

February 5, 1951.
Passed on File.

Senate File 259
By McCARVILLE, HULTMAN and O'MALLEY.

Passed Senate, Date.....
Vote: Ayes..... Nays.....
Passed House, Date
Vote: Ayes..... Nays.....
Approved

A BILL FOR

An Act to regulate the making and sale of abstracts of title to real estate for the protection of the public, to create a board of examiners and to prescribe its powers and duties to provide for licensing of persons, firms and corporations engaged in said business, to require the maintenance of surety bonds by licensees, to require the examination and registration of persons engaged in the business of making and certifying abstracts of title to real estate, and prescribing penalties for violations, and to provide for the licensing without examination of persons, firms and corporations engaged in said business since October first, 1950.

Be It Enacted by the General Assembly of the State of Iowa:

- 1 Section 1. Abstracters' Board—Appointment—Tenure.
- 2 An Abstracters' Board of Examiners is hereby created which
- 3 board shall consist of three members who shall be appointed by
- 4 the Governoꝛ. Each member of the board shall have been actively
- 5 engaged in this state in the business of making and compiling
- 6 of abstracts of title to real estate, for a period of not less
- 7 than five years prior to his appointment.
- 8 The Governor shall prior to June first, 1951, appoint the
- 9 first board, the terms of whose members shall be as follows:
- 10 one for a term ending June thirtieth, 1953; one for a term ending

11 June thirtieth, 1955; and one for a term ending June thirtieth,
12 1957. Upon the expiration of each of said terms, the succeeding
13 terms respectively shall be six years. In each year in which
14 an appointment of a member for a regular term is required to
15 be made, the Governor shall make such appointment on or before
16 June first. Any vacancy in the membership shall be filled by
17 appointment by the Governor of a person eligible therefor, for
18 the unexpired term.

1 Sec. 2 Board's powers and duties—

2 On or immediately after July first of each odd-numbered
3 year, the board shall organize by the election from its member-
4 ship, of a Chairman, a Vice-Chairman, and a Secretary-Treasurer.
5 The board shall have power and it shall be its duty to:

6 (1) issue licenses and certificates to qualified
7 persons, firms, and corporations as provided in
8 this Act, and to make reasonable investigations
9 in connection with application for licenses or
10 certificates, or of complaints against licensees
11 or certificate holders;

12 (2) issue a temporary abstractor's office license for
13 a period of not to exceed one year, to the personal
14 or legal representative of a person who was the
15 holder of an abstractor's office license at the
16 time of his death, provided a bond such as is
17 required in Section 7, is filed with the board,
18 and subject to such conditions as may be imposed

19 by the board, except that no fee shall be charged
20 therefor ;

21 (3) adopt such reasonable rules and regulations as may
22 be necessary for the proper administration of, but
23 not inconsistent with, the provisions of this Act ;

24 (4) compel the attendance of witnesses, administer
25 oaths, take testimony, and require proof in all
26 matters pertaining to the administration of this Act ;

27 (5) keep a written record of all proceedings, applications
28 for examinations, registrations, certificates and
29 licenses, issued and cancelled, and preserve a complete
30 record of each hearing for any cancellation or
31 revocation of any license or certificate, and all
32 matters connected therewith ;

33 (6) make a biennial report to the Governor of its
34 proceedings, with an account of all moneys received
35 and disbursed ;

36 (7) adopt and have an official seal which shall be
37 affixed to all licenses and certificates issued.

38 The board shall have power to employ such additional clerical
39 assistants and incur such expense as may be necessary to properly
40 carry out the provisions of this Act, but such expense shall be
41 paid only out of the abstracters' board fund and none other.
42 The Executive Council shall furnish necessary office facilities
43 to the board.

1 Sec. 3. Compensation—Expenses.

2 Each member of the board shall be paid the sum of ten (\$10.00)
3 Dollars per day or fraction thereof for the time actually spent
4 in traveling to and from, and in attending sessions of the board
5 and its committees, and shall be paid all necessary traveling
6 and incidental expenses incurred in the discharge of his duties,
7 which shall be paid only from the abstracters' board fund, and
8 in no event shall any such compensation or expenses be paid by
9 or chargeable to the State.

1 Sec. 4. Abstracters' Office License—Seal—Responsibility.

2 No person, firm or corporation shall engage in the business
3 of making, compiling and/or selling abstracts of title to real
4 estate within this state, except at a permanent place of business
5 located in this state, and unless said person, firm or corporation
6 has an Abstracter's Office License issued as provided in this Act.

7 Every person, firm or corporation having an Abstracter's
8 Office License shall be liable to any person, firm or corporation
9 for any damage sustained as a result of any error, deficiency
10 or mistake made, in any abstract of title or continuance of
11 an abstract of title to real estate in this state, furnished or
12 sold by such licensee.

13 Each such licensee shall have a seal, the impression on
14 which shall contain the name and address of such licensee,
15 and each abstract of title or continuance of an abstract of title
16 to real estate furnished by such licensee shall have the
17 impression of such seal thereon. Each licensee shall furnish a
18 certificate to the board before a license shall issue, containing

19 the name, location and address of the licensee, the impression of
 20 the seal of said licensee, and the name of each person authorized
 21 to sign certificates to abstracts of title to real estate and
 22 continuances thereof, and thereafter shall certify any change or
 23 additions.

1 Sec. 5. Requirements—Abstracters' Office License.

2 No person, firm or corporation shall be issued an
 3 Abstracter's Office License unless such applicant—

4 (a) possesses and maintains a set of real estate Abstract
 5 Books as defined in Section 6, for the county for
 6 which applicant has applied for a license.

7 (b) has filed with the board, a proper surety bond,
 8 as provided in Section 7;

9 (c) has paid to the board the required fees.

1 Sec. 6. Abstract Books—examination—fee.

2 A set of real estate abstract books for any county to be
 3 qualified under this Act, means a system of indexes or other
 4 records, currently maintained, which show accurately and in a
 5 sufficiently comprehensive form, the location in the various
 6 county offices of the particular county, and also in the offices
 7 of special charter cities located within a particular county,
 8 those matters of record or on file which affect the title to
 9 the real estate situated in such county, and which has been
 10 approved by the board.

11 An applicant for an Abstracter's Office License shall
 12 furnish proof satisfactory to the board that applicant possesses

13 and agrees to properly maintain a set of real estate abstract
14 books as defined herein, for the county in which applicant expects
15 to engage in business. Upon application for the approval of a set
16 of real estate abstract books, and the payment of the required fee,
17 the board shall forthwith conduct such examination of said books
18 as the board shall deem necessary to determine their accuracy and
19 sufficiency for the purposes of this Act. If upon such examination
20 the board finds that said books are accurate and sufficient
21 for the purposes of this Act, it shall so advise the applicant
22 in writing. However, if upon such examination the board finds
23 that said books are not accurate or sufficient for the purposes
24 of this Act, it shall immediately in writing advise the applicant
25 thereof, and shall state insofar as is practical the respects
26 in which said books are inaccurate or are insufficient for the
27 purposes of this Act. The applicant may thereafter apply to
28 the board for re-examination of said books for the purpose
29 of determining whether the objections of the board have been
30 removed and corrected, and upon the payment of a re-examination
31 fee, the board shall forthwith re-examine said books and shall
32 determine whether they are accurate and sufficient for the
33 purpose of this Act, and shall immediately advise the appli-
34 cant as to such finding. If said books are found to be inaccurate
35 or insufficient for the purposes of this Act, applicant may as
36 many times as necessary apply for re-examination thereof.

1 Sec. 7. Surety Bond.

2 Each surety bond required to be filed with the board by an

3 applicant for an Abstracter's Office License shall be in the
4 penal amount of Five Thousand (\$5,000.00) Dollars for each county
5 in which the licensee is authorized by the board to engage in
6 business, shall name the State of Iowa as obligee for the use
7 and benefit of anyone who may be damaged in the manner stated in
8 Section 4, be approved by the board, and shall have as surety,
9 any association or corporation authorized by law to engage in the
10 business of writing and furnishing surety bonds. Such bond shall
11 be conditioned for the payment by the licensee of any and all
12 damages which may be sustained by, or may accrue to, any person,
13 firm or corporation having or acquiring an interest in real
14 estate, because of any error, deficiency or mistake made, in
15 any abstract of title to real estate or in any continuance of an
16 abstract of title to real estate. The bond shall be in
17 full force and effect and shall cover every abstract of
18 title and every continuance of an abstract of title,
19 certified by said licensee during the period from and including
20 the date of the filing of said bond to and including the next June
21 thirtieth.

1 Sec. 8. Registered Abstracter—Signing Certificates.

2 No person shall for compensation of any kind, make or
3 compile an abstract of title to real estate or any continuance
4 thereof, unless said person has a certificate of registration
5 as a Registered Abstracter issued as provided in this Act.
6 Clerks, stenographers and apprentices may assist with the
7 making and compiling of abstracts of title to real estate and

8 continuances of such abstracts of title under the direction,
9 supervision and responsibility of a Registered Abstracter holding
10 a certificate under the provisions of this Act without first
11 obtaining a certificate under this Act.

12 No person shall certify to the accuracy and correctness
13 of an abstract of title to real estate or any continuance thereof,
14 or shall sign any certificate of registration except he be a Registered
15 Abstracter having a certificate of registration issued under the
16 provisions of this Act, or he be an officer of a corporation
17 having an Abstracter's Office License issued under the provisions
18 of this Act and is duly authorized by said corporation to sign
19 and certify abstracts of title to real estate and continuances
20 of abstracts of title to real estate in this State.

1 Sec. 9. Certificate of Registration.

2 Any natural person over twenty-one years of age who desires
3 to obtain a certificate showing him to be a Registered Abstracter,
4 shall make application to the board therefor on forms furnished
5 by the board, and state under oath the information required
6 by the board. The application shall be accompanied by the
7 required examination fee.

8 The board shall fix such times and places as are practicable
9 for the examination of applicants. The board shall give each
10 applicant sufficient notice by mail to present himself at the
11 prescribed time and place for examination of the applicant.
12 The board shall determine by proper and reasonable examination
13 whether each applicant is qualified to properly and accurately

14 make and compile abstracts of title to real estate.

15 If the board finds an applicant is sufficiently qualified,
16 said applicant shall be issued a certificate showing that he is
17 a Registered Abstracter under the provisions of this Act, and
18 is entitled to make, compile and certify abstracts of title to
19 real estate, and to conduct any abstract of title office in this
20 state holding an Abstracter's Office License.

1 Sec. 10. Fees.

2 The following fees shall be paid to and collected by the
3 board:

4 (1) For an Abstracter's Office License, Twenty-five (\$25.00)
5 Dollars annually, for each county in which the licensee
6 does business;

7 (2) For an original examination of a set of abstract books
8 for any county, One Hundred (\$100.00) Dollars;

9 (3) For a re-examination of a set of abstract books for
10 any county, Fifty (\$50.00) Dollars;

11 (4) For examination to obtain a certificate as a Registered
12 Abstracter, Ten (\$10.00) Dollars;

13 (5) For annual renewal of certificate as a Registered
14 Abstracter, One (\$1.00) Dollar.

15 All fees shall be paid to the Secretary of the Board and
16 he shall pay all fees received by him to the Treasurer of State,
17 ten percent of which shall be paid into and credited to the
18 general fund of the state, and ninety per cent of which shall
19 be placed in a separate fund to be known as the Abstracters'

20 Board Fund. Such fund shall be continued from year to year
21 and the Treasurer shall keep a separate account thereof showing
22 receipts and disbursements and the balance therein. No part of
23 such fund shall be used for any other purpose than the adminis-
24 tration and enforcement of the provisions of this Act.

1 Sec. 11. Renewals.

2 1. Every Abstracter's Office License shall expire on the
3 next June thirtieth after the date of the issuance thereof, and
4 shall be renewed only upon application by the holder thereof,
5 upon the payment of the required renewal fee, and the filing
6 of the required surety bond, on or before June first of each
7 year.

8 2. Every certificate of registration as a Registered
9 Abstracter shall expire on the next June thirtieth after the
10 date of the issuance thereof, and shall be renewed only upon
11 application by the holder thereof, without examination, upon
12 the payment of the required renewal fee, on or before June first
13 of each year. Every renewal certificate shall be displayed in
14 connection with the original certificate. Any holder of a
15 certificate who allows his certificate to lapse by failing to
16 renew it as provided herein, may be reinstated without examination
17 upon the approval thereof by the board, and upon payment of
18 both the examination fee and the renewal fees then due.

1 Sec. 12. Revocation of License or Certificate.

2 The board shall have the power and may cancel and revoke
3 any license or certificate of registration issued by it, if

4 it is established to the satisfaction of the board:

5 (1) that the license or certificate was obtained through
6 fraud or misrepresentation of material facts;

7 (2) that the licensee or the certificate holder has
8 practiced any fraud or deceit, or is guilty of
9 gross incompetence or negligence in the making,
10 compiling, certification or selling of abstracts
11 of title to real estate, or continuances of abstracts
12 of title to real estate.

13 The board shall have the power and may cancel and revoke
14 any license issued by it, if such licensee shall fail to furnish
15 or keep in full force and effect the bond required to be filed
16 and maintained by licensee, or shall lose or relinquish the
17 possession and use of, or shall fail to maintain and keep current
18 a proper set of real estate abstract books as required by the
19 provisions of this Act.

1 Sec. 13. Hearings.

2 No license or certificate shall be cancelled and revoked
3 (except for failure to file and maintain a bond as required by
4 this Act), until after the licensee or the certificate holder,
5 as the case may be, has been afforded a hearing thereon.

6 A hearing for the cancellation or revocation of a license
7 or certificate may be instituted by the filing of a written
8 complaint with the board by any person, or it may be instituted
9 by the board on its own motion, which must also be in the form
10 of a complaint and in writing. When a complaint is filed with

11 the board it shall make sufficient investigation thereof to
12 determine whether there is reasonable probability or any
13 foundation for the complaint and that it is such that if
14 established, the board should cancel and revoke the license
15 or the certificate. If the board finds that the complaint
16 is such as to require a hearing, or if the complaint is one
17 by the board, it shall fix a time and place of hearing, which
18 shall be not less than twenty (20) nor more than forty-five
19 (45) days after the filing with or by the board of said complaint.
20 The board shall then cause to be served in the same manner as
21 service of original notices of actions in the District Court
22 of Iowa, and at least twenty (20) days before the date fixed
23 for the hearing, a notice of the time and place of the hearing,
24 and a true copy of the complaint.

25 On such hearing the person, firm, or corporation, and the
26 complaining parties may be represented by counsel. All such
27 hearings shall be by the full membership of the board and a
28 two-thirds vote of the membership of the board for or against
29 any question for decision, is required. The board shall receive
30 and consider the evidence, and upon conclusion of the hearing,
31 make its decision in writing. The board may adjourn any hearing
32 from time to time as it may deem proper and necessary. Every
33 party shall pay his own costs, and the costs and expenses in-
34 curred by the board shall be paid from the funds paid under the
35 provisions of this Act.

1 Sec. 14. Appeals from Decisions.

2 Either the licensee, certificate holder or complainant
3 may appeal from the decision of the board to the District Court
4 in the county where such licensee or certificate holder resides
5 or has his or its place of business. Such appeal shall be taken
6 within thirty (30) days after the decision of the board and
7 by causing a written notice of appeal to be served upon any
8 member of the board and by executing an appeal bond to the
9 State of Iowa, with surety to be approved by the board, con-
10 ditioned to prosecute such appeal to final judgment, and to
11 pay all costs that may be adjudged against the appellant.
12 Upon such an appeal being taken, the board shall, within
13 thirty (30) days from the receipt of such notice of appeal,
14 file a transcript with the Clerk of the District Court to
15 which said appeal is taken of all pleadings and other papers
16 and proceedings pertaining to said appeal. Upon the hearing
17 of such appeal all proceedings therein shall be in all respects,
18 de novo, and the Court shall receive and consider any pertinent
19 evidence, oral or documentary, concerning the decision of the
20 board from which such appeal is taken. The cost of such appeal,
21 including the furnishing of testimony, shall be taxed against
22 either the licensee, certificate holder or the complainant,
23 whichever is defeated on such appeal, except in cases in which
24 the board has sustained the complaint, the board shall bear
25 such costs instead of complainant. An appeal so perfected
26 by the licensee or the certificate holder shall stay the can-
27 cellation or revocation of any license until the final decision

28 on appeal.

1 Sec. 15. Penalties for Violations.

2 Any person, firm or corporation making, compiling, selling
3 or certifying to abstracts of title to real estate, or contin-
4 uances to abstracts of title to real estate, in the State of
5 Iowa without having complied with the provisions of this Act,
6 shall be deemed guilty of a misdemeanor and upon conviction
7 thereof shall be punished by a fine not exceeding One Hundred
8 (\$100.00) Dollars nor less than Twenty-five (\$25.00) Dollars
9 for each offense. In addition to the foregoing criminal
10 penalty, any violation or violations of the provisions of this
11 Act or threats thereof, may be restrained by injunction on
12 behalf of said Abstracters' Board of Examiners, and the action
13 to enjoin shall be brought in the name of the State of Iowa
14 and prosecuted by the Attorney General of the State of Iowa.
15 It shall be the duty of the County Attorney in each county to
16 assist in the enforcement of the provisions of this Act.

1 Sec. 16. Constitutionality.

2 Should any of the provisions of this Act be declared
3 unconstitutional, illegal or void by any final judgment of a
4 court of this state, or of the United States, such decision
5 shall not invalidate or effect any other provisions of this Act.

1 Sec. 17. Effective Date.

2 The provisions of sections four (4) and eight (8) of this
3 Act shall not be effective until on and after July first, 1951.

1 Sec. 18. Automatic License Provisions.

2 1. Every person, firm or corporation who is, on the effective
3 date of this Act, actively engaged in the business of making,
4 compiling and selling abstracts of title to real estate in any
5 county of this state, and has been so engaged in said county
6 continuously since October first, 1950, shall, upon application
7 therefor to the board, made and filed with the board on or before
8 June first, 1951, and the filing with the board of a proper
9 surety bond as required by section seven (7) of this Act, and
10 the payment of a fee of Twenty-five (\$25.00) Dollars, for each
11 such county, be issued an Abstracter's Office License even though
12 said person, firm, or corporation does not possess and maintain
13 current a set of real estate abstract books as defined in
14 section six (6) of this Act. Said license shall be subject
15 to all of the other provisions of this Act, except that no
16 approved set of abstract books shall be required for the con-
17 secutive renewal of a license issued under the provisions of
18 this section.

19 2. Every natural person who is, on the effective date
20 of this Act, actively engaged in the business of making com-
21 piling and certifying abstracts of title to real estate in this
22 state, and who has been so engaged continuously in this state
23 since October first, 1950, shall upon application to the board
24 and the payment of a fee of Five (\$5.00) Dollars on or before
25 June first, 1951, be issued a certificate as a Registered
26 Abstracter, without examination, under such rules as may be
27 prescribed by the board.

28 The board shall have the power to make such investigations
29 as it deems necessary, and to require the furnishing of proofs
30 of such material facts, as shall satisfy the board that any such
31 applicant referred to in this section possessed the qualifications
32 prescribed in this section for a license or a certificate.

1 Sec. 19. Publication Clause.

2 This Act being deemed of immediate importance shall be in
3 full force and effect from and after its publication in the
4 Advocate Republican, a newspaper published at
5 Audubon, Iowa, and in the Hardin County Index,
6 a newspaper published at Eldora, Iowa. This publication
7 shall be without expense to the state.