HB460
136716-4
By Representative Hill
RFD: Insurance
First Read: 01-MAR-12

ACT NO. 2012-397
ENROLLED, An Act,

To amend Sections 27-25-3 and 27-25-4, Code of Alabama 1975, and to add Sections 27-25-4.1, 27-25-4.2, 27-25-4.3, 27-25-4.4, 27-25-4.5, 27-25-4.6, 27-25-4.7, and 27-25-4.8 to the Code of Alabama 1975, relating to insurance; to provide for the qualifications and procedures for the licensing of title insurance agents by providing definitions and exceptions to the licensing requirements; to require title insurance agents to pass a written examination; to provide exceptions; to require title insurance agents to complete minimum continuing education on a biennial basis; to authorize the Commissioner of Insurance to promulgate rules; and to provide a delayed effective date for certain provisions.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 27-25-3 and 27-25-4 of the Code of Alabama 1975, are amended to read as follows:

"§27-25-3.

"For the purposes of this chapter, the following terms shall have the following meanings:

"(1) ABSTRACT OF TITLE. A compilation or summary of all instruments of public record of whatever kind or nature which in any manner affect title to a specified parcel of real property."
"(2) BUSINESS ENTITY. A domestic entity properly
formed and existing under Title 10A.

"(3) COMMISSIONER. The Commissioner of the
Alabama Department of Insurance.

"(4) INDIVIDUAL. A natural person.

"(5) NAIC. The National Association of Insurance
Commissioners, its subsidiaries and affiliates, and any
successor thereof.

"(6) OPINION OF TITLE. A written expression of
the status of title, including, but not limited to, the
validity or invalidity thereof, based upon an examination by
an attorney at law, who is licensed to practice law in this
state, of instruments of public record or an abstract thereof
affecting title to a specified parcel of real property to
ascertain the history and present condition of title to such
real property as to its ownership and status with respect to
liens, encumbrances, clouds, and defects.

"(7) PERSON. Any natural person at least 10
years of age and who is domiciled in this state or is a bona
fide resident of and resides within this state or any
partnership, association, corporation, or other legal entity
properly existing or organized under the laws of this state.
The term "person" does not include "title insurer," nor does
it include the officers and employees of a title insurer An
individual or business entity.
"(5) PRELIMINARY REPORT, COMMITMENT, OR BINDER.
Reports furnished in connection with an application or request for title insurance and are offers to issue a title insurance policy subject to certain requirements and exceptions stated in the report, commitment, or binder and such other matters as are incorporated by reference therein.

"(6) PREMIUM. Fees charged for assuming liability and risk under a title insurance policy. For the purposes of this chapter, "premium" shall include any amount retained by or paid to an agent under an agreement between the agent and the title insurance company. For the purposes of this chapter, "premium" shall not include expenses for the performance of services such as abstracting, searching, and examining titles or obtaining a title opinion; fees for document preparation; fees for handling escrows, settlements, or closings; fees incurred to cure defects in the title; and fees incident to the issuance of a commitment to insure title or a title insurance policy, including, but not limited to, the costs of reinsurance.

"(7) TITLE AGENT or AGENT. a. Any person who is authorized in writing by a title insurer to perform the following:

  "a. Solicit title insurance business.
  "b. Collect premiums."
3. Determine insurability in accordance with underwriting rules, standards, and guidelines prescribed by the title insurer.

4. Issue title insurance commitments, policies, or endorsements of the title insurer.

b. The term "title agent" or "agent" does not include the officers or employees of a title insurer.

(11) TITLE INSURANCE POLICY or POLICY. A contract insuring or indemnifying against loss or damage arising from any or all of the following existing on or before the date of the policy:

a. Defects in or liens or encumbrances on the insured title.

b. Unmarketability of the insured title.

c. Invalidity or unenforceability of liens or encumbrances on the property described in the policy.

d. Lack of priority of liens or encumbrances.

(12) TITLE INSURER or INSURER. A company organized under the laws of this state or licensed in this state for the purpose of transacting as insurer the business of title insurance, as defined in Section 27-5-10, and any foreign or alien title insurer licensed to be engaged in this state in the business of title insurance, as defined in Section 27-5-10.
"(10) (13) TITLE SEARCH or TITLE EXAMINATION. A search of the records in the office of the judge of probate in the county where the real property is situated through such period of time as is acceptable to the title insurer. The search of the public records relating to matters of title performed in connection with the issuance of a preliminary report, commitment, or binder shall be solely for the benefit of the title insurance company requested to issue its policy or policies of title insurance.

"§27-25-4.

"(a) A title insurance policy insuring the interest of an insured in real property in this state shall not be issued by any person or agent unless the person or agent issuing a title insurance policy is domiciled in or is otherwise a bona fide resident of and resides within this state or is a partnership, association, corporation, or other legal entity properly organized or existing under the laws of this state. No person shall act as a title insurance agent in this state unless licensed pursuant to this chapter. Nothing herein contained shall be construed to prevent a title insurer licensed to do business in this state, nor an employee thereof, from issuing a policy of title insurance in this state.

"(b) A title insurance policy insuring the interest of an insured in real property in this state shall not be
issued by an agent of a title insurer unless the title insurer first obtains a certificate of authority from the commissioner for such an agent. Each title insurance agent acting on behalf of a title insurance company shall be appointed by the title insurance company in accordance with this chapter. The commissioner shall collect from the title insurer the sum of fifty dollars ($50) annually for each certificate of authority for which application is made the fees set forth in Section 27-25-4.7 for each appointment. For the purposes of this subsection, a certificate of authority need only be obtained for each agency of the title insurer and not for each person within an agency who is authorized to execute on behalf of the agency title insurance commitments, policies, or endorsements of the title insurer. Nothing herein contained shall be construed to require the issuance of a certificate of authority an appointment as described in this subsection to a title insurer licensed to do business in this state, nor an employee thereof, for the purpose of issuing a policy of title insurance in this state.

"(c) Unless a later date is specifically authorized by the title insurer for a particular transaction or unless the title insurance commitment specifies a time for which it is effective or such commitment is renewed or extended by the title insurer, the title agent shall issue to the insured the policy or policies of title insurance for which a premium has
been collected within 60 days from the effective date of the policy or in the case of a title insurance commitment having been issued, within 60 days after the satisfaction of all requirements and conditions set out in the commitment in accordance with the title insurer's underwriting guidelines. For the purpose of this subsection, the effective date of the policy is defined as the date and time the instrument conveying the interest to be insured is recorded unless the policy to be issued is insuring the interest of the proposed insured by virtue of an instrument recorded in the real property records prior to the time the request or order for title insurance is placed.

"(d) The fifty-dollar ($50) fee collected by the commissioner for the issuance of certificates of authority to agents of title insurers shall be deposited into the Insurance Department Fund. The name and license number of the title insurance agent shall be printed or legibly written by hand underneath his or her signature on each commitment, title insurance policy, and endorsement to a title insurance policy."


Section 27-25-4.1. Title agent qualifications.
(a) The commissioner may contract with non-governmental entities, including NAIC, to perform any ministerial functions, including the collection of fees and data, related to licensing that the commissioner may deem appropriate. The commissioner may require that license applications, license renewal applications, notices of appointments and appointment terminations, and supporting documentation be filed and all required fees and charges be paid electronically through systems operated or maintained by the non-governmental entities.

(b) An individual applying for a title insurance agent license shall apply to the commissioner on the appropriate NAIC Uniform Individual Application and declare under penalty of suspension, revocation, or refusal of the license that the statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. Before approving the application, the commissioner shall find that the individual:

(1) Is at least 19 years of age.

(2) Is a bona fide resident and citizen of this state or is a full-time employee of a duly licensed title insurance agent whose principal place of business is physically located in this state.
(3) Has not committed any act that is a ground for
probation, suspension, revocation, or refusal of license as
set forth in Section 27-25-4.5.

(4) Has completed the prelicensing course of study
for title insurance as required in Section 27-25-4.3.

(5) Has successfully passed the examination for
title insurance as required in Section 27-25-4.3.

(6) Has paid the fees set forth in Section
27-25-4.7.

(c) A business entity applying for a title insurance
agent license shall apply to the commissioner on the
appropriate NAIC Uniform Business Entity Application and
declare under penalty of suspension, revocation, or refusal of
the license that the statements made in the application are
true, correct, and complete to the best of the business
entity's knowledge and belief. Before approving the
application, the commissioner shall find that the business
entity:

(1) Is a domestic entity properly formed and
existing under Title 10A and whose principal place of business
is physically located in this state.

(2) Has designated an individual title insurance
agent licensed in this state as responsible for the business
entity's compliance with this chapter and with the insurance
laws, rules, and regulations of this state.
(3) Has not committed an act that is a ground for
probation, suspension, revocation, or refusal of license as
set forth in Section 27-25-4.5.

(4) Has paid the fees set forth in Section
27-25-4.7.

(d) The commissioner may require any documents
reasonably necessary to verify the information contained in
the application.

Section 27-25-4.2. License; license renewal; name or
address change.

(a) Unless denied licensure pursuant to Section
27-25-4.5, a person who meets the requirements of Sections
27-25-4.1 and 27-25-4.3 shall be issued a title insurance
agent license.

(b) A title insurance agent license must be
initially renewed in accordance with a schedule prescribed by
the commissioner and shall thereafter be subject to renewal on
a biennial basis. A renewal shall be effected by submitting a
renewal application, by paying the fee for renewal set forth
in Section 27-25-4.7, and by meeting the requirements for
renewal, including any applicable continuing education
requirements, before the due date for renewal of a license
expires if not renewed by the due date for renewal.

(c) Within the first 30 days following the date a
title insurance agent license expires, a reinstatement
retroactive to the expiration date shall be effected by
submitting a renewal application, by paying the renewal fee
plus the late fee set forth in Section 27-25-4.7, and by
meeting the other requirements for renewal including any
applicable continuing education requirements.

(d) After the first 30 days following the date a
title insurance agent license expires, but within 12 months
after the expiration date, the license may be reinstated
effective as of the reinstatement by submitting a renewal
application, by paying a fee of double the renewal fee set
forth in Section 27-25-4.7, and by meeting the other
requirements for renewal including any applicable continuing
education requirements.

(e) After a title insurance agent license has been
expired for 12 months, the person shall reapply pursuant to
Section 27-25-4.1 to become licensed.

(f) A title insurance agent who is unable to comply
with license renewal procedures and requirements due to
military service, long-term medical disability, or some other
extenuating circumstance may request a waiver, a waiver of an
examination requirement, fine, or other sanction imposed for
failure to comply with renewal procedures.

(g) The license shall contain the licensee's name,
address, personal identification number, the date of issuance
and expiration, and any other information the commissioner
deems necessary.

(h) The title insurance agent shall inform the
commissioner of a change in legal name or address within 30
days of the change in a manner prescribed by the commissioner.
Failure to timely inform the commissioner of a change in legal
name or address shall result in a penalty of fifty dollars
($50). If the penalty is not paid within 30 days after notice
of the penalty assessment, the license shall be suspended
until the penalty is paid.

Section 27-25-4.3. Prelicensing course and
examination.

(a)(1) Every individual subject to the examination
required in subsection (b) shall first complete a prelicensing
course consisting of 20 classroom hours or equivalent
individual instruction on the general principles of title
insurance, the duties and responsibilities of a title
insurance agent, and the title insurance laws and regulations
of this state. The course shall be taught only by those
educational institutions, title insurers, or title insurance
trade organizations which hold written authority from the
commissioner.

(2) The prelicensing course must have been completed
within 12 months before the date of the examination as shown
on the certificate furnished by the prelicensing course provider.

(3) Every prelicensing course provider shall apply annually for the continued authority to issue certificates of completion under rules and regulations to be prescribed by the commissioner.

(4) At the time of initial approval and annually thereafter, the commissioner shall collect from each prelicensing course provider the fee set forth in Section 27-25-4.7. Public institutions shall be exempt from paying the fee but shall otherwise be subject to the rules and regulations applicable to other providers.

(b)(1) An individual intending to apply for a title insurance agent license shall first pass a written examination unless exempt pursuant to subsection (c).

(2) The examination shall test the knowledge of the individual concerning title insurance, the duties and responsibilities of a title insurance agent, and the insurance laws of this state. Examinations required by this section shall be developed and conducted under rules prescribed by the commissioner.

(3) Each individual applying for an examination shall furnish a certificate of completion of the prelicensing course from an authorized prelicensing course provider and pay a nonrefundable examination fee pursuant to Section 27-25-4.7.
(4) The commissioner may make arrangements, including contracting with an outside testing service, for administering examinations and collecting the nonrefundable fee prescribed by the commissioner, in which case the fees approved by the commissioner for the examinations may be paid directly to the outside testing service, and the fee shall be in lieu of, but not in excess of, the fees for the examination set forth in Section 27-25-4.7.

(5) An individual who fails to appear for the examination as scheduled or fails to pass the examination shall reapply for an examination and remit all required fees and forms before being rescheduled for another examination.

(6) No individual who has taken and failed to pass two examinations given pursuant to this section shall be entitled to take any further title insurance agent examinations until after the expiration of three months from the date of the last examination which the individual failed to pass. If the individual thereafter fails to pass the examination after two more attempts, the individual shall not be eligible to take any further title insurance agent examinations until after the expiration of six months from the date of the last unsuccessful examination. An examination fee shall be paid for each and every examination.

(c) An individual shall be exempt from the examination requirement of subsection (b) only as follows:
(1) If, within 90 days after the effective date of this act, the applicant can establish to the satisfaction of the commissioner that for a period of at least five years preceding the effective date of this act the applicant has been an authorized signatory to commitments, title insurance policies, and endorsements to title insurance policies issued by the title insurance agent on behalf of a title insurer properly authorized to conduct the business of title insurance in this state.

(2) If the individual was previously licensed as a title insurance agent in this state after having passed the examination required by subsection (b) or being exempt from the examination under subdivision (1), this exemption is available only if the application is received within 12 months of the cancellation of the applicant's previous license in this state and if, at the time of cancellation, the applicant was in good standing in this state.

Section 27-25-4.4. Continuing education.

(a) An individual who holds a title insurance agent license shall satisfactorily complete a minimum of 24 hours of continuing education courses as may be approved by the commissioner, of which three hours shall be in ethics, reported to the commissioner on a biennial basis in conjunction with the license renewal cycle.
(b) This section shall not apply to licensees not licensed for one full year prior to the end of the applicable continuing education biennium.

(c) Only continuing education courses and providers approved by the commissioner shall be used to satisfy the continuing education requirements of this section. Continuing education providers and courses shall be subject to the same requirements and fees set forth in Chapter 8A of this title.

(d) The commissioner shall prescribe the number of hours of continuing education credit for each continuing education course approved. Continuing education courses submitted in accordance with a reciprocal agreement the commissioner enters with other states shall be approved according to the provisions of the reciprocal agreement.

(e) If a continuing education course requires successful completion of a written examination, no continuing education credit shall be given to licensees who do not successfully complete the written examination.

(f) An individual teaching any approved continuing education course shall qualify for the same number of hours of continuing education credit as would be granted to a licensee taking and satisfactorily completing the course.

Section 27-25-4.5. License denial, non-renewal, or revocation.
HB460

(a) The commissioner may place on probation, suspend, revoke, or refuse to issue or renew the license of a title insurance agent or may levy a civil penalty pursuant to subsection (d), or any combination of these actions, for any one or more of the following causes:

(1) Providing incorrect, misleading, incomplete, or materially untrue information in the license application.

(2) Violating any insurance laws, rules, subpoena, or order of the commissioner.

(3) Obtaining or attempting to obtain a license through misrepresentation or fraud.

(4) Improperly withholding, misappropriating, or converting any monies or properties received in the course of acting as a title insurance agent or in otherwise doing insurance business in this state or elsewhere.

(5) Intentionally misrepresenting the terms of an actual title insurance contract.

(6) Having been convicted of a felony.

(7) Having admitted or been found to have committed any insurance unfair trade practice or fraud.

(8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility, in the course of acting as a title insurance agent or otherwise in the conduct of business in this state or elsewhere.
(9) Having a title insurance agent license or its equivalent, or an insurance producer license or its equivalent, suspended, revoked, or refused in any other state, province, district, or territory.

(10) Forging another's name to any document related to a title insurance transaction.

(11) Cheating, including improperly using notes or any other reference material, to complete an examination for a license.

(b) In the event that action by the commissioner is to refuse application for licensure or renewal of an existing license, the commissioner shall notify the applicant or licensee in writing, advising of the reason for the refusal. The applicant or licensee may make written demand upon the commissioner within 30 days for a hearing before the commissioner to determine the reasonableness of the refusal. The hearing shall be held pursuant to Chapter 2 of this title.

(c) The license of a business entity may be placed on probation, suspended, or revoked if the commissioner finds, after a hearing, that an individual licensee's violation occurred while acting on behalf of or representing the business entity and that the violation was known or should have been known by one or more of the business entity's partners, officers, or managers and that the violation was
neither reported to the commissioner nor was corrective action
taken in relation thereto.

(d) In the absence of a greater fine specifically
provided elsewhere in this title, and in addition to or in
lieu of an applicable probation, suspension, revocation, or
refusal, a person, in the sole discretion of the commissioner
after a hearing, may additionally be subject to a civil fine
in an amount not to exceed ten thousand dollars ($10,000) per
violation.

(e) The commissioner shall retain the authority to
enforce the provisions of and impose any penalty or remedy
authorized by this chapter or elsewhere in Title 27 against
any person who is under investigation for or charged with a
violation of this chapter or Title 27 even if the person's
license or registration has been surrendered or has expired by
operation of law.

Section 27-25-4.6. Fingerprints.

(a) In order to make a determination of title
insurance agent license eligibility, the commissioner may
require fingerprints of initial applicants for a title
insurance agent license, and the fingerprints and the fee
required to perform the criminal history record checks shall
be submitted to the Alabama Department of Public Safety and
the Federal Bureau of Investigation (FBI) for state and
national criminal history record checks.
(b) The commissioner shall require a criminal history record check on each initial applicant for title insurance agent license pursuant to this section. The commissioner shall require each applicant to submit a full set of fingerprints, including a scanned file from a hard copy fingerprint, to allow the commissioner to obtain and receive national criminal history records from the FBI Criminal Justice Information Services Division.

(c) The commissioner may contract for the collection, transmission, and resubmission of fingerprints required pursuant to this section, and the fee for collecting, transmitting, and retaining fingerprints shall be payable directly to the contractor by the applicant. The commissioner may agree to a reasonable fingerprinting fee to be charged by the contractor, and both the contractor's fee and the fee required to perform the criminal history check shall be collected from the applicant by the contractor.

(d) The commissioner may waive submission of fingerprints by any person that has previously furnished fingerprints and those fingerprints are on file with the centralized repository of the NAIC.

(e) The criminal history record information may be submitted to the commissioner instead of the Alabama Department of Public Safety.
(f) The commissioner may submit electronic
fingerprint records and necessary identifying information to
the NAIC for permanent retention in a centralized repository.
The purpose of a centralized repository is to provide
insurance commissioners with access to fingerprint records to
perform criminal history record checks.

(g) The commissioner shall treat and maintain an
applicant's fingerprints and any criminal history record
information obtained pursuant to this section as confidential
and shall apply security measures consistent with the Criminal
Justice Information Services Division of the Federal Bureau of
Investigation standards for the electronic storage of
fingerprints and necessary identifying information and limit
the use of records solely to the purposes authorized in this
section. The fingerprints and any criminal history record
information shall not be subject to subpoena, other than one
issued in a criminal action or investigation, and shall be
confidential.

Section 27-25-4.7. Fees.

(a) The Commissioner of Insurance shall collect in
advance the following fees:

(1) Title insurance agent licenses:

a. Individuals:

1. Application fee (for filing of initial
application for license) .......................... $20
2. License fee (for issuance of original license and each biennial renewal) ......................... $40
   b. Business entities:
      1. Application fee (for filing of initial application for license) ......................... $20
      2. License fee (for original license and each biennial renewal) ......................... $100
   c. Examination fee, an amount set by the commissioner not to exceed .................. $100
   d. Late renewal fee, to be paid by each title insurance agent failing to make a timely renewal of license .................. $50

   (2) Title insurance agent appointment fee:
      a. Filing notice of appointment .............................................................. $30
      b. Annual continuation of appointment ..................................................... $10

   (3) Prelicensing course provider fee (for filing initial application for authority and annual renewal) an amount set by the commissioner not to exceed ............... $100

      (b) The fees specified in subsection (a) shall be deposited in the State Treasury and credited to the Insurance Department Fund.

Section 27-25-4.8. Implementation.
(a) The commissioner, by rule pursuant to Chapter 2
of this title, may provide for the implementation of the
requirements of this act.

(b) Each title insurance agent certificate of
authority in force prior to the effective date of this act
shall be issued a replacement title insurance agent license
and appointment upon payment of the annual fee in the amount
set forth in Section 27-25-4 prior to this act. A replacement
title insurance agent shall be authorized to continue to issue
title insurance policies in the same manner as permitted in
Section 27-25-4 prior to this act.

(c) A replacement title insurance agent license
issued in accordance with subsection (b) shall be valid for
six months, during which time the person shall satisfy the
requirements for a title insurance agent license pursuant to
Sections 27-25-4.1 and 27-25-4.3 or the replacement license
shall thereupon expire and be canceled. The appointment issued
in accordance with subsection (b) shall be transferred to the
title insurance agent license when the license is issued.

(d) The commissioner may stagger the renewal periods
of title insurance agents over the first two calendar years
following the effective date of this act. Certain licensees
may be required to renew for one year at half of the biennial
fee and continuing education requirements otherwise required
under this act.
(e) The commissioner may provide for the delayed enforcement of Section 27-25-4.3, regarding examinations, Section 27-25-4.4, regarding continuing education, and Section 27-25-4.6, regarding fingerprinting, for up to 24 months following the effective date of this act to allow for implementation.

(f) If the enforcement of the examination requirement of Section 27-25-4.3 is delayed as authorized in subsection (e), the commissioner may issue a temporary title insurance agent license to an applicant who is otherwise qualified except as to the prelicensing course and examination requirements of Section 27-25-4.3. A temporary license may be renewed once in accordance with the renewal schedule established by the commissioner as provided in subsection (d). A temporary license shall not be valid for a period of time exceeding three months following implementation of the examination requirement.

Section 3. This act shall become effective on the first day of January 2013, following its passage and approval by the Governor, or its otherwise becoming law.
Speaker of the House of Representatives

Kay Ivey

President and Presiding Officer of the Senate

House of Representatives
I hereby certify that the within Act originated in and was passed by the House 12-APR-12.

Greg Pappas
Clerk

Senate 08-MAY-12 Passed

APPROVED May 14, 2012

TIME 6:07 P.M.

Robert Bentley
GOVERNOR

Alabama Secretary Of State
Act Num....: 2012-397
Bill Num....: H-460
Recv’d 05/16/12 08:59amSLF

Page 25
HOUSE ACTION

DATE: 3-1-2012
RD 1 RFD Insurance

REPORT OF STANDING COMMITTEE
This bill having been referred by the House to its standing committee on Insurance was acted upon by such committee in session, and returned therefrom with a favorable report w/amend(s) w/sub w/eng sub by a vote of yeas 20 nays 0 abstain
this 14th day of March, 2012

Chairperson

DATE: 4-7-20
RD 1 RFD B+1

SENATE ACTION

This Bill was referred to the Standing Committee of the Senate on B+1 and was acted upon by such Committee in session and is by order of the Committee returned therefrom with a favorable report w/amd(s) w/sub w/eng sub by a vote of yeas 0 nays 0 abstain
this 25th day of April, 2012

Chairperson

DATE: 4-26-20
RF 4A
RD 2 CAL

I hereby certify that the Resolution as required in Section C of Act No. 81-889 was adopted and is attached to the Bill, HB 460.
YEAS 20 NAYS 0

PATRICK HARRIS, Secretary

DATE: 5-8-12
RD 3 at length

PASSED
YEAS 20 NAYS 0

And was ordered returned forthwith to the House.

PATRICK HARRIS, Secretary

DATE: 20

INDEFINITELY POSTPONED YEAS NAYS

DATE: 20

RECONSIDERED YEAS NAYS

GREG PAPPAS, Clerk