

1 STATE OF OKLAHOMA

2 1st Session of the 59th Legislature (2023)

3 SENATE BILL 1018

By: Bullard

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5  
6 AS INTRODUCED

7 An Act relating to abstracting; amending 1 O.S. 2021,  
8 Sections 21, 32, 33, 35, 36, 41, and 43, which relate  
9 to the Oklahoma Abstractors Act; modifying  
10 definitions; providing exception for determination of  
11 certain unnecessary delay; increasing certain civil  
12 penalty; requiring notice to Oklahoma Abstractors  
13 Board for certain noncompliance; requiring response  
14 to notice within specified time period; modifying  
15 requirements for certain temporary certificate;  
16 increasing certain civil penalty; modifying  
17 definition; prohibiting reliance on county index for  
18 preparation of abstract of title; increasing certain  
19 civil penalty; and providing an effective date.

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

21 SECTION 1. AMENDATORY 1 O.S. 2021, Section 21, is  
22 amended to read as follows:

23 Section 21. As used in the Oklahoma Abstractors Act:

24 1. "Abstract of title" is a compilation in orderly arrangement  
25 of the materials and facts of record, in the office of the county  
26 clerk and court clerk, affecting the title to a specific tract of  
27 land issued pursuant to a certificate certifying to the matters  
28 therein contained;

1           2. "Abstract plant" shall consist of a set of records in which  
2 an entry has been made of all documents or matters which legally  
3 impart constructive notice of matters affecting title to real  
4 property, any interest therein or encumbrances thereon, which are  
5 filed, recorded and currently available for reproduction in the  
6 offices of the county clerk and the court clerk in the county for  
7 which such abstract plant is maintained. Such records shall consist  
8 of:

9           a. an index in which notations of or references to any  
10 documents that describe the property affected are  
11 included, according to the property described or in  
12 which copies or briefs of all such documents that  
13 describe the property affected are sorted and filed  
14 according to the property described, which is compiled  
15 from the instruments of record affecting real property  
16 in the county offices and not copied or reproduced  
17 from any county index, and

18           b. an index or files in which all other documents,  
19 pending suits affecting real property and liens,  
20 except ad valorem taxes and special assessments, are  
21 posted, entered, or otherwise included, according to  
22 the name of the parties whose title to real property  
23 or any interest therein or encumbrances thereon is  
24 affected, which is compiled from the instruments of

1 record affecting real property in the county offices  
2 and not copied from any county index;

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

7 4. "Act" or "Oklahoma Abstractors Law" means the Oklahoma  
8 Abstractors Act;

9 5. "Actual physical presence" means the place of business of a  
10 holder of a certificate of authority, located within the county in  
11 which the certificate of authority is authorized to engage in the  
12 business of abstracting by the Oklahoma Abstractors Board. Such  
13 place of business shall have a licensed abstractor present to assist  
14 the public. Hours of operation shall be posted on the public entry  
15 doors and the website, if any, of the business;

16 6. "Board" means the Oklahoma Abstractors Board;

17 ~~6.~~ 7. "Certificate of authority" is the authorization to engage  
18 in the business of abstracting in a county in this state, granted to  
19 a person, firm, corporation, or other entity, by the Oklahoma  
20 Abstractors Board;

21 8. "Common carrier" means the business of abstracting is  
22 affected with a public interest so that any member of the general  
23 public desiring an abstract can transact business fairly and without  
24 consideration of another. The business of abstracting is also

1 affected by valid state interests and subject to the regulatory  
2 powers of the state. In order to protect the general public,  
3 minimum requirements have been established for holders of a  
4 certificate of authority, along with civil fines and penalties;

5 ~~7.~~ 9. "Permit" is the authorization to build an abstract plant  
6 in a specific county;

7 ~~8.~~ 10. "State Auditor and Inspector", for the purposes of the  
8 Oklahoma Abstractors Act, means the Oklahoma Abstractors Board; and

9 ~~9.~~ 11. "Authorized agent" or "representative" of a current  
10 owner or insured means a real estate broker, real estate agent,  
11 lender, attorney, title insurer, title insurance agent, escrow  
12 agent, or other duly appointed agent of the current owner or insured  
13 under a policy of title insurance authorized to act on behalf of  
14 such current owner or insured in a current transaction.

15 SECTION 2. AMENDATORY 1 O.S. 2021, Section 32, is  
16 amended to read as follows:

17 Section 32. A. All abstractors shall furnish abstracts,  
18 abstract extensions, supplemental abstracts or final title reports  
19 as desired, to the persons applying therefor, in the order of  
20 receipt of a valid order therefor, without unnecessary delay, and  
21 for reasonable compensation pursuant to the requirements of the  
22 Oklahoma Abstractors Act. A valid order is a written order from the  
23 person applying for the order who is a party to the transaction  
24 containing the following elements:

1 1. A complete and accurate legal description or a complete and  
2 accurate address, as applicable;

3 2. The availability of any necessary base abstract; and

4 3. An up-front commitment to pay for the order either upon  
5 delivery or other payment conditions agreed to by the parties to the  
6 transaction or a stated cancellation fee amount.

7 B. Failure of an abstractor to furnish an abstract, abstract  
8 extension, supplemental abstract or final title report within the  
9 following time periods shall constitute unnecessary delay unless  
10 such delay is due to extenuating circumstances as described in  
11 subsection E of this section and as approved as an exception by the

12 Oklahoma Abstractors Board:

13 1. For furnishing new abstracts:

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

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

16 2. For furnishing an abstract extension, supplemental abstract  
17 or final title report:

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

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

20 C. All licensed abstractors and certificate of authority  
21 holders, whose business is hereby declared to stand upon a like  
22 footing with that of common carriers, who shall refuse to do so,  
23 upon receipt of a valid order for the abstract, abstract extension,  
24

1 supplemental abstract or final title report, shall be subject to the  
2 following:

3 1. A civil penalty to the requesting party of not less than ~~One~~  
4 ~~Hundred Dollars (\$100.00)~~ nor the amount charged for the abstract,  
5 and a civil penalty not more than ~~One Thousand Dollars (\$1,000.00)~~  
6 Two Thousand Dollars (\$2,000.00) for each occurrence;

7 2. Liability in any action for damages, loss or injury which  
8 any person may suffer or incur by reason of failure to furnish such  
9 abstract, abstract extension, supplemental abstract or final title  
10 report pursuant to the provisions of this section. This penalty may  
11 be enforced in the same manner in which civil judgments may be  
12 enforced; and

13 3. Any administrative penalties and fines enforced by the  
14 Oklahoma Abstractors Board.

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

17 E. In the event a holder of a certificate of authority receives  
18 voluminous orders which create an impossibility of compliance with  
19 the provisions of this section, the holder of the certificate of  
20 authority shall notify the Board within three (3) business days of  
21 the receipt of orders. In such event, the Board shall respond to  
22 the holder within five (5) business days regarding the extenuating  
23 circumstances of the voluminous orders and begin negotiations with

1 the holder of the certificate of authority in order to establish any  
2 alternatives for timely delivery of the orders.

3 SECTION 3. AMENDATORY 1 O.S. 2021, Section 33, is  
4 amended to read as follows:

5 Section 33. In the event that a holder of a certificate of  
6 authority has had repeated violations of the provisions of ~~either~~  
7 Section 32, 35 or 41 of Title 1 of the Oklahoma Statutes or has  
8 caused an unnecessary risk to consumers or other operators in this  
9 state, the Oklahoma Abstractors Board shall establish a procedure  
10 whereby a temporary certificate of authority may be issued to  
11 another holder of a certificate of authority licensed in this state  
12 to ~~meet the consumer needs~~ ensure timely delivery orders in the  
13 county wherein the violations occurred. The certificate shall be  
14 subject to the following:

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

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

19 3. The holder of a temporary certificate of authority shall  
20 provide a fee schedule for the county covered by the temporary  
21 certificate of authority. The fee schedule may or may not be the  
22 same as the current fee schedule of the holder of the certificate of  
23 authority receiving the temporary certificate of authority; and  
24

1           4. The holder of a temporary certificate of authority ~~shall not~~  
2 ~~be required to furnish proof of the existence of an abstract plant~~  
3 ~~required in Section 27 of Title 1 of the Oklahoma Statutes~~ may take  
4 charge of such certificate of authority holder and all of the  
5 effects of the abstract plant, such as property, books, and abstract  
6 records, pursuant to a Declaration of Emergency contained in  
7 Oklahoma Abstractors Board Rules and Regulations 5:11-11-2(g).

8           SECTION 4.           AMENDATORY           1 O.S. 2021, Section 35, is  
9 amended to read as follows:

10           Section 35. A. The Oklahoma Abstractors Board shall censure,  
11 suspend, revoke, continue, renew, or refuse to issue any certificate  
12 of authority or permit issued or applied for pursuant to the  
13 provisions of the Oklahoma Abstractors Act, if, after a hearing, the  
14 Board finds any one or more of the following conditions:

15           1. Any untrue statement in the application for a certificate of  
16 authority or permit;

17           2. The violation of or noncompliance with any provision of the  
18 Oklahoma Abstractors Act or rule, regulation, or order of the Board;

19           3. The obtaining of or attempt to obtain a certificate of  
20 authority or permit through fraud or misrepresentation;

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



1           5. Conspiracy involving the certificate holder or the  
2 certificate holder's agents to obtain an abstract license for an  
3 employee, prospective employee, or other person through fraud or  
4 misrepresentation;

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

7           7. Failure to provide an abstract, abstract extension,  
8 supplemental abstract or final title report pursuant to the  
9 requirements of Section 32 of Title 1 of the Oklahoma Statutes.

10          B. In addition to or in lieu of any censure, denial,  
11 suspension, or revocation of a certificate or permit, any person,  
12 firm, corporation, or other entity violating the provisions of the  
13 Oklahoma Abstractors Act shall be subject to a civil penalty of not  
14 less than ~~One Hundred Dollars (\$100.00)~~ Five Thousand Dollars  
15 (\$5,000.00) nor more than Ten Thousand Dollars (\$10,000.00) for each  
16 occurrence, in addition to the costs of prosecution incurred by the  
17 Board. The fine may be enforced in the same manner in which civil  
18 judgments may be enforced.

19          SECTION 5.           AMENDATORY           1 O.S. 2021, Section 36, is  
20 amended to read as follows:

21          Section 36. A. Any person, firm, corporation, or other entity  
22 holding a valid abstract license or permit, or any abstract licensee  
23 affiliated with such person, firm, corporation, or other entity,  
24 shall:

1           1. Have free access to the instruments of record affecting real  
2 property filed in any city, county, or state office;

3           2. Be permitted to make such memoranda, notations, or copies of  
4 such instruments of record;

5           3. Occupy reasonable space with equipment for that purpose  
6 during the business hours of such office;

7           4. Make and prepare abstracts; and

8           5. Compile, post, copy, and maintain his or her books, records,  
9 and indexes.

10          B. The records in any city, county, or state office shall not  
11 be taken from the office to which they belong, for any reason,  
12 except that records may be taken from the office of the district  
13 court clerk by an abstractor who is doing business within that  
14 county and has an approved bond on file with the county clerk for a  
15 period of time not to exceed twenty-four (24) hours after first  
16 giving proper receipt to the appropriate clerk or deputy.

17          C. An abstractor shall have the right of access to any  
18 instrument filed of record in a county office, not later than the  
19 close of business of the first business day following the day of  
20 filing. There shall be no fee charged for providing access to the  
21 instrument.

22          D. For purposes of this section, "access" means possession of  
23 said instrument to mechanically or electronically reproduce it,  
24 either in the office or out of the office of filing, at the

1 discretion of the county officer having custody of the instrument,  
2 which reproduction shall be completed not later than the close of  
3 business of the first business day following the day of receipt of  
4 the document. Provided if the abstractor fails to return the files  
5 within the twenty-four-hour period, the county officer in his or her  
6 discretion may refuse to allow the abstractor to remove said files  
7 at a later date. Any county officer making such refusal shall send  
8 written notice of such action to the Oklahoma Abstractors Board.

9 E. Access to instruments of record shall be for immediate and  
10 lawful abstracting purposes only. The sale of the instruments of  
11 record for profit to the public either on the internet or any other  
12 such forum by any company holding a permit to build an abstract  
13 plant is prohibited, and a violation of this subsection shall be  
14 considered a violation of the Oklahoma Abstractors Law.

15 F. All certificates of authority or permit holders and abstract  
16 licensees shall be subject to the same obligation to protect and  
17 preserve the public records to which they have access as do the  
18 public officers who have legal custody of such records. Holders of  
19 certificates of authority or permits and abstract licensees shall be  
20 subject to the same penalties for a violation of such duty as said  
21 officers.

22 G. Reliance on the county indexes in the preparation of an  
23 abstract of title shall be prohibited and subject to the penalties  
24 established in subsection B of Section 35 of this title and shall

1 not be a defense of liability for an error or omission in an  
2 abstract of title.

3 SECTION 6. AMENDATORY 1 O.S. 2021, Section 41, is  
4 amended to read as follows:

5 Section 41. A. It shall be unlawful for any abstractor as an  
6 inducement to obtaining any business to pay, rebate, or deduct any  
7 portion of or to permit any deduction from a charge made for making,  
8 extending, or certifying an abstract of title, to:

9 1. Any owner, mortgagee, or lessee of the real property covered  
10 by the abstract of title, or of any right, title, or interest in or  
11 lien upon the same;

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

16 3. Any spouse, child, employee, ward, officer, director,  
17 subsidiary, affiliate, parent, relative within the fifth degree,  
18 personal representative, or partner of any person, firm, or  
19 corporation included in this section.

20 B. All charges for abstracts, abstract extensions, supplemental  
21 abstracts or final title reports shall be separately stated and  
22 shall not be combined with title insurance, closing fees, or  
23 examination charges, shall be uniform for all abstracts, abstract  
24 extensions, supplemental abstracts or final title reports of

1 whatsoever kind or nature, whether the abstract, abstract extension,  
2 supplemental abstract or final title report is prepared for use by  
3 the abstractor or for others purchasing abstracts, abstract  
4 extensions, supplemental abstracts or final title reports from the  
5 abstractor; and any other charge therefor shall be unlawful.

6 C. The list of abstracting fees required to be attached to an  
7 application for certificate of authority, an application to renew a  
8 certificate of authority and an application to transfer a  
9 certificate of authority pursuant to the provisions of Section  
10 227.18 of this title shall include all fees the applicant intends to  
11 charge for abstracts, abstract extensions, supplemental abstracts or  
12 final title reports. The Oklahoma Abstractors Board shall notify  
13 the applicant in writing of any action taken with regard to the  
14 requested fees within sixty (60) days of submission. If no notice  
15 is provided regarding the submitted fees, they will be deemed to  
16 become effective on the sixty-first day following the day the  
17 application was submitted to the Board. The fees shall also be  
18 subject to the following:

- 19 1. No fee shall be charged that is not on the approved list;
- 20 2. The holder of the certificate of authority may submit an  
21 amended list of fees once a year requesting approval for changes to  
22 the currently approved fees; and
- 23 3. The amended list of fees must be approved before becoming  
24 effective. The Board may disapprove a list of fees or an amended

1 list of fees if the fees are determined to be excessive or are used  
2 as an unlawful inducement. In determining whether a fee is  
3 excessive, the Board may consider any or all of the following:

- 4 a. the change from any prior rate for the same abstract,  
5 abstract extension, supplemental abstract or final  
6 title report,
- 7 b. the fee charged by other holders of certificates of  
8 authority within the same county, in adjacent  
9 counties, and in counties with similar  
10 characteristics,
- 11 c. the amount of work performed,
- 12 d. the time required to perform the work,
- 13 e. the amount of financial risk involved to the holder of  
14 the certificate of authority,
- 15 f. the cost of providing the abstract, abstract  
16 extension, supplemental abstract or final title  
17 report,
- 18 g. the availability of competition,
- 19 h. the average cost for such services across the state,  
20 and
- 21 i. any other relevant factor applicable to a particular  
22 set of circumstances presented for approval.

23 D. In addition to any other penalty any person, firm,  
24 corporation, or other entity violating the provisions of this

1 section shall be subject to a civil penalty of not less than ~~One~~  
2 ~~Hundred Dollars (\$100.00)~~ and not Five Hundred Dollars (\$500.00) nor  
3 more than ~~One Thousand Dollars (\$1,000.00)~~ Ten Thousand Dollars  
4 (\$10,000.00) for each occurrence. The fine may be enforced in the  
5 same manner in which civil judgments may be enforced.

6 SECTION 7. AMENDATORY 1 O.S. 2021, Section 43, is  
7 amended to read as follows:

8 Section 43. A purchaser of real property shall have the  
9 opportunity to retain possession of the abstract for the property  
10 being purchased. The purchaser shall be notified about the option  
11 to retain possession at the scheduled closing; however, if a  
12 contractual obligation to a mortgage company requires retention of  
13 the abstract by that mortgage company, then the purchaser shall have  
14 an opportunity to take possession of the abstract upon complete  
15 performance of the contractual obligations. If a duly licensed  
16 abstract company is holding or storing the abstract, upon written  
17 request from the owner or the authorized agent of the owner,  
18 pursuant to a current transaction, the licensed abstractor shall  
19 release the abstract without unnecessary delay. All licensed  
20 abstractors and certificate of authority holders who refuse to do so  
21 shall be subject to the following:

22 1. A civil penalty to the requesting party of not less than ~~One~~  
23 ~~Hundred Dollars (\$100.00)~~ and not the cost to replace the abstract,  
24

1 in addition to a fine not less than Five Hundred Dollars (\$500.00)  
2 nor more than One Thousand Dollars (\$1,000.00) for each occurrence;

3 2. Liability in any action for damages, loss or injury suffered  
4 or incurred by any person by reason of failure to deliver the  
5 abstract pursuant to the provisions of this section. Any civil  
6 judgment rendered pursuant to this paragraph may be enforced in the  
7 same manner in which other civil judgments may be enforced; and

8 3. Any administrative penalties and fines enforced by the  
9 Oklahoma Abstractors Board.

10 SECTION 8. This act shall become effective November 1, 2023.

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