

1 State of Arkansas
2 80th General Assembly
3 Regular Session, 1995
4 By: Senator Wilson

A Bill

SENATE BILL 841

For An Act To Be Entitled

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

Subtitle

"TO REGULATE TITLE INSURANCE AGENTS AND
PERSONS ENGAGED IN THE BUSINESS OF TITLE
INSURANCE."

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

SECTION 1. Title, Purpose.

(a) This act shall be known and may be cited as the "Arkansas Title
Insurance Agent_s Licensing Act."

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

SECTION 2. Application of Act and Construction with Other Laws.

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

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

(c) This act shall not apply to transactions involving the sale or
encumbering of property in amounts greater than five hundred thousand dollars
(\$500,000).

SECTION 3. Definitions. For the purpose of this act:

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

4 (2) "Charge" means any fee billed by a title agent for the performance
5 of services. Charge includes, but is not limited to, fees for document
6 preparation, fees for closing or settlement services, and any fee for
7 services commenced but not completed.

8 (3) "Gross operating revenue" means all income received by a title
9 agent.

10 (4) "Person" means any natural person, partnership, association,
11 cooperative, corporation, limited liability company, trust, or other legal
12 entity that is a resident of, or authorized to do business in this State.

13 (5) "Title agent" or "Agent" means any person who:

14 (A) Solicits title insurance business;

15 (B) Collects premiums;

16 (C) Determines insurability in accordance with underwriting
17 rules and standards prescribed by its title insurer; or

18 (D) Issues title insurance commitments or policies.

19 (6) "Title insurance commitment" is a preliminary report on the status
20 of a land title, and sets out the conditions under which a title or interest
21 will be insured.

22 (7) "Title insurance business" or the "business of title insurance"
23 means:

24 (A) Transacting or proposing to transact by a title agent any of
25 the following activities when conducted or performed in contemplation of the
26 issuance of a title commitment or a title insurance policy:

27 (1) Soliciting or negotiating the issuance of a title
28 insurance policy;

29 (2) Guaranteeing, warranting or otherwise insuring the
30 correctness of title searches;

31 (3) Execution of title insurance policies;

32 (4) Searching or examining titles of land.

33 (B) Doing or proposing to do any business in substance
34 equivalent to any of the foregoing in a manner designed to evade the
35 provisions of this act.

1 (8) "Title insurance policy" or "policy" means a contract insuring or
2 indemnifying against loss or damage arising from any or all of the following
3 existing on or before the policy date:

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

5 (B) Unmarketability of the insured title; or

6 (C) Invalidity or unenforceability of liens or encumbrances on
7 the stated property.

8 (9) "Title insurer" or "insurer" means a person or company which
9 issues title insurance commitments or policies on real property in this
10 state.

11 (10) "Title plant" means a set of records in which an entry has been
12 made of all recorded documents or matters imparting constructive notice under
13 the law of matters affecting title to all real property or any interest
14 therein or encumbrances thereon, which have been recorded in the jurisdiction
15 for which such title plant is maintained for a minimum of thirty (30) years
16 from effective date of this act. Such records shall consist of an index or
17 set of indices in which notations of or references to any such documents that
18 describe the property affected thereby are posted, entered or otherwise
19 included, according to the property described thereon, or copies or briefs of
20 all such documents describing the property affected and which are sorted and
21 filed according to the property described therein.

22

23 SECTION 4. Record Retention.

24 Evidence of the examination of title and determination of insurability
25 shall be preserved and retained for a period of not less than fifteen (15)
26 years after the title insurance policy has been issued. Instead of the
27 retention of the original evidence, a title agent may in the regular course
28 of business establish a system whereby all or part of the evidence is
29 recorded, copied, or reproduced by any process that accurately and legibly
30 reproduces or forms a durable medium for reproducing the contents of the
31 original.

32

33 SECTION 5. General Qualification for Title Plant License.

34 Except for applications accompanied by a currently verified Certificate
35 of Authority as an abstract plant in accordance with Arkansas Code 17-11-

1 102(5), or evidence of contractual access to a currently certified abstract
2 plant or currently certified title plant, no license shall be issued to a
3 title plant unless:

4 (1) Before the time of application, the Licensing Board shall
5 cause an inspection by their appointee to determine sufficiency of the set of
6 records of the proposed title plant.

7 (2) After inspection of the set of records proposed, the
8 Licensing Board shall notify by certified mail of the adequacy or inadequacy
9 of the set of records inspected. Insufficiencies or inadequacies shall be
10 noted to the entity making the application within two weeks after the
11 inspection.

12 (3) The Licensing Board shall approve the application by reading
13 and acknowledging the evidence of the application for title plant and sending
14 notice of approval within two weeks, if after an inspection it finds an
15 adequate set of records to meet the definition of title plant.

16

17 SECTION 6. Application, Issuance, Expiration and Renewal of Title
18 Insurance Plant License.

19 (a) Application for title insurance plant license shall be made in
20 writing in the form and manner prescribed by the Licensing Board. A non-
21 refundable application fee in an amount to be established by the Licensing
22 Board shall be paid at the time of application.

23 (b) The application shall be deemed to be a continuing one, and any
24 license or prospective licensee for a title insurance plant shall inform the
25 Licensing Board promptly if any information set forth in an application is no
26 longer accurate.

27 (c) Each title insurance plant_s license shall expire June 30 of each
28 year, and may be renewed by the Licensing Board, prior to expiration, by a
29 properly completed application in the form and manner prescribed by the
30 Board, and upon payment of the appropriate renewal fee, providing the
31 prospective licensee has met all requirements of the Licensing Board.

32

33 SECTION 7. Suspension or Revocation of Title Insurance Plant License.

34 The Licensing Board may suspend or revoke a title insurance plant
35 license, after providing due notice and an opportunity to be heard pursuant

1 to regulations promulgated by the Licensing Board, upon finding that a title
2 insurance plant:

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

5 (2) License was based on material misstatement in the application, or
6 was obtained by fraud or by willful misrepresentation.

7

8 SECTION 8. Title Agents, License Required, Attorneys Exempted.

9 No person shall act as a title agent or issue title insurance
10 commitments and policies unless licensed in accordance with the provisions of
11 this act, or unless licensed to practice law in this State.

12

13 SECTION 9. General Qualifications for Title Insurance Agent_s License.

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

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

18 (2) Is a bona fide resident of, and resides within, this state;

19 (3) Is appointed as an agent by a title insurer, subject to the
20 issuance of a title agent_s license;

21 (4) Has successfully demonstrated comprehension of the
22 principles of title examination and title insurance, the practical
23 application of those principles through a testing procedure administered by
24 the Licensing Board; and

25 (5) Met continuing educational and other administrative
26 requirements of the Licensing Board.

27 (b) Any person, other than a natural person, to whom an agent_s
28 license is issued, shall designate to the Licensing Board those natural
29 persons who are and will be exercising the powers and performing the duties
30 of the agent. The designated individuals, except persons performing only
31 clerical functions, shall be subject to the requirements of subsection (a) of
32 this section.

33 (c) Any person, other than a natural person, to whom a title insurance
34 agent_s license is issued, must demonstrate that each natural person
35 designated to exercise the powers and perform the duties of the title agent

1 meets the requirements of subsection (a) of this section.

2

3 SECTION 10. Application for Title Agent_s License.

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

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

11

12 SECTION 11. Issuance, Expiration, and Renewal of Title Agent_s
13 License.

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

16 (1) The prospective licensee files an application pursuant to
17 Section 11 of this act;

18 (2) The prospective licensee meets the requirements of Section
19 10 of this act;

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

23 (b) Each title agent_s license shall expire on June 30 of each year,
24 and may be renewed by the Licensing Board upon filing by the licensee, prior
25 to the expiration of his license, a properly completed application in the
26 form prescribed by the Licensing Board and upon payment of the appropriate
27 renewal fee, providing the licensee has met all requirements of the Licensing
28 Board.

29

30 SECTION 12. Refusal, Suspension, or Revocation of Title Agent_s
31 License; Fine in Lieu of Suspension.

32 (a) The Licensing Board may refuse to license any person as an agent,
33 or may suspend or revoke an agent_s license, after providing due notice and
34 an opportunity to be heard pursuant to regulations provided by the Licensing
35 Board, upon a finding that the person:

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

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

5 (3) Has made a material misstatement in an application for an
6 agent_s license or has obtained an agent_s license by fraud or by willful
7 misrepresentation;

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

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

13 (6) Has, in the conduct of his affairs, under his agent_s
14 license, used fraudulent, coercive, or dishonest practices, or has shown
15 himself to be incompetent, untrustworthy, financially irresponsible or a
16 source of injury or loss to the consumer, general public or parties involved;

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

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

21 (b) The Licensing Board may revoke the title agent_s license of any
22 person who is convicted of a felony.

23 (c) Without imposing the foregoing penalties, the Licensing Board may
24 additionally impose a fine in an amount to be determined by the Licensing
25 Board not to exceed five thousand dollars (\$5,000) for each violation of this
26 act or of any rule or regulation promulgated pursuant to it.

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

30

31 **SECTION 13. Rebates and Inducements Prohibited.**

32 (a) No title agent shall:

33 (1) Pay, directly or indirectly, to the insured or to any other
34 person, any commission, any part of its premiums, fees, other charges, or any
35 other consideration as inducement or compensation for the referral of title

1 insurance business or for the performance of any escrow or other service by
2 the title agent; or

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

7 (b) No insured named in a title insurance policy, no seller of real
8 estate, nor any person may knowingly receive or accept, directly or
9 indirectly, any commission, discount, rebate, or inducement referred to in
10 subsection (a).

11

12 SECTION 14. Title Agent Premium or Fees, Division of Fees, Charges or
13 Premiums.

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

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

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

21 (2) Payment of a forwarding fee or finder_s fee.

22

23 SECTION 15. Title Plant Standards. No commitment of title insurance
24 or title policy shall be issued except on the basis of one of the following:

25 (a) A thorough search of the records of the jurisdiction by a licensed
26 title insurance agent using a title plant;

27 (b) An abstract of title certified by a licensed abstracter;

28 (c) A thorough search of the records of the jurisdiction, personally
29 conducted by an attorney licensed to practice law within this state, at the
30 site where the recorded documents or matters imparting constructive notice
31 affecting title to real property have been recorded and maintained within the
32 jurisdiction.

33

34 SECTION 16. Graduated Implementation of Title Plant Standards.

35 (a) Within one (1) year from the effective date of this act a licensed

1 title plant, as defined in Section 3, must cover a minimum period of ten (10)
2 years preceding that effective date. Within two (2) years that coverage must
3 be extended to twenty (20) years preceding such effective date, and within
4 three (3) years it must cover the entire thirty (30) year period.

5 (b) In order for any title insurance agent to transact title insurance
6 business without the benefit of a title plant from the effective date of this
7 act until its first anniversary date, such agent must complete the following
8 requirements:

9 (1) Execute a letter of intent in form and substance approved by
10 the board to provide satisfactory evidence of the agent_s intention to comply
11 with the title plant requirements set out herein.

12 (2) Provide a cash bond or letter of credit from a sound
13 financial institution in form and amount approved by the board in order to
14 establish the agent_s financial ability to meet the title plants requirements
15 of this act.

16

17 **SECTION 17. Regulations.**

18 In addition to any other powers granted under this act, the Licensing
19 Board may adopt rules or regulations as it deems necessary for the proper
20 administration of its powers and duties consistent with this act.

21

22 **SECTION 18. Enforcement Procedure; Appeal.**

23 (a) Any violation of this act shall carry with it, in addition to or
24 in lieu of suspension or revocation of the violator_s license, a civil
25 penalty not to exceed five thousand dollars (\$5,000) for each violation. For
26 purposes of this act, each individual transaction which is not in conformance
27 with the provisions of this act shall be considered a violation.

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

34 (c)(1) Upon a verified complaint being filed with the board or upon
35 the board's own motion filing a complaint charging the holder of a

1 certificate of registration with a violation of any of the provisions of this
2 chapter, or conviction of a crime involving moral turpitude, or with habitual
3 carelessness, or fraudulent practices in the conduct of the business of
4 abstracting, or charging the holder of a certificate of authority with
5 failure to furnish the bond or bonds, or other securities, required by
6 17-11-324, or with failing to have employed a registered abstracter as
7 provided in 17-11-301, or with a violation of any of the provisions of this
8 chapter, the board shall immediately notify in writing by registered mail,
9 with return receipt, the holder of the certificate of the filing of the
10 complaint and furnish the holder with a copy of the complaint.

11 (2) The board shall at the same time require the holder of the
12 certificate to appear before it on a day fixed by the board, not less than
13 twenty (20) days nor more than forty (40) days from the date of the service
14 of the complaint on the holder of the certificate and to show cause why the
15 certificate should not be cancelled and revoked.

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

19 (4) The president or the secretary may administer oaths or affirmations
20 to witnesses appearing before the board.

21 (5) If any person refuses to obey any subpoena so issued or refuses to
22 testify or to produce any books, papers, or other documents, the board may
23 present its petition to any court of record, setting forth the facts.
24 Thereupon the court shall, in a proper case, issue its subpoena to the person
25 requiring his attendance before the court and there to testify or produce
26 such books, papers, and documents as may be deemed necessary and pertinent.

27 (6) The holder of the certificate shall be entitled to counsel at any
28 hearing before the board or any other hearing involving revocation of his or
29 her certificate.

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

32 (d)(1) Either the respondent or the complainant may appeal from the
33 decision of the board to the circuit court in the county in which the
34 respondent has his or its place of business. The appeal shall be taken within
35 thirty (30) days after the decision of the board by causing a written notice

1 of appeal to be served on the secretary of the board and executing a bond to
2 the State of Arkansas, with surety to be approved by the secretary of the
3 board, conditioned to pay all costs that may be adjudged against the
4 appellant.

5 (2) Upon an appeal being taken, the secretary of the board shall
6 immediately make out a return of the proceedings in the matter before the
7 board with its decision thereon and file them together with the bond and all
8 the papers pertaining thereto in his possession, including a certified record
9 of testimony taken at the hearing, with the clerk of the court to which the
10 appeal is taken.

11 (3) The court shall hear the appeal as a trial de novo, and the costs of
12 the appeal, including the furnishing of the testimony, shall be taxed as the
13 court may direct.

14 (4) An appeal shall stay the cancellation of any certificate of
15 registration or certificate of authority until the final decision is had on
16 appeal.

17

18 SECTION 19. Creation of Title Insurance Agent_s Licensing Board.

19 (a) There is created a Title Insurance Agent_s Licensing Board,
20 consisting of five (5) members who shall be appointed by the Governor. Each
21 member shall be at least twenty-five (25) years of age and be a resident of
22 this state. Members of the Licensing Board shall consist of three (3)
23 licensed title insurance agents and two (2) lay people not affiliated with
24 the title insurance business. Members shall serve five (5) year terms which
25 shall expire on December 31st of the fifth year, but shall hold over after
26 the expiration of their term until a successor shall be appointed. If a
27 vacancy shall occur, then the Governor shall appoint a successor for the
28 remainder of the term. The Governor may remove any member of the Licensing
29 Board for incompetency or neglect of duty. Each member of the board shall
30 receive a certificate of appointment from the Governor, and before entering
31 upon the discharge of duties of office, shall file with the Secretary of
32 State the constitutional oath of office. Each member may receive
33 reimbursement, not to exceed fifty dollars (\$50.00) per day, for necessary
34 actual traveling expenses, board and lodging in the performance of their
35 duties. The board shall meet annually and elect a chairman, vice-chairman

1 and secretary to serve in their respective capacity for one (1) year. The
2 board may elect other officers, if the board deems it appropriate. Regular,
3 special, or adjourned meetings may be held at such times as the board may
4 provide by the rules and regulations which it shall adopt, or at such times
5 as the board may by reasonable resolution provide. Due notice of each
6 meeting time and place shall be given to each member in such manner as the
7 rules and regulations shall provide. Three (3) members of the board shall
8 constitute a quorum. The board shall adopt a seal for its own use and shall
9 have on it the words, "TITLE INSURANCE AGENT_S LICENSING BOARD, STATE OF
10 ARKANSAS, SEAL", and the secretary shall have charge and custody of it.

11 (b) Initially, the Governor shall appoint members of the Licensing
12 Board who shall serve staggered, ascending terms of one (1) through five (5)
13 years. The Governor shall consult an advisory board consisting of the Board
14 of Governors of the Arkansas Land Title Association for appointee
15 recommendations. Ongoing, the advisory board shall be consulted for
16 appointee recommendations to the Licensing Board when an opening occurs or is
17 anticipated through expiration of term.

18 (c) All expenses incurred by the board for the administration of this
19 act are authorized to be paid by the board. The board, or any committee
20 thereof, shall be entitled to the services of the Attorney General or other
21 state legal counsel as deemed appropriate in connection with the operation of
22 the affairs, administration, rules or regulations of the Licensing Board.
23 Additional legal counsel may be employed by the board from time to time as it
24 may deem necessary. The board shall employ an administrator, who shall
25 possess such qualifications as may be determined by the board, and who shall
26 serve at the pleasure of the board. In addition, the board may employ such
27 additional professional and clerical employees as may be necessary for the
28 operation of the board_s various functions and pay wages and salaries
29 thereto.

30 (d) All funds collected by the board from fees and other charges shall
31 be deposited in a bank account or accounts in one or more banks in this State
32 in the name of the board and shall be used by the board exclusively for
33 administering the provisions of this act.

34 All expenses of the board including employee salaries, office space,
35 facilities and equipment; reimbursement of expenses of the board members,

1 costs of continuing education programs and other expenses of administering
2 the provisions of this act shall be paid from funds accruing to the board
3 from fees, licenses and other charges collected by the board, and within
4 appropriations provided therefor by the General Assembly.

5

6 SECTION 20. Policy not Invalidated by Agent_s Action.

7 It is the intent of this act that no action of a title agent in
8 violation of the provisions of this act render invalid any title insurance
9 policy issued by that agent.

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11 SECTION 21. Exemption of Licensed Attorneys.

12 Persons licensed to practice law in this State are exempted from the
13 title insurance agent licensing provisions of this act.

14

15 SECTION 22. Effective Date.

16 This act shall be effective July 1, 1995. The Licensing Board is
17 hereby empowered to establish rules, procedures and regulations for the
18 timely and effective implementation of this act; provided, however, that the
19 complete implementation shall not be longer than eighteen (18) months from
20 its effective date.

21

22 SECTION 23. All provisions of this act of a general and permanent
23 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
24 Code Revision Commission shall incorporate the same in the Code.

25

26 SECTION 24. If any provision of this act or the application thereof to
27 any person or circumstance is held invalid, such invalidity shall not affect
28 other provisions or applications of the act which can be given effect without
29 the invalid provision or application, and to this end the provisions of this
30 act are declared to be severable.

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32 SECTION 25. All laws and parts of laws in conflict with this act are
33 hereby repealed.

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