein or encumbrances thereon is  
21 affected, which is compiled from the instruments of  
22 record affecting real property in the county offices  
23 and not copied from any county index.

1           3. "Certificate of authority" is the authorization to engage  
2 in the business of abstracting in a county in this state, granted to  
3 a person, firm, corporation, or other entity, by the State Auditor  
4 and Inspector.

5           4. "Permit" is the authorization to build an abstract plant in  
6 a specific county.

7           5. "Abstract license" is the authorization for a person  
8 working for a holder of a certificate of authority to search and  
9 remove from county offices county records, summarize or compile  
10 copies of such records, and issue the abstract of title.

11           SECTION 4.           AMENDATORY           74 O.S. 2001, Section 227.13, is  
12 amended to read as follows:

13           Section 227.13 In performing the duties imposed pursuant to the  
14 Oklahoma Abstractors Law, the State Auditor and Inspector shall have  
15 the following powers and duties:

16           1. To prescribe promulgate, implement and enforce rules and  
17 regulations and make such orders as deemed necessary to implement  
18 all the provisions of the Oklahoma Abstractors Law including the  
19 duties imposed in this section; and

20           2. To hold examinations for applicants for abstract licenses  
21 ~~and to promulgate rules and regulations regarding such examinations~~  
22 ~~as deemed proper; and~~

1           3. To issue abstract licenses, certificates of authority, ~~or~~  
2 and permits in such form as deemed appropriate; ~~and~~

3           4. To ~~promulgate rules and regulations governing the issuing of~~  
4 issue abstract licenses and certificates of authority to  
5 nonresidents, associations, corporations, and partnerships; ~~and~~

6           5. To suspend, revoke, or reinstate abstract licenses and  
7 certificates of authority previously issued, upon good cause shown;  
8 ~~and~~

9           6. To reprimand, place on probation, or require additional  
10 education of licensees and certificate holders upon good cause  
11 shown; ~~and~~

12           7. To ~~prescribe rules and regulations governing proceedings~~  
13 ~~necessary to perform the duties described in paragraphs 5 and 6 of~~  
14 ~~this section~~ establish administrative penalties and fines as  
15 provided for in Section 227.22 of this title for failure to furnish  
16 an abstract, abstract extension, supplemental abstract or final  
17 title report; and

18           8. To prescribe and impose such administrative penalties and  
19 fines as deemed proper to be assessed against licensees and  
20 certificate holders for the failure to pay the renewal fees or for  
21 the violation or noncompliance with any provision of the Oklahoma  
22 Abstractors Law or rule, regulation or order of the State Auditor  
23 and Inspector; and

1           9. To cause the prosecution of any person who violates any of  
2 the provisions of the Oklahoma Abstractors Law; ~~and~~

3           10. To promulgate such rules and regulations governing the  
4 approval of organizations offering courses of study in real estate  
5 as are necessary for the administration of the Oklahoma Abstractors  
6 Law; ~~and~~

7           11. To establish minimum standards to be followed in the  
8 preparation of abstracts; ~~and~~

9           12. To establish a schedule of fees for applications for or  
10 renewals of certificates of authority, abstract licenses, or  
11 permits; ~~and~~

12           13. To establish the amount of the bond to be filed with  
13 applications for abstract licenses, certificates of authority, or  
14 permits; ~~and~~

15           14. To approve fee schedules of holders of certificates of  
16 authority, set criteria for determining what constitutes an  
17 excessive ~~abstracting~~ fee, and impose administrative penalties and  
18 finances for violations of approved fee schedules; and

19           15. To deposit all fees and fines collected to the credit of  
20 the State Auditor and Inspector Revolving Fund.

21           SECTION 5.           AMENDATORY           74 O.S. 2001, Section 227.15, is  
22 amended to read as follows:

1           Section 227.15 In addition to the bond required any person,  
2 firm, corporation, or other entity not engaged in the business of  
3 abstracting on January 1, 1984, desiring to enter into the business  
4 of compiling or abstracting titles to real estate in any of the  
5 counties of the State of Oklahoma from and after the passage of the  
6 Oklahoma Abstractors Law, shall have for use in such business an  
7 independent set of abstract books or other system of indexes  
8 compiled from the instruments of record affecting real estate in the  
9 office of the county clerk, and not copied from the indexes in said  
10 office, showing in a sufficiently comprehensive form all instruments  
11 affecting the title to real property on file ~~or,~~ of record and  
12 currently available for reproduction in the office of the county  
13 clerk and court clerk of the county wherein such business is  
14 conducted.

15           SECTION 6.           AMENDATORY           74 O.S. 2001, Section 227.18, is  
16 amended to read as follows:

17           Section 227.18 A. The State Auditor and Inspector shall issue  
18 a certificate of authority to any applicant who has complied with  
19 the provisions of the Oklahoma Abstractors Law. The certificate  
20 shall be in written form and shall indicate the county or counties  
21 in which the applicant may operate. The certificate shall be  
22 prominently displayed in the office of the certificate holder.

1 B. All certificates of authority issued pursuant to the  
2 provisions of the Oklahoma Abstractors Law shall expire annually on  
3 a staggered schedule established by the State Auditor and Inspector  
4 except the first certificates which may cover more than one (1) year  
5 but less than two (2) years. Renewal procedures are as follows:

6 1. Applications for renewal shall be made ninety (90) days  
7 prior to expiration and shall be accompanied by a renewal fee in an  
8 amount determined by the State Auditor and Inspector not to exceed  
9 the original application fee-; i

10 2. Any individual, firm, corporation, or other entity holding a  
11 certificate of authority who fails to apply for renewal and pay the  
12 renewal fee shall be notified by the Office of the State Auditor and  
13 Inspector no later than sixty (60) days prior to expiration of the  
14 certificate of authority-; i

15 3. The individual, firm, corporation, or other entity shall  
16 have thirty (30) days from the date of notification to file a  
17 renewal application-; and

18 4. The name of any individual, firm, corporation, or other  
19 entity failing to renew the certificate of authority shall be  
20 stricken from the records of the State Auditor and Inspector and  
21 said individual, firm, corporation, or other entity shall no longer  
22 engage in the business of abstracting in this state until  
23 authorized.

1        C. A list of abstracting fees shall be attached to an  
2 application for certificate of authority, an application to renew a  
3 certificate of authority and an application to transfer a  
4 certificate of authority. No certificate of authority shall be  
5 issued to any applicant until the list of abstracting fees is  
6 approved by the Office of the State Auditor and Inspector.

7        SECTION 7.        AMENDATORY        74 O.S. 2001, Section 227.20, is  
8 amended to read as follows:

9        Section 227.20 A. All abstractors shall furnish abstracts ~~or~~  
10 copies, abstract extensions, supplemental abstracts or final title  
11 reports as desired, to the persons applying therefor, in the order  
12 of ~~application~~ receipt, without unnecessary delay, and for  
13 reasonable compensation pursuant to the requirements of the Oklahoma  
14 Abstractors Law. A valid order is a written order from the person  
15 applying for the order who is a party to the transaction containing  
16 the following elements:

- 17        1. A complete and accurate legal description or a complete and  
18 accurate address, if applicable;  
19        2. The availability of any necessary base abstract; and  
20        3. An up-front commitment to pay for the order either upon  
21 delivery or other payment conditions agreed to by the parties to the  
22 transaction or a stated cancellation fee amount.

1        B. Failure of an abstractor to furnish an abstract, abstract  
2 extension, supplemental abstract or final title report within the  
3 following time periods shall constitute unnecessary delay:

4        1. For furnishing new abstracts:

5            a. unplatted: twenty (20) business days, and

6            b. platted: fifteen (15) business days; and

7        2. For furnishing an abstract extension, supplemental abstract  
8 or final title report:

9            a. unplatted: seventeen (17) business days, and

10           b. platted: twelve (12) business days.

11        C. All persons so engaged licensed abstractors and certificate  
12 of authority holders, whose business is hereby declared to stand  
13 upon a like footing with that of common carriers, who shall refuse  
14 so to do so, if tender of payment is made to them of the amount due  
15 for such abstract or copy, not exceeding the said legal fees, as  
16 soon as such amount is ascertained, or of a sum adequate to cover  
17 said amount before the ascertainment, upon conviction, shall be  
18 guilty of a misdemeanor and shall be punished by a fine upon receipt  
19 of a valid order for the abstract, abstract extension, supplemental  
20 abstract or final title report shall be subject to the following:

21        1. A civil penalty of not less than One Hundred Dollars  
22 (\$100.00) nor more than One Thousand Dollars (\$1,000.00) in any  
23 court of competent jurisdiction, for each occurrence; and

1        2. ~~shall also be liable~~ Liability in any action for damages,  
2 loss or injury which any person may suffer or incur by reason of  
3 failure to furnish such abstract ~~or copy~~, abstract extension,  
4 supplemental abstract or final title report pursuant to the  
5 provisions of this section. This penalty may be enforced in the  
6 same manner in which civil judgments may be enforced; and

7        3. Any administrative penalties and fines enforced by the  
8 office of the State Auditor and Inspector.

9        D. The provisions of this section shall not apply to orders for  
10 abstracts on oil, gas, and other minerals.

11        SECTION 8.        NEW LAW        A new section of law to be codified  
12 in the Oklahoma Statutes as Section 227.20A of Title 74, unless  
13 there is created a duplication in numbering, reads as follows:

14        In the event that a holder of a certificate of authority has  
15 had repeated violations of the provisions of either Section 227.22  
16 or 227.28 of Title 74 of the Oklahoma Statutes, the State Auditor  
17 and Inspector shall establish a procedure whereby a temporary  
18 certificate of authority may be issued to another holder of a  
19 certificate of authority licensed in this state to meet the consumer  
20 needs in the county wherein the violations occurred. The  
21 certificate shall be subject to the following:

22        1. The temporary certificate of authority shall be valid for  
23 ninety (90) days;

1           2. Additional ninety-day renewals may be granted if deemed  
2 appropriate;

3           3. The holder of a temporary certificate of authority shall  
4 provide a fee schedule for the county covered by the temporary  
5 certificate of authority. The fee schedule may or may not be the  
6 same as the current fee schedule of the holder of the certificate of  
7 authority receiving the temporary certificate of authority; and

8           4. The holder of a temporary certificate of authority shall  
9 not be required to furnish proof of the existence of an abstract  
10 plant required in Section 227.14 of this title.

11           SECTION 9.           AMENDATORY           74 O.S. 2001, Section 227.21, is  
12 amended to read as follows:

13           Section 227.21 Any person wishing to develop an abstract plant  
14 shall make application for a permit. The application shall be on a  
15 form prepared by the State Auditor and Inspector and shall be  
16 accompanied by the fee and the bond ~~set by the State Auditor and~~  
17 ~~Inspector subject to the limits established in Section 5 of the~~  
18 ~~Oklahoma Abstractors Law~~ as provided in Section 227.14 of this  
19 title. All permits shall expire annually. A permit holder who has  
20 not completed development of an abstract plant at the time the  
21 permit expires may apply for renewal of the permit. Applications  
22 for renewal must be made thirty (30) days prior to the scheduled  
23 expiration of the original permit and shall be accompanied by the

1 renewal fee. The permit holder shall comply with the provisions of  
2 the Oklahoma Abstractors Law to obtain a certificate of authority  
3 after completion of the abstract plant.

4 SECTION 10. AMENDATORY 74 O.S. 2001, Section 227.22, is  
5 amended to read as follows:

6 Section 227.22 A. The State Auditor and Inspector shall  
7 censure, suspend, revoke, continue, renew, or refuse to issue any  
8 certificate of authority or permit issued or applied for pursuant to  
9 the provisions of the Oklahoma Abstractors Law, if, after a hearing,  
10 the State Auditor and Inspector finds any one or more of the  
11 following conditions:

12 1. Any untrue statement in the application for a certificate of  
13 authority or permit; ~~or~~

14 2. The violation of or noncompliance with any provision of the  
15 Oklahoma Abstractors Law or rule, regulation, or order of the State  
16 Auditor and Inspector; ~~or~~

17 3. The obtaining of or attempt to obtain a certificate of  
18 authority or permit through fraud or misrepresentation; ~~or~~

19 4. Conviction of or plea of guilty or nolo contendere to a  
20 felony in this state, another state, or a federal court or of a  
21 misdemeanor involving moral turpitude; ~~or~~

22 5. Conspiracy involving the certificate holder or ~~his~~ the  
23 certificate holder's agents to obtain an abstract license for an

1 employee, prospective employee, or other person through fraud or  
2 misrepresentation; ~~or~~

3 6. Failure to properly supervise an abstract licensee whose  
4 license is issued through the certificate holder; or

5 7. Failure to provide an abstract, abstract extension,  
6 supplemental abstract or final title report pursuant to the  
7 requirements of Section 227.20 of this title.

8 B. In addition to or in lieu of any censure, denial,  
9 suspension, or revocation of a certificate or permit, any person,  
10 firm, corporation, or other entity violating the provisions of the  
11 Oklahoma Abstractors Law, ~~upon conviction, may~~ shall be subject to a  
12 civil ~~fine~~ penalty of not less than One Hundred Dollars (\$100.00)  
13 nor more than Ten Thousand Dollars (\$10,000.00) for each occurrence.  
14 The fine may be enforced in the same manner in which civil judgments  
15 may be enforced.

16 SECTION 11. AMENDATORY 74 O.S. 2001, Section 227.25, is  
17 amended to read as follows:

18 Section 227.25 A. An abstract license shall be issued by the  
19 State Auditor and Inspector to an applicant who:

- 20 1. Is eighteen (18) years of age or older; ~~and~~  
21 2. Is of good moral character; ~~and~~

1           3. Has not been convicted of or pleaded guilty or nolo  
2 contendere to a felony or crime of moral turpitude in this state,  
3 another state, or a federal court; and

4           4. Has passed a test for abstractors required by the State  
5 Auditor and Inspector.

6           B. Each abstract license shall be valid for one (1) year. The  
7 State Auditor and Inspector shall set the fees for an abstract  
8 license and for renewal not to exceed Fifty Dollars (\$50.00).

9           SECTION 12.           AMENDATORY           74 O.S. 2001, Section 227.28, is  
10 amended to read as follows:

11           Section 227.28 A. It shall be unlawful for any abstractor as  
12 an inducement to obtaining any business, to pay, rebate, or deduct  
13 any portion of or to permit any deduction from a charge made for  
14 making, extending, or certifying an abstract of title, to:

15           1. Any owner, mortgagee, or lessee of the real property covered  
16 by the abstract of title, or of any right, title, or interest in or  
17 lien upon the same; ~~and~~

18           2. Any principal, broker, agent, or attorney in connection with  
19 a sale or lease of real property or the making or obtaining of a  
20 loan thereon in which an abstract of title is required, used, or  
21 furnished; and

22           3. Any spouse, child, employee, ward, officer, director,  
23 subsidiary, affiliate, parent, relative within the fifth degree,

1 personal representative, or partner of any person, firm, or  
2 corporation included in this section.

3 B. All charges for abstracts ~~and abstracting~~, abstract  
4 extensions, supplemental abstracts or final title reports shall be  
5 separately stated and shall not be combined with title insurance,  
6 closing fees, or examination charges, shall be uniform for all  
7 abstracts, abstract extensions, supplemental abstracts or final  
8 title reports of whatsoever kind or nature, whether the abstract,  
9 abstract extension, supplemental abstract or final title report is  
10 prepared for use by the abstractor or for others purchasing  
11 abstracts, abstract extensions, supplemental abstracts or final  
12 title reports from the abstractor; and any other charge therefor  
13 shall be unlawful.

14 C. The list of abstracting fees required to be attached to an  
15 application for certificate of authority, an application to renew a  
16 certificate of authority and an application to transfer a  
17 certificate of authority pursuant to the provisions of Section  
18 227.18 of this title shall include all fees the applicant intends to  
19 charge for abstracts, abstract extensions, supplemental abstracts or  
20 final title reports. The State Auditor and Inspector shall notify  
21 the applicant in writing of any action taken with regard to the  
22 requested fees within sixty (60) days of submission. If no notice  
23 is provided regarding the submitted fees, they will be deemed to

1 become effective on the sixty-first day following the day the  
2 application was submitted to the State Auditor and Inspector. The  
3 fees shall also be subject to the following:

4 1. No fee shall be charged that is not on the approved list;

5 2. The holder of the certificate of authority may submit an  
6 amended list of fees once a year requesting approval for changes to  
7 the currently approved fees; and

8 3. The amended list of fees must be approved before becoming  
9 effective. The State Auditor and Inspector may disapprove a list of  
10 fees or an amended list of fees if the fee is determined to be  
11 excessive or is used as an unlawful inducement. In determining  
12 whether a fee is excessive, the State Auditor and Inspector may  
13 consider any or all of the following:

14 a. the change from any prior rate for the same abstract,  
15 abstract extension, supplemental abstract or final  
16 title report,

17 b. the fee charged by other holders of certificates of  
18 authority within the same county, in adjacent  
19 counties, and in counties with similar  
20 characteristics,

21 c. the amount of work performed,

22 d. the time required to perform the work,

- 1           e. the amount of financial risk involved to the holder of  
2           the certificate of authority,  
3           f. the cost of providing the abstract, abstract  
4           extension, supplemental abstract or final title  
5           reports,  
6           g. the availability of competition,  
7           h. the average cost for such services across the state,  
8           and  
9           i. any other relevant factor applicable to a particular  
10           set of circumstances presented for approval.

11           D. In addition to any other penalty any person, firm,  
12           corporation, or other entity violating the provisions of this  
13           section shall be subject to a civil penalty of not less than One  
14           Hundred Dollars (\$100.00) and not more than One Thousand Dollars  
15           (\$1,000.00) for each occurrence. The fine may be enforced in the  
16           same manner in which civil judgments may be enforced.

17           SECTION 13.           REPEALER           74 O.S. 2001, Section 227.16, is  
18 hereby repealed.

19           SECTION 14. This act shall become effective July 1, 2007.

20           COMMITTEE REPORT BY: COMMITTEE ON BUSINESS AND LABOR, dated 4-3-06 -  
21           DO PASS, As Amended.