

1 SB246
2 33489-4
3 By Senator Lindsey
4 RFD: Rules for Assignment
5 First Read: 13-FEB-2001

ACT No. 2001-496



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Enrolled, An Act,

To provide further for the regulation and supervision of the business of title insurance transacted within the state; to provide for the authority of the Commissioner of Insurance in the regulation and supervision of the business of title insurance transacted within the state; to make an appropriation to the Department of Insurance from the Insurance Department Fund to be used to implement this act; and to repeal Section 27-25-1, Code of Alabama 1975.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. (a) This act shall be known and cited as the Alabama Title Insurance Act.

(b) The purpose of this act is to set forth certain definitions applicable to title insurance in this state and to provide further for the supervision of the business of title insurance transacted in this state.

Section 2. (a) This act shall apply to all title insurers and title agents engaged in the business of title insurance in this state.

(b) Except as otherwise expressly provided in this act, except where the context otherwise requires, and except those provisions which are inconsistent with this act, the provisions of Title 27 of the Code of Alabama 1975, the

1 Alabama Insurance Code, which apply to title insurance and
2 title insurance companies shall continue to be applicable to
3 the business of title insurance and title insurance companies.
4 No amendment to Title 27 that is enacted after the effective
5 date of this act that is inconsistent with the provisions of
6 this act shall be applicable to the business of title
7 insurance unless the amendment specifically states that it is
8 to be applicable to the business of title insurance.

9 Section 3. For the purposes of this act, the
10 following terms shall have the following meanings:

11 (1) ABSTRACT OF TITLE. A compilation or summary of
12 all instruments of public record of whatever kind or nature
13 which in any manner affect title to a specified parcel of real
14 property.

15 (2) COMMISSIONER. The Commissioner of the Alabama
16 Insurance Department.

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

1 (4) PERSON. Any natural person at least 18 years of
2 age and who is domiciled in this state or is a bona fide
3 resident of and resides within this state or any partnership,
4 association, corporation, or other legal entity properly
5 existing or organized under the laws of this state. The term
6 "person" does not include "title insurer," nor does it include
7 the officers and employees of a title insurer.

8 (5) PRELIMINARY REPORT, COMMITMENT, or BINDER.
9 Reports furnished in connection with an application or request
10 for title insurance and are offers to issue a title insurance
11 policy subject to certain requirements and exceptions stated
12 in the report, commitment, or binder and such other matters as
13 are incorporated by reference therein.

14 (6) PREMIUM. Fees charged for assuming liability and
15 risk under a title insurance policy. For the purposes of this
16 act, "premium" shall include any amount retained by or paid to
17 an agent under an agreement between the agent and the title
18 insurance company. For the purposes of this act, "premium"
19 shall not include expenses for the performance of services
20 such as abstracting, searching, and examining titles or
21 obtaining a title opinion; fees for document preparation; fees
22 for handling escrows, settlements, or closings; fees incurred
23 to cure defects in the title; and fees incident to the
24 issuance of a commitment to insure title or a title insurance

1 policy, including, but not limited to, the costs of
2 reinsurance.

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

- 6 a. Solicit title insurance business.
- 7 b. Collect premiums.
- 8 c. Determine insurability in accordance with
9 underwriting rules, standards, and guidelines prescribed by
10 the title insurer.
- 11 d. Issue title insurance commitments, policies or
12 endorsements of the title insurer.

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

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

- 19 a. Defects in or liens or encumbrances on the
20 insured title.
- 21 b. Unmarketability of the insured title.
- 22 c. Invalidity or unenforceability of liens or
23 encumbrances on the property described in the policy.
- 24 d. Lack of priority of liens or encumbrances.

1 (9) TITLE INSURER or INSURER. A company organized
2 under the laws of this state or licensed in this state for the
3 purpose of transacting as insurer the business of title
4 insurance, as defined in Section 27-5-10, Code of Alabama
5 1975, and any foreign or alien title insurer licensed to be
6 engaged in this state in the business of title insurance, as
7 defined in Section 27-5-10, Code of Alabama 1975.

8 (10) TITLE SEARCH or TITLE EXAMINATION. A search of
9 the records in the office of the judge of probate in the
10 county where the real property is situated through such period
11 of time as is acceptable to the title insurer. The search of
12 the public records relating to matters of title performed in
13 connection with the issuance of a preliminary report,
14 commitment, or binder shall be solely for the benefit of the
15 title insurance company requested to issue its policy or
16 policies of title insurance.

17 Section 4. (a) A title insurance policy insuring the
18 interest of an insured in real property in this state shall
19 not be issued by any person or agent unless the person or
20 agent issuing a title insurance policy is domiciled in or is
21 otherwise a bona fide resident of and resides within this
22 state or is a partnership, association, corporation, or other
23 legal entity properly organized or existing under the laws of
24 this state. Nothing herein contained shall be construed to
25 prevent a title insurer licensed to do business in this state,

1 nor an employee thereof, from issuing a policy of title
2 insurance in this state.

3 (b) A title insurance policy insuring the interest
4 of an insured in real property in this state shall not be
5 issued by an agent of a title insurer unless the title insurer
6 first obtains a certificate of authority from the commissioner
7 for such an agent. The commissioner shall collect from the
8 title insurer the sum of fifty dollars (\$50) annually for each
9 certificate of authority for which application is made. For
10 the purposes of this subsection, a certificate of authority
11 need only be obtained for each agency of the title insurer and
12 not for each person within an agency who is authorized to
13 execute on behalf of the agency title insurance commitments,
14 policies, or endorsements of the title insurer. Nothing herein
15 contained shall be construed to require the issuance of a
16 certificate of authority as described in this subsection to a
17 title insurer licensed to do business in this state, nor an
18 employee thereof, for the purpose of issuing a policy of title
19 insurance in this state.

20 (c) Unless a later date is specifically authorized
21 by the title insurer for a particular transaction or unless
22 the title insurance commitment specifies a time for which it
23 is effective or such commitment is renewed or extended by the
24 title insurer, the title agent shall issue to the insured the
25 policy or policies of title insurance for which a premium has

1 been collected within 60 days from the effective date of the
2 policy or in the case of a title insurance commitment having
3 been issued, within 60 days after the satisfaction of all
4 requirements and conditions set out in the commitment in
5 accordance with the title insurer's underwriting guidelines.
6 For the purpose of this subsection, the effective date of the
7 policy is defined as the date and time the instrument
8 conveying the interest to be insured is recorded unless the
9 policy to be issued is insuring the interest of the proposed
10 insured by virtue of an instrument recorded in the real
11 property records prior to the time the request or order for
12 title insurance is placed.

13 (d) The fifty dollar (\$50) fee collected by the
14 commissioner for the issuance of certificates of authority to
15 agents of title insurers shall be deposited into the Insurance
16 Department Fund.

17 Section 5. No preliminary report, commitment,
18 binder, policy or contract of title insurance shall be issued
19 until and unless the title insurer or the person or agent
20 issuing the title insurance policy on behalf of the title
21 insurer has performed any of the following:

22 (1) Caused to be conducted a search or examination
23 of the title as defined in this act.

24 (2) Obtained an abstract of title.

25 (3) Obtained an opinion of title.

1 Section 6. Companies to file rates.

2 (a) Every title insurer shall file with the
3 commissioner its schedule of premium rates and every
4 modification of any premium rate that it proposes to use in
5 this state. The premium rates shall not be subject to rebate
6 and the rebate of premiums to the insured are expressly
7 prohibited. If a reissue premium rate is filed by an insurer,
8 an insured may receive reissue credit only when the insured
9 physically produces the prior title insurance policy,
10 including schedules associated therewith, issued by a title
11 insurer licensed to be engaged in the business of title
12 insurance in this state. A title insurer that has not filed
13 its premium rates pursuant to the provisions hereof shall not
14 engage in the business of title insurance until such time as
15 its premium rates are filed. No person, title insurer, agency,
16 or agent shall charge any premium rate for any policy or
17 contract of title insurance except in accordance with the
18 filed premium rates which are in effect for the title insurer
19 as provided in this section.

20 (b) Every premium rate filing by a title insurer
21 shall state the effective date thereof and shall indicate the
22 character and extent of the coverage contemplated. The
23 commissioner shall determine the form, manner, and detail of
24 premium rate filings required in this section. No premium rate
25 filing shall provide for the negotiation or bidding of the

1 rate to be charged for a policy insuring an interest in real
2 property in this state.

3 (c) Before the expiration of 60 days after the
4 receipt of a premium rate filing by a title insurer, the
5 commissioner shall determine the fairness and justness of all
6 such filings and shall also notify the title insurer of any
7 disapproval of the premium rate filing.

8 (d) Any premium rate filed may be used or charged
9 after the expiration of 60 days from the date of filing in the
10 office of the commissioner, unless the commissioner has issued
11 notice of the commissioner's prior written disapproval thereto
12 within the time period.

13 (e) A notice of written disapproval by the
14 commissioner shall set forth the reasons therefor and shall
15 state that a hearing will be granted within 30 days after
16 request in writing by the title insurer. The commissioner or
17 his or her designee shall have the power to administer oaths,
18 to require the appearance of and examine any person under
19 oath, and to require the production of books, records, or
20 papers relevant to the inquiry upon the commissioner's or the
21 designee's own initiative or upon the request of any
22 interested insurer.

23 Section 7. (a) In connection with any transaction
24 involving the purchase or sale of a fee simple or possessory
25 interest in real property in this state, the title insurer

1 shall obtain or cause its agent to obtain, at or before the
2 closing of settlement and disbursement of any funds, a
3 statement in writing from the purchaser acknowledging that the
4 purchaser has received a notice that owner's title insurance
5 may be available to the purchaser in accordance with the
6 underwriting guidelines of the title insurer and that the
7 purchaser does or does not desire to purchase owner's
8 insurance coverage. The written notice of availability of
9 owner's title insurance shall contain all of the following:

10 (1) The address or legal description of the
11 property.

12 (2) A disclosure that owner's title insurance may be
13 available in accordance with the underwriting guidelines of
14 the title insurer and the premium therefor.

15 (3) A space to indicate the desire of the purchaser
16 to either acquire or decline owner's title insurance.

17 (4) The date the notice is executed by the
18 purchaser.

19 (5) The signature of the purchaser or purchasers.

20 (b) In the event that the notice required in this
21 section is not obtained from the purchaser at or before the
22 closing of settlement and disbursement of any funds, the
23 omission may be cured by the title agent or title insurer at
24 any time subsequent to the closing of settlement but prior to
25 actual or constructive notice of a claim or possible claim

1 against the title of the real estate which was the subject of
2 the settlement by sending a certified letter, return receipt
3 requested, to the last known address of the purchaser, which
4 includes the notification required in this section.

5 (c) The notification provided by this section shall
6 not be required in any of the following transactions:

7 (1) A judicial or nonjudicial foreclosure.

8 (2) A sale pursuant to a decree of any court.

9 (3) A tax sale.

10 (4) A transfer evidenced by a deed upon which a
11 recording or deed tax is not payable as provided by law.

12 (5) Any transaction in which the purchaser has
13 elected to obtain owner's title insurance or wherein the
14 seller has elected or is required by contract to provide
15 owner's title insurance to the purchaser.

16 (6) Any transaction that conveys a security interest
17 in property of an existing owner.

18 Section 8. The commissioner shall adopt rules and
19 regulations for the purpose of implementing the provisions of
20 this act in accordance with the Alabama Administrative
21 Procedure Act.

22 Section 9. (a) Each individual transaction which is
23 in violation of this act or which does not otherwise conform
24 to the requirements of this act shall be considered a
25 violation.

1 (b) This act shall be enforceable only by the
2 commissioner and does not create any private cause of action
3 or other private legal recourse.

4 (c) The commissioner may, in his or her discretion
5 and upon good cause shown, revoke the certificate of authority
6 of a title agent, revoke the license issued to a title
7 insurer, or impose a fine in an amount not to exceed five
8 hundred dollars (\$500) for each violation of this act or of
9 any rule or regulation promulgated under this act. No title
10 insurer shall pay, directly or indirectly, any portion of a
11 fine imposed on any agent of the title insurer. In addition,
12 the commissioner may impose a fine in an amount not to exceed
13 five thousand dollars (\$5,000) per violation upon a finding
14 that an agent or an insurer willfully or intentionally
15 deviated from the filed rates for that insurer. Any fine
16 collected by the commissioner shall be deposited into the
17 State General Fund.

18 (d) If, from any examination of a title insurer the
19 commissioner finds that a title insurer is violating any of
20 the provisions of Section 34-3-7 of the Code of Alabama 1975,
21 the commissioner shall so certify his or her findings in
22 writing to the Attorney General, and the Attorney General
23 shall forthwith bring an action in a court of competent
24 jurisdiction in the State of Alabama to permanently enjoin the
25 commission of such acts by the title insurer. If the title

1 insurer violates any of the provisions of such an injunction,
2 the Attorney General shall forthwith bring an action in such a
3 court to revoke the corporate charter of the title insurer, if
4 a domestic entity, or the license to conduct business in this
5 state of the title insurer, if a foreign or alien entity.

6 Section 10. There is appropriated from the Insurance
7 Department Fund to the Department of Insurance the sum of
8 fifty thousand dollars (\$50,000) for the fiscal year ending on
9 September 30, 2002, to be used as directed by the commissioner
10 to implement this act.

11 Section 11. This chapter shall not be interpreted or
12 construed as regulating or attempting to regulate the practice
13 of law.

14 Section 12. All laws and parts of laws in conflict
15 with this act are repealed and specifically Section 27-25-1,
16 Code of Alabama 1975, is repealed.

17 Section 13. The provisions of this act are
18 severable. If any part of this act is declared invalid or
19 unconstitutional, that declaration shall not affect the part
20 which remains.

21 Section 14. This act shall become effective October
22 1, 2001, following its passage and approval by the Governor,
23 or its otherwise becoming law.

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Gene Hinson

President and Presiding Officer of the Senate

Ray H. Hunt

Speaker of the House of Representatives

SB246

Senate 12-APR-2001
I hereby certify that the within Act originated in and passed
the Senate, as amended.

McDowell Lee
Secretary

House of Representatives
Passed: 09-MAY-2001

By: Senator Lindsey

APPROVED *5/19/01*
TIME *1:05 PM*
[Signature]
GOVERNOR