

# ARIZONA STATE SENATE

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TO: MEMBERS OF THE SENATE  
JUDICIARY COMMITTEE

DATE: March 19, 2024

SUBJECT: Strike everything amendment to H.B. 2738, relating to DIFI; title companies; recorded documents

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### Purpose

Outlines the enforceability of an agreement to indemnify a title insurer from risks arising from a properly recorded instrument exclusively for that instrument if the agreement meets certain criteria.

### Background

The Director of the Department of Insurance and Financial Institutions (DIFI) oversees and administers licensure for title insurance agents. A title insurance agent license applicant must apply on a form prescribed by the Director of DIFI and submit all applicable fees. Title insurance agents' licenses must be renewed quadrennially.

Every title insurer must file with the Director of DIFI all forms of title policies and other contracts of title insurance before issuance of any policy or contract. A title insurance rating organization may make filings on behalf of all of its members or subscribers. A title insurer may not issue any policy or contract until 30 days after the policy or contract has been filed with the Director of DIFI. A policy or contract is approved 30 days after filing unless the Director of DIFI has issued, within the 30-day period, an order affirmatively approving or disapproving the form. The Director of DIFI may extend the period for up to 15 additional days to complete the review of the filing by giving notice within the 30-day period to the title insurer.

Forms of title policies and other contracts of insurance must specifically exclude: 1) reinsurance contracts or agreements; 2) all specific defects in title that may be ascertained from an examination of the risk and excepted in reports, binders or policies, together with any affirmative assurance of the title insurer with respect to the defects whether given by endorsement or otherwise; and 3) further exceptions from coverage by reason of limitations on the examination of the risk imposed by an applicant for insurance or through failure of an applicant for insurance to provide the date requisite to a judgment of insurability.

*Title insurance* insures, guarantees or indemnifies owners of real property or others interested therein against loss or damage suffered by reason of liens, encumbrances upon, defects in or the unmarketability of the title to such property, guaranteeing, warranting or otherwise insuring the correctness of searches relating to the title to real property, or doing any business in substance equivalent to any of the foregoing (A.R.S. §§ [20-1562](#); [20-1580](#) and [20-1591](#)).

There is no anticipated fiscal impact to the state General Fund associated with this legislation.

Provisions

1. Stipulates that an agreement by a person to indemnify or hold harmless a title insurer from risks arising from an instrument that is or becomes properly recorded and indexed in the office of the county recorder is only enforceable, if the agreement is in writing and any of the following are met:
  - a) the instrument was not of record at the time the agreement was executed;
  - b) the instrument is specifically described in the agreement;
  - c) the instrument is shown as an exception from coverage in the title insurance policy;
  - d) the agreement indemnifies for or holds harmless against liens arising from work or labor done or professional services, materials, machinery, fixtures or tools furnished on the insured property; or
  - e) the instrument is or secures a monetary obligation of the person and the instrument remains an outstanding and enforceable debt.
2. Specifies that the outlined stipulation does not affect the enforceability of title warranties provided by a person in a deed or mortgage.
3. Contains a statement of legislative intent.
4. Makes technical changes.
5. Becomes effective on the general effective date.