

1 **State of Arkansas**  
2 **78th General Assembly**  
3 **Regular Session, 1991**

# A Bill

**HOUSE BILL**

4 **By: Representatives George and J. Miller**

5

6

7

## **For An Act To Be Entitled**

8 "AN ACT TO REGULATE TITLE INSURANCE AGENTS, AND PERSONS  
9 ENGAGED IN THE BUSINESS OF TITLE INSURANCE; AND FOR OTHER  
10 PURPOSES."

11

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

13

14 SECTION 1. TITLE, PURPOSE.

15 (a) This act shall be known and may be cited as the Arkansas Title  
16 Insurance Agents Licensing Act.

17 (b) The purpose of this act is to provide the state of Arkansas with a  
18 comprehensive body of law for the effective regulation and supervision of the  
19 title insurance agents business transacted within this state.

20

21 SECTION 2. APPLICATION OF ACT AND CONSTRUCTION WITH OTHER LAWS.

22 (a) This act shall apply to all title agents, applicants for title  
23 insurance and title insurance policyholders.

24 (b) Nothing in this act shall be construed to authorize the practice of  
25 law by any person who is not duly licensed to practice law in this state.

26

27 SECTION 3. DEFINITIONS.

28 (a) "Applicant" means a person, whether or not a prospective insured,  
29 who applies to a title insurer or title agent for a title insurance policy and  
30 who, at the time of application, is not a title agent.

31 (b) "Associate" means any:

32 (1) Business organized for profit in which a producer of title business  
33 is a director, officer, partner, employee or owner of more than five percent  
34 (5%) of the equity and/or capital thereof;

35 (2) Employee of a producer of title business;

**jmb091**

1 (3) Franchisor or franchisee of a producer of title business;

2 (4) Spouse, parent, or child of a producer of title business who is a  
3 natural person;

4 (5) Person, other than a natural person, that controls, is controlled  
5 by, or is under common control with, a producer of title business; or

6 (6) Person with whom a producer of title business or any associate of  
7 such producer has any agreement, arrangement, or understanding, or pursues any  
8 course of conduct, the purpose or substantial effect of which is to evade the  
9 provisions of this act.

10 (c) "Charge" means any fee billed by a title agent for the performance  
11 of services. Charge includes, but is not limited to, fees for document  
12 preparation, fees for closing or settlement services, and any fee for services  
13 commenced but not completed.

14 (d) "Controlled business" means any portion of a title agent's business  
15 of title insurance in this state, referred to it by any producer of title  
16 business or by any associate of such producer, where the producer of title  
17 business, the associate, or both, have a financial interest exceeding five  
18 percent (5%) in the title agent to which the business is referred.

19 (e) "Financial interest" means any interest, legal or beneficial, that  
20 entitles the holder, directly or indirectly, to more than five percent (5%) of  
21 the net profits or net worth of the entity in which the interest is held.

22 (f) "Gross operating revenue" means all income received by a title  
23 agent.

24 (g) "Person" means any natural person, partnership, association,  
25 cooperative, corporation, trust, or other legal entity that is a resident of,  
26 or authorized to do business in this state.

27 (h) "Producer of title business" or "producer" means any person,  
28 including any officer, director, or owner of more than five percent (5%) of  
29 the equity or capital of any person, engaged in this state in the trade,  
30 business, occupation or profession of:

31 (1) Buying or selling an interest in real property;

32 (2) Making loans secured by interests in real property; or

33 (3) Acting as broker, agent, representative or attorney of a person who  
34 buys or sells any interest in real property or who lends or borrows money with  
35 such interest as security; provided, however, that an attorney licensed to

1 practice law in this state who, in conjunction with a real estate transaction,  
2 examines title and issues a title insurance policy to or on behalf of a client  
3 and who, in so doing, acts consistently with the ethical standards applicable  
4 to the legal profession in this state, shall not be deemed to be a producer of  
5 title business.

6 (i) "Refer" means to direct or cause to be directed or to exercise any  
7 power or influence over the direction of title insurance business, whether or  
8 not the consent or approval of any other person is sought or obtained with  
9 respect to the referral.

10 (j) "Title agent" or "agent" means any person who:

11 (1) Solicits title insurance business;

12 (2) Collects premiums;

13 (3) Determines insurability in accordance with underwriting rules and  
14 standards prescribed by its title insurer; or

15 (4) Issues title insurance commitments or policies.

16 (k) "Title insurance commitment" is a preliminary report on the status  
17 of a land title, and sets out the conditions under which a title or interest  
18 will be insured.

19 (l) "Title insurance business" or the "business of title insurance"  
20 means:

21 (1) Transacting or proposing to transact by a title agent any of the  
22 following activities when conducted or performed in contemplation of the  
23 issuance of a title commitment or a title insurance policy:

24 (a) Soliciting or negotiating the issuance of a title insurance  
25 policy;

26 (b) Guaranteeing, warranting or otherwise insuring the  
27 correctness of title searches;

28 (c) Execution of title insurance policies;

29 (d) Searching or examining titles of land.

30 (2) Doing or proposing to do any business in substance equivalent to  
31 any of the foregoing in a manner designed to evade the provisions of this act.

32 (m) "Title insurance policy" or "policy" means a contract insuring or  
33 indemnifying against loss or damage arising from any or all of the following  
34 existing on or before the policy date:

35 (1) Defects in or liens on encumbrances on the insured title;

1 (2) Unmarketability of the insured title; or

2 (3) Invalidity or unenforceability of liens or encumbrances on the  
3 stated property.

4 (n) "Title insurer" or "insurer" means a company organized under the  
5 laws of this state for the purpose of transacting as insurer, the business of  
6 title insurance and any foreign or alien title insurer engaged in this state  
7 in the business of title insurance as insurer.

8 (o) "Title plant" means a set of records in which an entry has been  
9 made of all recorded documents or matters imparting constructive notice under  
10 the law of matters affecting title to all real property or any interest  
11 therein or encumbrances thereon, which have been recorded in the jurisdiction  
12 for which such title plant is maintained fifty (50) years prior to the date of  
13 certification of a title search and continually thereafter. Such records  
14 shall consist of an index or set of indices in which notations of or  
15 references to any such documents that describe the property affected thereby  
16 are posted, entered or otherwise included, according to the property described  
17 thereon, or copies or briefs of all such documents describing the property  
18 affected and which are sorted and filed according to the property described  
19 therein.

20

21 SECTION 4. UNDERWRITING STANDARD AND RECORD RETENTION.

22 No title insurance policy may be written unless and until a reasonable  
23 search and examination of the title from a title plant, as defined by this  
24 act, has been conducted, and a determination of insurability of title in  
25 accordance with sound underwriting practices has been made. Evidence of the  
26 examination of title and determination of insurability shall be preserved and  
27 retained for a period of not less than fifteen (15) years after the title  
28 insurance policy has been issued. Instead of the retention of the original  
29 evidence, title agent may in the regular course of business establish a system  
30 whereby all or part of the evidence is recorded, copied, or reproduced by any  
31 process that accurately and legibly reproduces or forms a durable medium for  
32 reproducing the contents of the original.

33

34 SECTION 5. TITLE AGENTS, LICENSE REQUIRED.

35 No person shall act as a title agent, or issue title insurance

1 commitments and policies, unless licensed in accordance with the provisions of  
2 this act.

3

4 SECTION 6. GENERAL QUALIFICATIONS FOR TITLE INSURANCE AGENT'S LICENSE.

5 (a) No license shall be issued to, continued for, or permitted to exist  
6 for any natural person acting as an agent for the above services, unless the  
7 natural person:

8 (1) Is at least eighteen (18) years old;

9 (2) Is a bona fide resident of, and resides within, this state.

10 (3) Is appointed as an agent by a title insurer, subject to the  
11 issuance of a title agent's license;

12 (4) Has successfully demonstrated comprehension of the principles of  
13 title insurance, the practical application of those principles through a  
14 testing procedure administered by the Licensing Board; and

15 (5) Met continuing educational and other administrative requirements of  
16 the Licensing Board.

17 (b) Any person, other than a natural person, to whom an agent's license  
18 is issued, shall designate to the Licensing Board those natural persons who  
19 are and will be exercising the powers and performing the duties of the agent.  
20 The designated individuals, except persons performing only clerical  
21 functions, shall be subject to the requirements of subsection (a) of this  
22 section.

23 (c) Any person, other than a natural person, to whom a title insurance  
24 agent's license is issued, must demonstrate that each natural person  
25 designated to exercise the powers and perform the duties of the title agent  
26 meets the requirements of subsection (a) of this section.

27

28 SECTION 7. APPLICATION FOR TITLE AGENT'S LICENSE.

29 (a) Application for a license to act as a title agent shall be made in  
30 writing in the form and manner prescribed by the Licensing Board. A non-  
31 refundable application fee in an amount to be established by the Licensing  
32 Board shall be paid at the time of application.

33 (b) The application shall be deemed to be a continuing one, and any  
34 licensee or prospective licensee shall inform the Licensing Board promptly if  
35 any information set forth in the application is no longer accurate.

1

2 SECTION 8. ISSUANCE, EXPIRATION, AND RENEWAL OF TITLE AGENT'S LICENSE.

3 (a) The Licensing Board shall issue a license to act as a title agent  
4 to any person if:

5 (1) The prospective licensee files an application pursuant to Section 7  
6 of this act;

7 (2) The prospective licensee meets the requirements of Section 6 of  
8 this act; and

9 (3) The prospective licensee has provided the Licensing Board with  
10 evidence of financial responsibility in the form and in a minimum amount  
11 required by the regulations of the Licensing Board.

12 (b) Each title agent's license shall expire on June 30 of each year,  
13 and may be renewed by the Licensing Board upon filing by the licensee, prior  
14 to the expiration of his license, a properly completed application in the form  
15 prescribed by the Licensing Board and upon payment of the appropriate renewal  
16 fee, providing the licensee has met all requirements of the Licensing Board.

17

18 SECTION 9. REFUSAL, SUSPENSION, OR REVOCATION OF TITLE AGENT'S LICENSE;  
19 FINE IN LIEU OF SUSPENSION.

20 (a) The Licensing Board may refuse to license any person as an agent,  
21 or may suspend or revoke an agent's license, after providing due notice and an  
22 opportunity to be heard pursuant to regulations provided by the Licensing  
23 Board, upon a finding that the person:

24 (1) Fails to meet or fails to continue to meet the qualifications of  
25 licensure under this act;

26 (2) Has violated any provision of this act or any rule or regulation of  
27 the Licensing Board;

28 (3) Has made a material misstatement in an application for an agent's  
29 license or has obtained an agent's license by fraud or by willful  
30 misrepresentation;

31 (4) Has misappropriated, commingled, or converted to his own use, funds  
32 belonging to applicants, title insurers, insureds, or real estate closing or  
33 settlement participants, or others;

34 (5) Has intentionally misrepresented the terms of a title insurance  
35 policy to any applicant or policyholder;

1 (6) Has, in the conduct of his affairs, under his agent's license, used  
2 fraudulent, coercive, or dishonest practices, or has shown himself to be  
3 incompetent, untrustworthy, financially irresponsible or a source of injury or  
4 loss to the consumer, general public or parties involved;

5 (7) Has aided, abetted or assisted another person in violating the  
6 provisions of this act, or any rule or regulation promulgated under this act;  
7 or

8 (8) Has otherwise violated the provisions of this act.

9 (b) The Licensing Board may revoke the title agent's license of any  
10 person who is convicted of a felony.

11 (c) Without imposing the foregoing penalties, the Licensing Board may  
12 additionally impose a fine in an amount to be determined by the Licensing  
13 Board for each violation of this act or of any rule or regulation promulgated  
14 pursuant to it.

15 (d) Any of the penalties provided under this section may be imposed on  
16 a title agent other than a natural person for action of individuals designated  
17 by that insurance agent under Section 6 (b) of this act.

18

19 SECTION 10. REBATES AND INDUCEMENTS PROHIBITED.

20 (a) No title agent shall:

21 (1) Pay, directly or indirectly, to the insured, to any producer of  
22 title business, to any associate of a producer, or to any other person, any  
23 commission, any part of its premiums, fees, other charges, or any other  
24 consideration as inducement or compensation for the referral of title  
25 insurance business or for the performance of any escrow or other service by  
26 the title agent; or

27 (2) Issue any title insurance policy or perform any service in  
28 connection with any transaction in which it has paid or intends to pay  
29 commission, rebate, discount or inducement which it knows to be in violation  
30 of this section.

31 (b) No insured named in a title insurance policy, no seller of real  
32 estate, no producer, no associate of a producer, nor any person may knowingly  
33 receive or accept, directly or indirectly, any commission, discount, rebate,  
34 or inducement referred to in subsection (a).

35

1 SECTION 11. TITLE AGENT PREMIUM OR FEES, DIVISION OF FEES, CHARGES OR  
2 PREMIUMS.

3 (a) Nothing in this act shall be construed as prohibiting a title agent  
4 from charging any fee deemed appropriate for services rendered.

5 (b) Nothing in this act shall be construed as prohibiting the division  
6 of premiums and charges between or among title insurers and title agents,  
7 provided such division of premiums and charges does not constitute:

8 (1) An unlawful rebate, discount or inducement under the provisions of  
9 this act; or

10 (2) Payment of a forwarding fee or finder's fee.

11

12 SECTION 12. CONTROLLED BUSINESS.

13 (a) No title agent may accept any order for, issue a title policy to,  
14 or provide services to, an applicant if he knows or has reason to believe that  
15 the applicant was referred to him by any producer of title business or by any  
16 associate of such producer, where the producer, the associate or both, have a  
17 financial interest in the title agent to which business is referred unless the  
18 producer has disclosed to the buyer, seller and lender, the financial interest  
19 of the producer of title business, or associate referring the title business.  
20 The disclosure must be made in writing on forms prescribed by the Licensing  
21 Board. The title agent shall maintain the disclosure forms for a period of  
22 three (3) years.

23 (b) Each title agent shall file with the Licensing Board, on forms  
24 prescribed by the Board, reports setting forth the names and addresses of  
25 those persons, if any, who have had a financial interest in the title agent  
26 during the calendar year, who are known by the agent to be producers of title  
27 business or associates of producers.

28 (1) Each title agent shall file the report required under this  
29 subsection with its application for a license and at any time there is a  
30 change in the information provided in the last report.

31 (2) Each title agent herein licensed on the effective date of this act  
32 shall file the report required under this subsection within ninety (90) days  
33 of the effective date.

34 (c) No title agent may accept an order for business, issue a title  
35 insurance policy, or receive or retain any premium, fee or charge in



1 connection with any transaction if:

2 (1) The title agent knows or has reason to believe that the transaction  
3 will constitute controlled business for that title agent; and if

4 (2) Twenty percent (20%) or more of the gross operating revenue of that  
5 title agent in the calendar year in which the transaction takes place is  
6 derived from controlled business.

7 (d) For the purposes of subsection (c) of this section, the percentage  
8 limitation set forth in paragraph (2) of subsection (c) shall be eighty  
9 percent (80%) in the first calendar year after the effective date of this act;  
10 sixty percent (60%) in the second calendar year after the effective date of  
11 this act; forty percent (40%) in the third calendar year after the effective  
12 date of this act; and twenty percent (20%) in any later calendar year.

13 (e) No license may be issued, renewed, or continued for a title agent  
14 who fails to comply with this section. Provided, however, these provisions  
15 shall not apply to title agents, producers of title business, or associates of  
16 producers residing or domiciled in any county or district within this state  
17 which has a population not greater than twenty thousand (20,000) people,  
18 according to the latest United States of America decennial census.

19

20 SECTION 13. FAVORED TITLE INSURANCE AGENT.

21 (a) No producer shall require, directly or indirectly, or through any  
22 trustee, director, officer, agent, employee, or affiliate, as a condition,  
23 agreement, or understanding to selling or furnishing any other person any  
24 loan, or extension thereof, credit, sale, property, contract, lease or  
25 service, that such other person shall place any contract of title insurance or  
26 contract of any kind through any particular title agent. No title agent shall  
27 knowingly participate in any such prohibited plan or transaction.

28 (b) Any producer who violates the provisions of this section, or any  
29 title agent who accepts an order for title insurance or order for a closing  
30 transaction in violation of the provisions of this section shall, in addition  
31 to any other action which may be taken by the Licensing Board, be subject to a  
32 fine by the Commissioner in an amount equal to five (5) times the premium for  
33 the title insurance.

34

35 SECTION 14. TITLE PLANT STANDARDS.

1           No commitment of title insurance or title policy shall be issued except  
2 on the basis of one of the following:

3           (1) A thorough search of the records of the jurisdiction by a licensed  
4 title insurance agent using a title plant;

5           (2) An abstract of title certified by a licensed abstractor; or

6           (3) An opinion given by an attorney licensed to practice law in this  
7 state, and licensed under the provisions of this act.

8

9           SECTION 15. REGULATIONS.

10           In addition to any other powers granted under this act, the Licensing  
11 Board may adopt rules or regulations not inconsistent with the provisions of  
12 this act to protect the interest of the public including but not limited to  
13 regulations governing sales practices; coverage standards; rebates and  
14 inducements; controlled business; the approval of agency contracts; unfair  
15 trade practices and fraud; statistical plans for data collection; consumer  
16 education or any other consumer matter; continuing education of agents;  
17 licensing fees; the business of title insurance or any regulation otherwise  
18 necessary for implementing or interpreting the provisions of this act.

19

20           SECTION 16. ENFORCEMENT.

21           (a) Any violation of this act shall carry with it, in addition to or in  
22 lieu of suspension or revocation of the violator's license, a civil penalty in  
23 an amount as set by the Licensing Board. For purposes of this act, each  
24 individual transaction which is not in conformance with the provisions of this  
25 act shall be considered a violation.

26           (b) Upon establishing the existence of a violation of any provision of  
27 this act, any person, or title agent, shall be entitled, in addition to any  
28 other damages or remedies provided by law, to such equitable or injunctive  
29 relief as the court deems proper. In any such action, the court may award to  
30 the successful party the court costs of the action together with reasonable  
31 attorney's fees.

32           (c) The Licensing Board may invoke the aid of the courts in enforcing  
33 the provisions of this act.

34

35           SECTION 17. CREATION OF TITLE INSURANCE AGENTS LICENSING BOARD.

1           (a) There is created a Title Insurance Agents Licensing Board,  
2 consisting of seven (7) members who shall be appointed by the Governor and  
3 confirmed by the Senate. Each member shall be at least twenty-five (25) years  
4 of age, and be a resident of this state. Members of the Licensing Board shall  
5 consist of five (5) licensed agents, and two (2) lay people not affiliated  
6 with the title insurance business. Members shall serve seven (7) year terms  
7 which shall expire on December 31st of the seventh (7th) year, but shall hold  
8 over after the expiration of their term until a successor shall be appointed.  
9 If a vacancy shall occur, then the Governor shall appoint a successor for the  
10 remainder of the term. The Governor may remove any member of the Licensing  
11 Board for incompetency or neglect of duty. Each member of the board shall  
12 receive a certificate of appointment from the Governor, and before entering  
13 upon the discharge of duties of office, shall file with the Secretary of State  
14 the constitutional oath of office. Each member shall receive reimbursement  
15 for necessary traveling expenses, board and lodging in the performance of  
16 their duties. The board shall annually elect in January of each year, a  
17 chairman, vice-chairman and secretary to serve in their respective capacity  
18 for one (1) year. The board may elect other officers, if the board deems it  
19 appropriate. Regular, special, or adjourned meetings may be held at such  
20 times as the board may provide by the rules and regulations which it shall  
21 adopt, or at such times as the board may by reasonable resolution provide.  
22 Due notice of each meeting time and place shall be given to each member in  
23 such manner as the rules and regulations shall provide. Four (4) members of  
24 the board shall constitute a quorum. The board shall adopt a seal for its own  
25 use and shall have on it the words, "TITLE INSURANCE AGENTS LICENSING BOARD,  
26 STATE OF ARKANSAS, SEAL", and the secretary shall have charge and custody of  
27 it.

28           (b) Initially, the Governor shall appoint members of the Licensing  
29 Board who shall serve staggered, ascending terms of one (1) through seven (7)  
30 years. The Governor shall consult an advisory board consisting of the Board  
31 of Governors of the Arkansas Land Title Association for appointee  
32 recommendations. Ongoing, the advisory board shall be consulted for appointee  
33 recommendations to the Licensing Board when an opening occurs or is  
34 anticipated through expiration of term.

35           (c) The Title Insurance Agents Licensing Board shall have power to make

1 such rules and regulations for its operation as it shall consider appropriate,  
2 provided that they are not in conflict with the laws of the state of Arkansas.  
3 All expenses incurred by the board for the administration of this act are  
4 authorized to be paid by the board. The board, or any committee thereof,  
5 shall be entitled to the services of the Attorney General or other state legal  
6 counsel as deemed appropriate in connection with the operation of the affairs,  
7 administration, rules or regulations of the Licensing Board. Additional legal  
8 counsel may be employed by the board from time to time as it may deem  
9 necessary. The board shall employ an administrator, who shall possess such  
10 qualifications as may be determined by the board, and who shall serve at the  
11 pleasure of the board. In addition, the board may employ such additional  
12 professional and clerical employees as may be necessary for the operation of  
13 the board's various functions and pay wages and salaries thereto.

14 (d) All fees and charges collected under this act shall be paid by the  
15 Licensing Board within a period of thirty (30) days after receipt of same  
16 together with a statement thereof to the Treasurer of the state who shall  
17 place ten percent (10%) of such sums remitted to the credit of the general  
18 fund of the state, and ninety percent (90%) to the credit of the Title  
19 Insurance Agents Licensing Board Fund, which fund is hereby expressly created.  
20 All moneys so paid into the State Treasury and credited to the fund, or so  
21 much thereof as may be needed, are hereby appropriated to the use of the  
22 Licensing Board under its direction for the payment of all expenses and  
23 expenditures incurred under the provisions of this act. Upon request of the  
24 Licensing Board, the State Auditor shall draw warrants for such expenses and  
25 expenditures and the State Treasurer shall pay the same from the fund. No  
26 expenditures under this act shall be made except from moneys in such fund.  
27 The fees of the Title Insurance Agents Licensing Board shall be deposited in  
28 banks to be used by the board in the manner prescribed by law, similar to the  
29 accounts of other examining and licensing boards of the state, and shall be  
30 audited under rules and regulations prescribed by the director of the  
31 Department of Finance and Administration.

32

33 SECTION 18. EFFECTIVE DATE.

34 This act shall be effective July 1, 1991. The Licensing Board is hereby  
35 empowered to establish rules, procedures and regulations for the timely and

1 effective implementation of this act, provided, however, that the complete  
2 implementation shall not be longer than eighteen (18) months from its  
3 effective date.

4

5         SECTION 19. All provisions of this act of a general and permanent  
6 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas  
7 Code Revision Commission shall incorporate the same in the Code.

8

9         SECTION 20. If any provision of this act or the application thereof to  
10 any person or circumstance is held invalid, such invalidity shall not affect  
11 other provisions or applications of the act which can be given effect without  
12 the invalid provision or application, and to this end the provisions of this  
13 act are declared to be severable.

14

15         SECTION 21. All laws and parts of laws in conflict with this act are  
16 hereby repealed.

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14