

**Hall of the House of Representatives**  
86th General Assembly - Regular Session, 2007  
**Amendment Form**

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**Subtitle of House Bill No. 2620**

"TO TRANSFER THE REGULATION OF TITLE INSURANCE TO THE STATE  
INSURANCE DEPARTMENT AND TO ENACT THE ARKANSAS TITLE INSURANCE  
ACT."

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**Amendment No. 1 to House Bill No. 2620.**

Amend House Bill No. 2620 as originally introduced:

Delete SECTION 1 in its entirety and substitute the following:

"SECTION 1. TEMPORARY LANGUAGE. DO NOT CODIFY. Effective January 1, 2008, the Arkansas Title Insurance Agents' Licensing Board established by the Arkansas Title Insurance Agents' Licensing Act, § 23-103-101 et seq., is abolished and its powers and duties are transferred to the State Insurance Department by a type 3 transfer under § 25-2-106.

SECTION 2. Arkansas Code § 23-62-108 is amended to read as follows:  
23-62-108. Title insurance.

As used in the Arkansas Insurance Code, unless the context otherwise requires, "title insurance" is insurance of owners of property or others having an interest therein, or liens or encumbrances thereon, against loss by encumbrance, ~~or a defective titles, or invalidity or invalid title,~~ or adverse claim to title, or closing protection.

SECTION 3. Arkansas Code § 23-64-201 is amended to read as follows:  
23-64-101. Scope of provisions.

This chapter shall apply with respect to any insurer, as to all insurances other than wet marine, and foreign trade insurance, ~~and title insurance.~~

SECTION 4. Arkansas Code § 23-64-301(b)(1), concerning continuing education requirements for insurance producers, is amended to add an additional subdivision to read as follows:

(b)(1) Beginning July 1, 2003, during each annual period of the duration of his or her license, any person licensed to act as an insurance producer shall satisfactorily complete courses or programs of instruction equivalent to:

(A) A minimum of eight (8) hours of related instruction for a life license or an accident and health license, or both;



or

(B) A minimum of eight (8) hours of instruction for a property and casualty license; or

(C) A minimum of eight (8) hours of instruction for a title insurance license.

SECTION 5. Arkansas Code § 23-67-203(7), concerning the regulation of insurance rates, is amended to read as follows:

(7) Title insurance, except that the following provisions shall apply to this line: §§ 23-67-202; 23-67-205; 23-67-208; 23-67-209; 23-67-211(a), (b) and (e); 23-67-212; 23-67-213; 23-67-214; 23-67-215; 23-67-216; 23-67-217; 23-67-218; 23-67-220; and 23-67-222;

SECTION 6. Arkansas Code § 23-79-102(4) concerning the applicability of certain insurance laws to title insurance, is amended to read as follows:

(4) ~~Title insurance, except as to the following provisions:~~  
~~(A) Section 23-79-109, filing, approval of forms;~~  
~~(B) Section 23-79-110, grounds for disapproval;~~  
~~(C) Section 23-79-113, charter, bylaw provisions;~~  
~~(D) Section 23-79-116, execution of policies;~~  
~~(E) Section 23-79-119, construction of policies; and~~  
~~(F) Sections 23-79-202 - 23-79-205 and 23-79-208,~~  
suits against insurers, etc. that the following provisions shall apply to this line: §§ 23-79-101(1), 23-79-109, 23-79-110, 23-79-111, 23-79-113, 23-79-116, 23-79-118, 23-79-119, 23-79-202, and 23-79-205.

SECTION 7. Arkansas Code Title 23, Chapter 103 is amended to add an additional subchapter to read as follows:

23-103-401. Title.

This subchapter shall be known and may be cited as the "Arkansas Title Insurance Act".

23-103-402. Definitions.

As used in this subchapter:

(1) "Closing" means the process of executing documents in a transaction involving either personal or real property, including the transfer of title or creation of a lien on the title, or the collection and disbursement of funds in connection therewith;

(2) "Closing agent" means a person that facilitates a closing for a fee;

(3) "Depositor" means the person providing funds or documents for delivery to a depository in connection with a transaction involving real property;

(4) "Depository" means a title insurer, title insurance agent, or qualified financial institution receiving a deposit of funds or documents;

(5) "Escrow" means the act or process of providing closing services or services pursuant to an escrow agreement by a title insurer or a title insurance agent;

(6) "Escrow account" means the demand deposit account maintained by a title insurer or title insurance agent at a qualified financial institution into which the insurer or agent deposits all funds collected from any person that is or will be a party to a transaction involving real

property;

(7) "Indemnity agreement" means an agreement by which funds or other property are received by the title insurer or the title insurance agent as collateral to secure the obligation of a person to indemnify or protect a title insurer in exchange for agreeing to provide coverage in a title insurance policy;

(8) "Person" means any natural person, or any partnership, association, cooperative, corporation, firm, trust, limited liability company, or other legal entity;

(9) "Qualified financial institution" means a bank or savings and loan association regulated, supervised, or examined by federal or state authorities having regulatory authority over banks and trust companies;

(10) "Risks" means the danger or hazards of a loss by encumbrance, a defective or invalid title, or adverse claim to title covered under a title insurance policy;

(11)(A) "Title insurance agent" means a person that is authorized on behalf of a title insurer to issue a title insurance report or title insurance policy and is:

(i) A resident of the State of Arkansas licensed under § 23-64-101 et seq.; or

(ii) A nonresident individual licensed under § 23-64-101 et seq. and employed by a resident licensee.

(B) "Title insurance agent" does not include:

(i) An individual employed by a licensee who does not sell or negotiate title insurance but who performs marketing duties directed to depository institutions or licensed real estate brokers and agents on behalf and under the direction of a licensee; or

(ii) An individual employed by a resident licensee who is a closing agent and does not solicit, sell, or negotiate title insurance;

(12) "Title insurance business" means:

(A) Issuing or offering to issue as an insurer a title insurance policy or closing protection;

(B) Transacting or proposing to transact by a title insurer or a title insurance agent any of the following activities when conducted or performed in contemplation of or in conjunction with the issuance of a title insurance report or policy:

(i) Guaranteeing, warranting, or otherwise insuring the status of title, liens, encumbrances or other matters of record;

(ii) Executing title insurance policies;

(iii) Effecting contracts of reinsurance;

(iv) Underwriting titles;

(v) Collecting, disbursing, or receiving title insurance premiums; or

(vi) Recording closing documents; or

(C) Doing or proposing to do any business substantially equivalent to the matters described in this subdivision (12) in a manner designed to evade the provisions of this subchapter;

(13) "Title insurance policy" means a contract, including any coverage, enhancements to coverage, or endorsements, insuring or indemnifying owners of, or other persons lawfully interested in, personal or real property against loss or damage arising from any of the following conditions existing

on, before, or subsequent to the policy date and not specifically excepted or excluded:

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

(B) Unmarketability of the insured title;

(C) Invalidity or unenforceability of liens or encumbrances on the insured title of the personal or real property;

(D) Title being vested otherwise than as stated in the policy;

(E) Lack of a legal right of access to the land that is part of the insured title in a policy relating to real property;

(F) Lack of priority of the lien of any insured mortgage over any statutory lien for services, labor, or materials as specifically described in the policy;

(G) Invalidity or unenforceability of any assignment of an insured mortgage subject to certain conditions; or

(H) The priority of any lien or encumbrance over the lien of an insured mortgage;

(14)(A) "Title insurance premium" means the funds paid to the title insurer directly or through its title insurance agent as consideration for:

(i) The amount of liability assumed by a title insurer under a title insurance policy;

(ii) The title insurer's operating expenses; and

(iii) Any underwriting expense retained by the title insurance agent.

(B) "Title insurance premium" does not include charges for the performance of services related or incidental to title insurance or closings that are disclosed to the person charged, including without limitation:

(i) Title search, abstracting, or examination of title;

(ii) Obtaining a title opinion;

(iii) Document preparation fees;

(iv) Escrow or closing fees;

(v) Notary fees;

(vi) Attorneys' fees;

(vii) Fees incurred to cure defects in title;

(viii) Tax report or tax certification fees;

(ix) Title report fees;

(x) Processing fees;

(xi) Courier fees; and

(xii) Fees incident to the issuance of a title insurance report or policy;

(15)(A) "Title insurance rates" means the same as in § 23-67-202(11).

(B) "Title insurance rates" does not include charges for the performance of services related or incidental to title insurance or closings that are disclosed to the person charged, including without limitation:

(i) Title search, abstracting, or examination of title;

(ii) Obtaining a title opinion;  
(iii) Document preparation fees;  
(iv) Escrow or closing fees;  
(v) Notary fees;  
(vi) Attorney's fees;  
(vii) Fees incurred to cure defects in title;  
(viii) Tax report or tax certification fees;  
(ix) Title report fees;  
(x) Processing fees;  
(xi) Courier fees; and  
(xii) Fees incident to the issuance of a title insurance report or policy;

(16) "Title insurance report" means a preliminary report, commitment, or binder issued before the issuance of a title insurance policy containing the requirements, terms, conditions, exceptions, and any other matters incorporated by reference under which a title insurer is willing to issue a title insurance policy;

(17) "Title insurer" means a company authorized under the laws of this state to transact title insurance business; and

(18) "Underwrite" means the acceptance or rejection of risk on behalf of the title insurer.

23-103-403. Requirement for license.

(a) Other than a title insurer, only a person authorized as a title insurance agent shall issue title insurance policies, reports, or otherwise transact the business of title insurance.

(b) All title insurance policies and reports covering an insurable interest in title to real property located in this state shall be signed by an agent licensed in this state under this subchapter.

23-103-404. Authorized activities of title insurers.

Subject to the exceptions and restrictions contained in this subchapter, a title insurer may:

(1) Transact only title insurance business;  
(2) Reinsure title insurance policies; and  
(3) Unless prohibited by the Insurance Commissioner, perform or cause to be performed ancillary activities whether or not in contemplation of or in conjunction with the issuance of a title insurance report or policy including:

(A) Underwriting title to and furnishing related information about personal property or real property; and

(B) Procuring and furnishing information about relevant personal property.

23-103-405. Title insurers – Limitation of authority – Powers.

(a)(1) No insurer that transacts any class, type, or kind of insurance other than title insurance shall be eligible for the issuance or renewal of a license to transact title insurance business in this state.

(2) No title insurance shall be transacted, underwritten, or issued by any insurer transacting or licensed to transact any other class, type, or kind of business.

(b) No title insurer shall engage in the business of guaranteeing

payment of the principal or the interest on bonds or mortgages.

(c)(1) Notwithstanding subsection (a) of this section, a title insurer shall give notice of availability of closing protection to all parties to a transaction in which it is contemplated that title insurance may be issued.

(2) Upon written request by a party to a closing with a licensed agent with which it has an agent contract, the insurer shall issue closing protection to the requesting party.

(3) The settlement protection shall conform to the terms of coverage and form of instrument as may be filed with the Insurance Commissioner and shall indemnify a person solely against loss of closing funds because of the following acts of a closing agent, title insurer's named employee, or title insurance agent:

(A) Theft or misappropriation of closing funds; or

(B) Failure to comply with written instructions from the proposed insured when agreed to by the closing agent, employee, or title insurance agent as it relates to the status of the title to the interest in land or to the validity, enforceability, and priority of the lien of a mortgage or deed of trust on said interest in land.

(2) The form and amount charged by a title insurer for closing protection coverage shall be filed with the Insurance Commissioner at least twenty (20) days before the first use of closing protection coverage in the market.

(3) Except as provided in this section, a title insurer shall not provide any other coverage that purports to indemnify against improper acts or omissions of a person with regard to escrow or closing services.

23-103-406. Title insurance agents – Examination of records.

The Insurance Commissioner or title insurer may during normal business hours examine, audit, and inspect any and all books, records, files, and escrow and operating accounts related to title insurance reports and policies maintained by a title insurance agent, its successor in interest, transferee, or receiver as provided under this subchapter.

23-103-407. Underwriting contracts.

(a)(1) No person acting in the capacity of a title insurance agent shall place business with a title insurer, and no title insurer shall accept business from a title insurance agent, unless a written contract exists between the title insurer and title insurance agent.

(2) The written contract shall establish the responsibilities of the title insurer and title insurance agent and specify the division of the responsibilities if both share responsibility for a particular function.

(3) The written contract shall also contain:

(A) The types of risks that may be undertaken;

(B) The maximum authority or limits of liability;

(C) The territorial limitations;

(D) All terms of compensation for the title insurance

agent;

(E) Policies and funds remittance;

(F) Termination provisions;

(G)(i) The date by which all funds and policies due under the contract shall be accounted for to the title insurer.

(ii) The date shall be no later than sixty (60) days

after:

(a) Issuance of the policy;  
(b) The satisfaction of all requirements and condition of any report; or

(c) The time specified in the contract if sooner than sixty (60) days; and

(H) The time in which the title insurance agent has to report and forward to the title insurer all claims filed in writing with the title insurance agent by policyholders or other claimants.

(b) The contract shall not be assigned in whole or in part by the title insurance agent unless as part of a sale of a title insurance agency or its assets and approved in writing by the title insurer.

(c)(1) The title insurer may terminate the contract upon written notice to the title insurance agent under any of the following circumstances:

(A) Fraud, insolvency, appointment of a receiver or conservator, bankruptcy, cancellation of the title insurance agent's license or permit to do business, or the commencement of legal proceedings by the state of the domicile of the title insurance agent, which if successful, would lead to the cancellation of the title insurance agent's permit or license to do business;

(B) Material breach of any provision of the contract between the title insurer and the title insurance agent; or

(C) In accordance with any other termination provision of the contract.

(2) Upon the effective date as set forth in the notice of termination from a title insurer, unless otherwise agreed to in writing by the title insurer, the title insurance agent shall immediately discontinue all title insurance business on behalf of that title insurer.

(3) Nothing in this subsection shall relieve the title insurance agent or the title insurer of any other contractual obligation.

#### 23-103-408. Minimum search requirements.

(a) No title insurance report or policy shall be issued unless the title insurer or title insurance agent has caused to be made a search of the title from the evidence prepared from a title plant of the county where the property is located or from the records of the clerk or the ex officio recorder of land records of the county that maintains records relating to real estate and any interest in the country.

(b) The search shall include a review of all matters affecting the title to the property or interest to be insured for a continuous period of not less than the immediately preceding forty-five (45) years.

(c) No title insurance policy shall be issued until the title insurer or title insurance agent has caused to be made a determination of insurability of title in accordance with the title insurer's underwriting practices.

#### 23-103-409. Title insurance agent – Restrictions.

A title insurance agent shall not:

(1) Bind reinsurance on behalf of the title insurer;

(2) Permit any of its directors, officers, controlling shareholders, or employees to serve on the title insurer's board of directors if the title insurance agent wrote five percent (5%) or more of the direct

premiums of the title insurer written in the previous calendar year as shown on the title insurer's most recent annual statement filed with the Insurance Commissioner, unless the title insurer and the title insurance agent are under common control or ownership;

(3) Jointly employ an individual who is employed with the title insurer unless the title insurer and the title insurance agent are under common control or ownership; or

(4) Issue a title insurance report or policy insuring the interest of an insured in real property in this state unless the title insurance agent is licensed under this subchapter and the title insurance report or policy is signed by a title insurance agent licensed under this subchapter.

23-103-410. Title insurance inventory maintenance.

The title insurer and the title insurance agent shall each maintain an inventory of all numbered policy forms or policy numbers assigned to the title insurance agent by the title insurer.

23-103-411. Title insurer – Audit.

(a)(1) At least one (1) time each year, a title insurer shall conduct an on-site audit of the escrow and closing practices, escrow accounts, security arrangements, files, underwriting and claims practices, and policy inventory of the title insurance agencies that the title insurer has authorized to issue title insurance reports or policies on its behalf.

(2) If the title insurance agent fails to maintain separate escrow or trust accounts for each title insurer it represents, the title insurer shall verify that the funds related to closings in which the title insurer's policies are issued are reasonably ascertainable from the books of account and records of the title insurance agent.

(b)(1) The Insurance Commissioner may promulgate rules setting forth the standards of audit and the form of audit required.

(2) The commissioner may also require the title insurer to provide a copy of its audit reports to the commissioner.

(3) Any audits shall remain confidential unless introduced as evidence at a hearing or court proceeding involving the title insurance agent.

23-103-412. Title insurer – Restrictions.

A title insurer shall not:

(1) Appoint any director, officer, controlling shareholder, or employee of a title insurance agent to serve on the title insurer's board of directors if the title insurance agent wrote five percent (5%) or more of the direct premiums of the title insurer written during the previous calendar year as shown on the title insurer's most recent annual statement on file with the Insurance Commissioner, unless the title insurer and the title insurance agent are under common control or ownership; or

(2) Jointly employ an individual who is employed with the title insurance agent unless the title insurer and the title insurance agent are under common control or ownership.

23-103-413. Policyholder rights and disclosure.

(a)(1) When a title insurance report includes an offer to issue an



owner's title insurance policy covering the resale of owner-occupied residential property, the title insurance report shall be furnished to the purchaser or mortgagor or to the representative of the purchaser-mortgagor as soon as reasonably possible before closing.

(2) The title insurance report furnished to the purchaser-mortgagor shall incorporate the following statement on the first page in bold type:

"Please read the exceptions and the terms shown or referred to herein carefully. The exceptions are meant to provide you with notice of matters that are not covered under the terms of the title insurance policy and should be carefully considered.

This report is a written representation as to the condition of title for purposes of providing title insurance and lists all liens, defects, and encumbrances affecting title to the land."

(b)(1) When no owner's title insurance policy has been requested, a title insurer or a title insurance agent issuing a title insurance policy to a lender in conjunction with a mortgage loan involving real property made simultaneously with the purchase of all or part of the real property securing the loan shall give written notice on a form prescribed or approved by the Insurance Commissioner, to the purchaser-mortgagor at the closing.

(2) The notice required by subdivision (b)(1) of this section shall explain:

(A) That a title insurance policy for the lender involving real property is issued for the protection of the mortgage lender, and that the policy does not provide title insurance protection to the purchaser-mortgagor as the owner of the real property being purchased;

(B) The coverage that a title insurance policy relating to real property insures and that risks exist for the purchaser-mortgagor of real property that could be insured through the purchase of an owner's title policy involving real property; and

(C) That the purchaser-mortgagor may obtain an owner's title insurance policy at a specified premium.

(3) A copy of the notice signed by the purchaser-mortgagor shall be retained in the closing file for at least five (5) years after the effective date of the lender's title insurance policy.

(c) No title insurance agent or any other person other than a licensed Arkansas attorney may provide legal advice concerning the status of title to the property described in the title commitment.

#### 23-103-414. Record retention requirements.

(a) The title insurer and the title insurance agent shall maintain sufficient records of their affairs, including evidence of underwriting title, determination of insurability, and records of their escrow operations and escrow accounts.

(b) The Insurance Commissioner may prescribe the specific records and documents to be kept and the length of time for which the records shall be maintained.

#### 23-103-415. Rules promulgated by Insurance Commissioner.

The Insurance Commissioner shall issue rules in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq., to implement this subchapter.

23-103-416. Penalties – Liabilities.

(a) If the Insurance Commissioner determines that a title insurer, title insurance agent, or any other person has violated this subchapter or any rule or order promulgated under this subchapter, the commissioner may order:

(1)(A) Payment of a monetary penalty not to exceed one thousand dollars (\$1,000) for each act or violation and not to exceed an aggregate penalty of ten thousand dollars (\$10,000) unless the title insurer, title insurance agent, or other person knew or reasonably should have known that the title insurer, title insurance agent, or other person was in violation of this subchapter.

(B) If the title insurer, title insurance agent, or other person knew or reasonably should have known that the title insurer, title insurance agent, or other person was in violation of this subchapter, the penalty shall not exceed five thousand dollars (\$5,000) for each act or violation and not exceed an aggregate penalty of fifty thousand dollars (\$50,000) in any six-month period; or

(2) Suspension or revocation of the title insurer's, title insurance agent's, or other person's license, if the title insurer, title insurance agent, or other person knew or reasonably should have known that the title insurer, title insurance agent, or other person was in violation of this subchapter.

(b) If an order of rehabilitation or liquidation of the title insurer or of conservation of assets of the title insurer has been entered and the receiver appointed under the order determines that the title insurance agent or any other person has not complied with this subchapter or any rule or order promulgated under this subchapter and the title insurer suffered any resulting loss or damage, the receiver shall maintain a civil action for recovery of damages or other appropriate sanctions for the benefit of the title insurer and its policyholders and creditors.

(c) Nothing contained in this section shall affect the right of the commissioner to impose any other penalties provided under § 23-64-101 et seq.

SECTION 8. Arkansas Code § 19-5-1224 is repealed.

~~19-5-1224. Title Insurance Agents' Licensing Board Fund.~~

~~(a) There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "Title Insurance Agents' Licensing Board Fund".~~

~~(b)(1) The fund shall consist of the license and examination fees as set out in § 23-103-204.~~

~~(2) The fund shall be used by the Arkansas Title Insurance Agents' Licensing Board for the payment of all expenses and expenditures incurred under § 23-103-201 et seq.~~

SECTION 9. Arkansas Code §§ 23-103-101 – 23-103-316 are repealed.

~~23-103-101. Purpose.~~

~~(a) This chapter shall be known and may be cited as the "Arkansas Title Insurance Agents' Licensing Act".~~

~~(b) The purpose of this chapter is to provide the procedures for the licensing of title insurance agents.~~

~~23-103-102. Definitions.~~

~~As used in this chapter:~~

- ~~(1) "Business entity" means a corporation, firm, association, partnership, joint venture, limited liability company, limited liability partnership, or other legal business entity;~~
- ~~(2) "Commitment" means a contract or binder reporting the state of the title to the real property described and committing the title insurer to issue a contract of title insurance upon compliance with the requirements stated and subject to any exceptions set forth;~~
- ~~(3) "Home state" means the District of Columbia and any state or territory of the United States in which a title insurance agent maintains a principal place of residence or principal place of business and is licensed to act as a title insurance agent;~~
- ~~(4) "Inactive signing title insurance agent" means a person having a signing agent's license that has been placed in inactive status by the Arkansas Title Insurance Agents' Licensing Board;~~
- ~~(5) "Issuing title insurance agent" means a person authorized to issue commitments and contracts of title insurance and to collect premiums in the name of a title insurer;~~
- ~~(6) "Person" means any natural person, firm, corporation, partnership, association, limited liability company, limited liability partnership, or other business entity;~~
- ~~(7) "Sell" means to exchange a contract of title insurance for valuable consideration on behalf of a title insurer;~~
- ~~(8) "Signing title insurance agent" means a person authorized under this chapter to sign commitments and contracts of title insurance;~~
- ~~(9) "Title insurance" means the insurance defined in § 23-62-108;~~
- ~~(10) "Title insurance agent" means a person required to be licensed under the laws of the State of Arkansas to sell title insurance; and~~
- ~~(11) "Title insurer" means a person authorized by the State of Arkansas to underwrite and effectuate a contract of title insurance.~~

~~23-103-103. Penalties.~~

~~(a)(1) Any person violating any of the provisions of this chapter shall be guilty of a violation and upon conviction shall be punished by a fine of not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000) for each offense.~~

~~(2) Each succeeding day on which this chapter is violated shall be a separate offense.~~

~~(b) If any title insurance agent knowingly falsifies any public record or information required to be furnished, the title insurance agent shall be guilty of a Class D felony in addition to any civil liability.~~

~~23-103-201. Creation — Members.~~

~~(a) There is created the Arkansas Title Insurance Agents' Licensing Board.~~

~~(b)(1) The board shall consist of five (5) members appointed by the Governor, who shall serve four year terms, subject to confirmation by the Senate.~~

~~(2) Two (2) members shall have been actively engaged in the title insurance business in the state for a period of five (5) years prior to appointment and shall serve an initial term of four (4) years each.~~

~~(3) One (1) member shall be knowledgeable of the title insurance business and shall serve an initial term of three (3) years.~~

~~(4) Two (2) members shall be citizens of the State of Arkansas and shall serve an initial term of two (2) years each.~~

~~(c) Vacancies on the board caused by death, resignation, or otherwise shall be filled by appointment of the Governor, subject to confirmation by the Senate.~~

~~(d) Any member may be appointed to successive terms, but no two (2) members shall be appointed from the same county.~~

~~(e) Each member shall serve without compensation but shall be reimbursed for travel and expenses in accordance with § 25-16-902.~~

#### ~~23-103-202. Organization and proceedings.~~

~~(a)(1) The Arkansas Title Insurance Agents' Licensing Board shall organize by the election of a chair and a secretary-treasurer.~~

~~(2) The chair and secretary-treasurer shall have the power to administer oaths.~~

~~(b) The board shall have a seal and shall have the power to compel the attendance of witnesses by issuance of subpoena.~~

#### ~~23-103-203. Duties and powers.~~

~~(a) The Arkansas Title Insurance Agents' Licensing Board shall keep a register of the names of each applicant for licensure, with the applicant's place of business and other information as may be deemed appropriate, including a notation of the action taken by the board and the date upon which any licenses are issued. In addition, the board shall maintain other records, registers, and files as may be necessary for the proper administration of its duties under this chapter.~~

~~(b) The board may adopt rules and regulations as it shall deem necessary or desirable for the proper administration of its powers and duties and the carrying out of the purposes of this chapter.~~

~~(c) The board may employ or contract with persons as it deems necessary and desirable to discharge its duties and powers.~~

~~(d) In addition to its other powers, the board may institute suits and other legal proceedings in a court of competent jurisdiction in Pulaski County, Arkansas, as may be required for the enforcement of this chapter.~~

#### ~~23-103-204. License fees, disposition of funds, and Title Insurance Agents' Licensing Board Fund.~~

~~(a) The Arkansas Title Insurance Agents' Licensing Board shall collect fees as follows:~~

~~(1) For an issuing agent's license, the original license fee shall not exceed three hundred fifty dollars (\$350), and the renewal fee shall not exceed three hundred fifty dollars (\$350) annually;~~

~~(2) For a signing agent's license, the original license fee shall not exceed twenty five dollars (\$25.00), and the renewal fee shall not exceed twenty five dollars (\$25.00) annually;~~

~~(3) For an inactive status license fee, the original fee shall not exceed twenty five dollars (\$25.00), and the renewal fee shall not exceed twenty five dollars (\$25.00) annually; and~~

~~(4) The board shall have the authority to set reasonable fees established by regulation promulgated in accordance with the Arkansas~~

~~Administrative Procedure Act, § 25-15-201 et seq., for the performance of its administrative duties, including, but not limited to, the testing of applicants for licenses, transferring licenses, replacing license certificates, and responding to inquiries from regulatory agencies in other states.~~

~~(b) All fees and charges collected under this chapter shall be paid by the board within a period of thirty (30) days after their receipt together with a detailed statement to the Treasurer of State, who shall place the sums remitted to the credit of the Title Insurance Agents' Licensing Board Fund which is created by this chapter.~~

~~(c) All moneys paid into State Treasury and credited to the fund, or so much as may be needed, shall be used by the board for the payment of all expenses and expenditures incurred under this chapter.~~

~~(d) Upon the request of the board, the Auditor of State shall draw warrants against the fund for expenses and expenditures, and the Treasurer of State shall pay the warrants out of the fund.~~

~~23-103-301. License required.~~

~~(a) On and after January 31, 2002, a person shall not sell or receive a premium for a commitment or a contract of title insurance pertaining to real property in this state unless the person is:~~

~~(1) A title insurer; or~~

~~(2) Licensed as an issuing title insurance agent under this chapter.~~

~~(b) On and after January 31, 2002, no commitment or contract of title insurance pertaining to real property situated in the State of Arkansas shall be issued, sold, or exchanged unless the commitment and contract of title insurance is countersigned by a title insurance agent who is:~~

~~(1) A resident of this state; and~~

~~(2) Licensed under this chapter either as:~~

~~(A) An issuing title insurance agent; or~~

~~(B) A signing title insurance agent.~~

~~(c) The name of the signing agent making the countersignature and the number of the license certificate shall be printed or legibly written by hand underneath the countersignature.~~

~~23-103-302. Application of act and construction with other laws.~~

~~Without any further qualification or examination, an attorney at law licensed to practice law by the State of Arkansas, upon written request to the Arkansas Title Insurance Agents' Licensing Board and payment of the original license fee, shall be immediately certified by the board as a licensed title insurance agent, and a license certificate shall be immediately issued to the attorney.~~

~~23-103-303. License — Application.~~

~~(a) Any person desiring to become a licensed title insurance agent shall make application to the Arkansas Title Insurance Agents' Licensing Board for license registration.~~

~~(b) The application shall be in a form prepared by the board and shall contain information as may be necessary to assist the board in registration and to determine if the applicant is qualified to act as a title insurance agent.~~

~~(c) Except as provided in subsection (c) of this section, each application shall be accompanied by the examination fee prescribed in § 23-103-204.~~

~~(d) The board shall notify the applicant of the time and place of the next scheduled examination, and notice of the examination shall be given to the applicant by mail.~~

~~(e) If the person seeking to become a licensed title insurance agent is a business entity, the application shall show the names of all members, partners, manager, venturers, officers, and directors of the business entity and shall designate each natural person who is to exercise the powers to be conferred by the license, and each natural person shall take the examination and pay the examination fee prescribed in § 23-103-204.~~

~~23-103-304. License — Examination.~~

~~The examination shall be in the form of written interrogatories as may be prescribed by the Arkansas Title Insurance Agents' Licensing Board from time to time to determine the proficiency of the applicant.~~

~~23-103-305. License — Issuance or reapplication.~~

~~(a) If the person satisfactorily passes the examination and is found by the Arkansas Title Insurance Agents' Licensing Board to:~~

- ~~(1) Be at least eighteen (18) years of age;~~
- ~~(2) Be a resident of the State of Arkansas for at least six (6) months;~~
- ~~(3) Have not committed any act that is a ground for denial, suspension, or revocation set forth in § 23-103-312;~~
- ~~(4) Have paid the original license fee prescribed by § 23-103-204; and~~
- ~~(5) Be qualified, the person shall be certified as a licensed title insurance agent, and the license certificate provided for shall be issued to the person. The privileges granted by the license certificate shall continue unless revoked or unless the certificate is surrendered to the board.~~

~~(b) If the person seeking to become a licensed title insurance agent is a business entity and the board finds each natural person designated by the business entity to exercise the powers to be conferred by the license:~~

- ~~(1) Is at least eighteen (18) years of age;~~
- ~~(2) Is a resident of the State of Arkansas for at least six (6) months;~~
- ~~(3) Has not committed any act that is a ground for denial, suspension, or revocation set forth in § 23-103-312;~~
- ~~(4) Has paid the original license fee prescribed by § 23-103-204; and~~
- ~~(5) Is determined by the board to be qualified, and the business entity has paid the original license fee prescribed by § 23-103-204, the business entity shall be certified as a licensed title insurance agent, and the license certificate provided for shall be issued to the person. The privileges granted by the license certificate shall continue unless revoked or unless the certificate is surrendered to the board.~~

~~(c)(1) The license certificate shall be in a form prescribed by the board and shall attest that the person possesses the knowledge, skill, ability, and understanding to act as a title insurance agent and is~~

~~designated a licensed title insurance agent.~~

~~(2) The license certificate shall be prominently displayed in the office where the person is employed.~~

~~(d) A person failing to satisfy the board that the applicant possesses the qualifications or proficiency to become a licensed title insurance agent may reapply for registration if the application is accompanied by the examination fee provided for in § 23-103-204, but no application shall be submitted sooner than five (5) months following the date on which the last previous examination was administered to the applicant.~~

~~(e)(1) The license certificate shall indicate whether the license is issued as:~~

- ~~(A) An issuing agent license;~~
- ~~(B) A signing agent license; or~~
- ~~(C) A license for an inactive licensee.~~

~~(2) An issuing agent license shall be issued to an applicant if the applicant:~~

~~(A) Provides evidence satisfactory to the board that the applicant:~~

~~(i) May sell or receive premiums for commitments and contracts for title insurance issued by the applicant in the name of a title insurer; and~~

~~(ii) Is an insured under an errors and omissions policy of insurance in an amount no less than two hundred fifty thousand dollars (\$250,000) or other evidence of financial responsibility satisfactory to the board; and~~

~~(B) Satisfies the requirements for licensure under subsections (a) and (b) of this section.~~

~~(3) A signing agent license shall be issued to an applicant if the applicant:~~

~~(A) Provides evidence satisfactory to the board that upon licensure the applicant will be authorized by the issuing agent to countersign commitments and contracts of title insurance on behalf of the issuing agent; and~~

~~(B) Satisfies the requirements for licensure under subsections (a) and (b) of this section.~~

~~(4) An inactive signing agent's license shall be issued to all other applicants who otherwise would qualify for licensure under subsections (a) and (b) of this section.~~

#### ~~23-103-306. Nonresident licensing.~~

~~Unless denied licensure for having committed any act that is a ground for denial, suspension, or revocation set forth in § 23-103-312, a nonresident person shall receive a nonresident title insurance agent license without complying with the examination requirement prescribed by § 23-103-304 if:~~

~~(1) The person is currently a licensed title insurance agent as a resident and in good standing in that person's home state;~~

~~(2) The person has submitted the proper request for licensure as prescribed by the Arkansas Title Insurance Agents' Licensing Board, including proof of licensure in the home state, and has paid the original license fee prescribed by § 23-103-204; and~~

~~(3) The person's home state awards nonresident title insurance~~

~~agent licenses to residents of this state on the same basis.~~

~~23-103-307. Abstractor's exemption from examination.~~

~~(a) Every person to whom the State of Arkansas has issued, as of January 1, 2001, a certificate of registration as a registered abstractor or a certificate of authority to engage in the business of abstracting shall be exempt from the examination required in § 23-103-304, and the person, including each natural person designated by a business entity to exercise the powers to be conferred by the title insurance agent's license, who is an Arkansas registered abstractor on January 1, 2001, upon payment of the original license fee, shall be certified by the Arkansas Title Insurance Agents' Licensing Board as a licensed title insurance agent, and the license certificate shall be immediately issued to the person.~~

~~(b) An Arkansas registered abstractor eligible for the exemption granted in this section shall become ineligible for the exemption after January 31, 2005.~~

~~23-103-308. Temporary license.~~

~~(a) The Arkansas Title Insurance Agents' Licensing Board may issue a temporary title insurance agent's license for a period not to exceed one hundred eighty (180) days without requiring an examination, if the board deems that the temporary license is necessary in the following cases:~~

~~(1) To the surviving spouse or court-appointed personal representative of a licensed title insurance agent who dies or becomes mentally or physically disabled, to allow adequate time for the sale of the title insurance agent's business or for the recovery or return of the title insurance agent, or to provide for the training and licensing of new personnel to operate the title insurance agent's business; and~~

~~(2) Any circumstance in which the board deems that the public interest will best be served by the issuance of the temporary license.~~

~~(b) The board may revoke the temporary license at any time if the interest of the public is endangered.~~

~~23-103-309. Unregistered employees, officers and assistants.~~

~~Nothing in this chapter shall be construed to prohibit any person holding a valid license from having the directors, partners, or members and employing the officers, personnel, and clerical and stenographic assistants as may be necessary in the conduct of its business who are not licensed under this chapter.~~

~~23-103-310. License — Expiration — Renewal.~~

~~(a)(1) All licenses issued under this chapter shall expire on the same date.~~

~~(2) Expiration dates of the licenses, either renewal or original, shall be January 31 following the year from the preceding expiration date.~~

~~(b)(1) Current licenses shall be renewed as provided for in this section for a one year period upon payment of the renewal fee prescribed in § 23-103-204.~~

~~(2) If the license is held by a business entity, the renewal fee shall be paid for each natural person designated by the business entity to exercise the powers conferred by the license.~~

~~(c)(1)(A) No more than sixty (60) days nor less than thirty (30) days~~



~~prior to the expiration date of the license issued, the Arkansas Title Insurance Agents' Licensing Board shall cause a notice of expiration and application for renewal to be mailed to each of the holders of a license.~~

~~(B) The notice and application shall be in a form prepared by the board.~~

~~(2) Upon determination by the board of the applicant's compliance with this chapter, a renewal license shall be issued to the applicant.~~

~~(d)(1)(A) If a holder of a license fails to apply for renewal and fails to pay the fee provided for renewal, the board shall cause to be mailed to the holder a notice that the license has expired and the person may no longer act as a title insurance agent.~~

~~(B) The notice shall be mailed not more than thirty (30) days following the license expiration date.~~

~~(C) The holder shall be granted an additional period of sixty (60) days from the date of mailing the notice within which to file an application for renewal.~~

~~(2)(A) The name of any holder failing to renew the license shall be stricken from the records of the board.~~

~~(B) The person shall no longer act as a title insurance agent until reinstated by the board.~~

#### ~~23-103-311. Access to public records.~~

~~Licensed title insurance agents shall have access to the public records in any office of any city or county or of the state and shall be permitted to make memoranda, notations, or copies and to occupy reasonable space with equipment for that purpose, subject to the reasonable regulation of the custodian of the public records and during the business hours of each office.~~

#### ~~23-103-312. Revocation of license — Grounds.~~

~~The Arkansas Title Insurance Agents' Licensing Board is authorized, after a hearing, to cancel and revoke any license issued to any person under this chapter:~~

~~(1) For a violation of any of the provisions of this chapter;~~

~~(2) Upon a conviction of the holder of a license of a crime involving moral turpitude; or~~

~~(3) If the board finds the holder of the license to be guilty of habitual carelessness or of fraudulent practices.~~

#### ~~23-103-313. Revocation of license — Procedure — Appeal.~~

~~(a)(1) Upon a verified complaint's being filed with the Arkansas Title Insurance Agents' Licensing Board, or upon the board's own motion filing a complaint charging the person holding a title insurance agent's license or any natural person designated by a business entity holding a title insurance agent's license to exercise the power conferred by that license with:~~

~~(A) A violation of any of the provisions of this chapter;~~

~~(B) Conviction of a crime involving moral turpitude; or~~

~~(C) Habitual carelessness or fraudulent~~

~~practices, the board shall immediately notify the person in writing by registered mail, with return receipt, of the filing of the complaint and furnish that person with a copy of the complaint.~~

~~(2) The board shall at the same time require the person to appear before it on a day fixed by the board, not less than twenty (20) days nor~~

~~more than forty (40) days from the date of the service of the complaint on that person, and to show cause why the license should not be canceled and revoked.~~

~~(3) Under the hand of its chair and the seal of the board, the board may subpoena witnesses and compel their attendance and may require the production of books, papers, and other documents.~~

~~(4) The Chair of the Arkansas Title Insurance Agents' Licensing Board or the Secretary-treasurer of the Arkansas Title Insurance Agents' Licensing Board may administer oaths or affirmations to witnesses appearing before the board.~~

~~(5)(A) If any person refuses to obey any subpoena so issued or refuses to testify or to produce any books, papers, or other documents, the board may present its petition to any court of record, setting forth the facts.~~

~~(B) In a proper case, the court shall issue its subpoena to the person requiring his or her attendance before the court and there to testify or produce the books, papers, and documents as may be deemed necessary and pertinent.~~

~~(6) The person holding the license shall be entitled to counsel at any hearing before the board or any other hearing involving revocation of his or her license.~~

~~(7) The board shall cause a transcript of any testimony taken to be made by a reporter or stenographer.~~

~~(b)(1)(A) Either the respondent or the complainant may appeal from the decision of the board to the circuit court in the county of the respondent's place of business.~~

~~(B) The appeal shall be taken within thirty (30) days after the decision of the board by causing a written notice of appeal to be served on the secretary treasurer and executing a bond to the State of Arkansas, with surety to be approved by the secretary treasurer, conditioned to pay all costs that may be adjudged against the appellant.~~

~~(2) Upon an appeal's being taken, the secretary treasurer shall immediately make out a return of the proceedings in the matter before the board with its decision and file them together with the bond and all the papers pertaining thereto in his or her possession, including a certified record of testimony taken at the hearing, with the clerk of the court to which the appeal is taken.~~

~~(3) The court shall hear the appeal as a trial de novo, and the costs of the appeal, including the furnishing of the testimony, shall be taxed as the court may direct.(4) An appeal shall stay the cancellation of any license until the final decision is had on appeal.~~

#### ~~23-103-314. Commitment and policy as evidence.~~

~~A photostat or verbatim copy of any commitment or contract of title insurance pertaining to real property situated in the State of Arkansas shall be admissible in evidence on behalf of any party litigant in any court in the State of Arkansas and shall be prima facie evidence of the facts therein recited and contained.~~

#### ~~23-103-315. Transfer and cancellation of license.~~

~~(a)(1) An issuing agent may effect the transfer of a signing agent's license or an inactive signing agent's license to the issuing agent by~~

~~furnishing evidence satisfactory to the Arkansas Title Insurance Agents' Licensing Board that the signing agent has:~~

~~(A) Been authorized to countersign commitments and contracts of title insurance in the name of the issuing agent; and~~

~~(B) Otherwise satisfied the requirements for licensure under this chapter.~~

~~(2) The board shall then issue a replacement license certificate to the signing agent naming the issuing agent thereon.~~

~~(b)(1) An issuing agent shall effect the cancellation of a signing agent's license that has been placed with the issuing agent by providing evidence satisfactory to the board that the signing agent licensee no longer may countersign commitments and contracts of title insurance on behalf of the issuing agent.~~

~~(2) The board shall then cancel the license certificate issued to the signing agent licensee.~~

~~(3) The signing agent's license shall be placed on inactive status.~~

#### ~~23-103-316. Continuing education — Requirements.~~

~~(a) Beginning February 1, 2004, as a condition precedent to renewal or reactivation of licenses, licensees shall meet the following requirements:~~

~~(1)(A) Before activation of a license on inactive status, the licensee shall satisfactorily complete four (4) classroom hours or equivalent continuing education units or equivalent correspondence work of continuing education for each year inactive, not to exceed twenty (20) classroom hours.~~

~~(B) However, satisfying the requirements in subdivision (a)(1)(A) of this section will only satisfy the requirements for that particular license year and not for the following license year;~~

~~(2)(A) Persons licensed as title insurance agents shall successfully complete four (4) classroom hours or equivalent continuing education units or equivalent correspondence work of continuing education annually.~~

~~(B) At least one (1) hour or equivalent continuing education unit shall be in a specific topic or topics as identified by the Arkansas Title Insurance Agents' Licensing Board.~~

~~(C) Persons satisfying the requirements in subdivision (a)(2)(A) of this section shall be deemed to have successfully completed the continuing education requirements for the licensing year following the year in which first licensed in Arkansas; and~~

~~(3) A nonresident licensee may meet this state's continuing education requirements by taking courses that meet the continuing education requirements of his or her resident state for the licensing year in question if:~~

~~(A) The course or courses consist of no fewer than four (4) classroom hours or equivalent continuing education units of title insurance-related subjects and otherwise comply with the minimum requirements of this chapter; and~~

~~(B) Evidence of compliance satisfactory to the board is submitted in a form, manner, and content prescribed by the board.~~

~~(b) Licensees on inactive status are not required to comply with this subchapter during their inactive status.~~

~~(c) The board may waive all or part of the requirements of subsection~~

~~(a) of this section for any licensee who submits satisfactory evidence of inability to meet the continuing education requirements due to health reasons or other hardship or extenuating circumstances beyond the licensee's control.~~

~~(d) Licenses for persons who apply for renewal of their license and who do not provide to the board evidence of meeting the continuing education requirements but who have otherwise met all requirements for license renewal shall be placed on inactive status until the evidence is provided to the board.~~

~~(e) If the licensee fails to complete the post-licensure education requirements within twelve (12) months after the date the license was issued, the board shall place the license on inactive status until the board receives documentation that the licensee has completed the post-licensure education requirements.~~

~~(f) The board may prescribe forms and certificates to be utilized by continuing education providers and licensees in the administration and completion of continuing education courses.~~

~~(g) The board may require continuing education providers to maintain course records and to make these records available to the board for audit and review.~~

~~(h) The board may require licensees to maintain continuing education records and to provide the records to the board to ensure compliance with the continuing education requirements.~~

~~(i) Renewal of a license issued to an attorney licensed in this state under § 23-103-302 is subject to § 23-103-310 except that the renewal shall not be subject to the continuing education requirements of this chapter.~~

SECTION 10. TEMPORARY LANGUAGE. DO NOT CODIFY.

(a) On January 1, 2008, all unexpended balances, assets, and appropriations from the Title Insurance Agents' Licensing Board Fund under § 19-5-1224 being repealed by this act shall be transferred by the Chief Fiscal Officer of the State to the State Insurance Department Trust Fund.

(b) The fund balances shall be used by the State Insurance Department for the purposes for which the fund balances were collected.

SECTION 11. Effective Date. Except as provided in the Emergency Clause of Section 13 of this act, this act takes effect January 1, 2008.

SECTION 12. TEMPORARY LANGUAGE. DO NOT CODIFY. License transition.

Every person who holds a license granted under § 23-103-101 -- § 23-103-316 and who meets the definition of a title insurance agent under § 23-103-402 shall be exempt from examination under § 23-64-202(a)(1) upon the payment of the renewal license fee and shall be issued a title insurance agent license if that person applies for a license on or before December 31, 2007.

SECTION 13. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that the holders of title agent licenses are required to take certain actions to maintain their licenses in good standing prior to the January 1, 2008, effective date of this act; and that it is imperative for the effective regulation of title insurance agents that additional time be allotted to comply with the transitional provisions of the preceding section of this act. Therefore, an emergency is declared to

exist and the preceding section 12 of this act being immediately necessary for the preservation of the public peace, health, and safety, the preceding section 12 shall become effective on:

(1) The date of its approval by the Governor;

(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

The Amendment was read \_\_\_\_\_

By: Representative Walters  
DLP/SML - 03-08-2007 14:01  
DLP380

\_\_\_\_\_  
Chief Clerk