

State of Arkansas

77th General Assembly

Regular Session, 1989

A Bill

SENATE BILL

594

By: Senator Walters

For An Act To Be Entitled

"AN ACT TO REGULATE TITLE INSURANCE COMPANIES, AGENTS, AND PERSONS ENGAGED IN THE BUSINESS OF TITLE INSURANCE AND REAL ESTATE CLOSING OR SETTLEMENT SERVICES IN THIS STATE; AND FOR OTHER PURPOSES."

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 Real Estate Title Insurance 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 business, closing or settlement services transacted within this state in reponse to the McCarran-Ferguson Act (P.L. 79-15, 15 U.S.C. Sections 1011-1015).

SECTION 2. Application of Act, Construction with Other Laws. A. This act shall apply to all title insurers, title insurance rating organizations, title agents, applicants for title insurance, title insurance policyholders, and all persons engaged in the business of title insurance or those providing closing or settlement services for a fee in this state.

B. Except as otherwise expressly provided in this act, and except where the context otherwise requires, provisions of Subtitle 3 of Title 23 of the Arkansas Code applying to insurance and insurance companies generally shall apply to title insurance and title insurance companies.

C. 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 nor shall it be construed to authorize the commissioner to regulate the practice of law.

SECTION 3. Definitions, as Used in this Act, Unless the Context
Otherwise Requires:

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

B. "Associate" means any:

1. Business organized for profit in which a producer of title business is a director, officer, partner, employee or owner of more than 10% of the equity and/or capital thereof;

2. Employee of a producer of title business;

3. Franchisor or franchisee of a producer of title business;

4. Spouse, parent, or child of a producer of title business who is a natural person;

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

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

C. "Charge" means any fee billed by a title insurer, title agent, or both, or by a closing or settlement agent for the performance of services. Charge includes, but is not limited to, fees for document preparation, fees for closing or settlement services, and any fee for services commenced but not completed. "Charge" does not include fees collected by a title insurer or title agent in a closing or settlement when the fees are limited to the amount billed for services rendered by an entity independent of the title insurer or title agent.

D. "Commissioner" means the Insurance Commissioner of this state.

E. "Controlled Business" means any portion of a title insurer's or title agent's business of title insurance in this state, referred to it by any producer of title business or by any associate of such producer, where the producer of title business, the associate, or both, have a financial interest exceeding 10% in the title insurer or title agent to which the business is referred.

F. "Domestic", "Foreign", "Alien" insurer as defined in Arkansas Code 23-60-102 shall apply to this act.

G. "Closing or Settlement Agent" means anyone except attorneys duly licensed in this state, who provides the service, for a fee or charge to the public, for the handling of real estate closings or settlements.

H. "Closing or Settlement Fee" means the consideration for supervising the actual execution, delivery or recordation of transfer and lien documents, and/or disbursing funds, any of which is pertinent to real estate transactions.

I. "Financial Interest" means any interest, legal or beneficial, that entitles the holder, directly or indirectly, to more than 10% of the net profits or net worth of the entity in which the interest is held.

J. "Gross Operating Revenue" means all premiums received by a title insurer or title agent.

K. "Net Retained Liability" means the total liability retained by a title insurer for a single risk, after taking into account the deduction for ceded liability, if any.

L. "Person" means any natural person, partnership, association, cooperative, corporation, trust, or other legal entity.

M. "Premium" means that rate for title insurance as filed by the title insurer with the commissioner, as outlined in Section 32, paragraph "A".

N. "Producer of Title Business" or "Producer" means any person, including any officer, director, or owner of more than 10% of the equity or capital of any person, engaged in this state in the trade, business, occupation or profession of:

1. Buying or selling interest in real property;
2. Making loans secured by interests in real property; or,
3. Acting as broker, agent, representative or attorney of a person who buys or sells any interest in real property or who lends or borrows money with such interest as security; provided, however, that an attorney licensed to practice law in this state who, in conjunction with a real estate transaction, examines title and issues a title insurance policy to or on behalf of a client and who, in so doing, acts consistently with the ethical standards applicable to the legal profession in this state, shall not be deemed to be a producer of title business.

O. "Refer" means to direct or cause to be directed or to exercise any power or influence over the direction of title insurance business, whether or not the consent or approval of any other person is sought or obtained with

respect to the referral.

P. "Risk Premium" means that portion of the premium charged for title insurance which is remitted to or received by the title insurer as payment for the risk incurred.

Q. "Single Risk" means the insured amount of any title insurance policy, except that where two or more title insurance policies are issued simultaneously covering different estates in the same real property; "Single Risk" means the sum of the insured amounts of all such title insurance policies. Any title insurance policy insuring a mortgage interest a claim under which reduces the insured amount of a fee or leasehold title insurance policy shall be excluded in computing the amount of a single risk to the extent that the insured amount of the mortgage title insurance policy does not exceed the insured amount of the fee or leasehold title insurance policy.

R. "Title Agent" means any person authorized in writing by a title insurer to:

1. Solicit title insurance business;
2. Collect premiums;
3. Determine insurability in accordance with underwriting rules and standards prescribed by the title insurer; or
4. Issue policies of the title insurer.

"Title Agent" does not include officers or employees, or attorneys of a title insurer.

S. "Title Insurance Business" or the "Business of Title Insurance" means:

1. Issuing as insurer or offering to issue as insurer a title insurance policy;
2. Transacting or proposing to transact by a title insurer or title agent any of the following activities when conducted or performed in contemplation of the issuance of a title insurance policy:
 - (a) Soliciting or negotiating the issuance of a title insurance policy;
 - (b) Guaranteeing, warranting or otherwise insuring the correctness of title searches;
 - (c) Handling of closing or settlements for a fee;
 - (d) Execution of title insurance policies;
 - (e) Effecting contracts of reinsurance; or

(f) Searching or examining titles of land;

3. Doing or proposing to do any business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of this act.

T. "Title Insurance Policy" or "Policy" means a contract insuring or indemnifying against loss or damage arising from any or all of the following existing on or before the policy date:

1. Defects in or liens or encumbrances on the insured title;
2. Unmarketability of the insured title; or
3. Invalidity or unenforceability of liens or encumbrances on the stated property.

"Title Insurance Policy" does not include a preliminary report, binder, commitment or abstract.

U. "Title Insurer" or "Insurer" means a company organized under laws of this state for the purpose of transacting, as insurer, the business of title insurance and any foreign or alien title insurer engaged in this state in the business of title insurance as insurer.

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

W. "Title Search" means using a licensed title plant's index or indices by licensed title agents or their employees to effect a land title search in the jurisdiction for which the title plant is maintained.

SECTION 4. Corporate Form Required. No person other than a domestic, foreign or alien title insurer organized on the stock plan and duly

certificated under Chapter 63 of Title 23 of the Arkansas Code shall transact title insurance business as an insurer in this state.

SECTION 5. Authorized Activities of Title Insurers. Each title insurer may:

A. Engage in the title insurance business in this state if certificated to do so by the commissioner; and

B. Subject to the limitations of this act, provide any other service related or incidental to the sale or transfer of property.

SECTION 6. Limitations on Powers. A. An insurer that transacts any class or kind of business other than title insurance is not eligible for the issuance of a license to transact the business of title insurance in this state, nor for the renewal thereof, nor shall title insurance be transacted, underwritten or issued by any insurer transacting or licensed to transact any other kind of insurance.

B. An insurer shall not engage in the business of guaranteeing payment of the principal or the interest of bonds or mortgages.

C. A title insurer shall not engage in the business of guaranteeing the obligations of other persons other than issuing insured closing letters covering its agents in the normal course of business.

SECTION 7. Capital and Surplus. A title insurer shall have a minimum capital, which shall be paid in and maintained, of not less than \$100,000 and, in addition, paid in surplus of at least \$100,000.

SECTION 8. Deposits. A. A title insurer, before issuing any title insurance policy covering property located in this state, shall deposit with the commissioner or other designated official of this state a sum of \$100,000, which deposit shall be known as a guarantee fund and shall be held for the security and protection of the holders or beneficiaries under its title insurance policies.

B. The deposit required under this section may be made in lawful money of the United States of America or in the classes of investments authorized by the laws of the state in which such deposits are made.

C. Assets deposited pursuant to this section may, with the approval of

the commissioner, be exchanged from time to time for other assets that qualify under subsection "B" of this section.

D. The depositing title insurer shall receive the income, interests, and dividends on any assets deposited.

E. A title insurer that has deposited assets pursuant to this section may, with the approval of the commissioner, withdraw any part of the assets so deposited. If any such title insurer continues to engage in the business of title insurance, it shall not be permitted to withdraw assets that would reduce the amount of its deposits below the amount required by subsection "A" of this section.

F. In the event of the insolvency or dissolution of a title insurer, the deposit made pursuant to this section shall be retained by the commissioner until such time as all outstanding liabilities created by title insurance policies issued or reinsurance assumed by such title insurer have been discharged by reinsurance or otherwise. Such deposit, or so much thereof as shall be necessary, may be used by or with the written approval of the Commissioner in the payment of claims arising under such title insurance policies or reinsurance assumed or to purchase reinsurance thereon. Any amounts then remaining shall be applied first to the payment of other obligations of such title insurer and second shall be distributed to the stockholders of such title insurer.

G. In lieu of such a deposit maintained in this state, the commissioner shall accept the certificate in proper form of the public officer having general supervision of insurers in any other state to the effect that a deposit, in a like amount, by such insurer is being maintained for like purposes in public custody or control pursuant to the laws of such state.

SECTION 9. Limitation on Compliance with Sections 7 and 8. If sections 7 or 8 of this act require a greater amount of capital and surplus or deposits than that required of a title insurer prior to the effective date of this act, such title insurer shall have three (3) years after the effective date of this act to comply with any such increased requirement.

SECTION 10. Procedure when Capital Impaired. The provisions of Arkansas Code 23-69-138 shall be followed with respect to impairment of capital, liquidation, and rehabilitation of title insurers.

SECTION 11. Single Risk Limitation. A. The net retained liability of a title insurer for a single risk on property located in this state, whether assumed directly or as reinsurance, may not exceed fifty percent (50%) of the sum of its total surplus to policyholders and unearned premium reserve, less the admitted asset value assigned to title plants, as shown in the most recent annual statement of the title insurer on file in the office of the commissioner.

B. The commissioner may waive the limitation of this section for a particular risk upon application of the title insurer and for good cause shown.

SECTION 12. Underwriting Standard and Record Retention. A. No title insurance policy may be written unless and until the title insurer or its title agent has caused to be conducted a reasonable search and examination of the title from a title plant as defined by this act, and has caused to be made a determination of insurability of title in accordance with sound underwriting practices. Evidence of the examination of title and determination of insurability shall be preserved and retained in the files of the title insurer or its title agent for a period of not less than fifteen (15) years after the title insurance policy has been issued. Instead of retaining the original evidence, the title insurer or title agent may in the regular course of business establish a system whereby all or part of the evidence is recorded, copied, or reproduced by any process that accurately and legibly reproduces or forms a durable medium for reproducing the contents of the original. This subsection shall not apply to:

1. A title insurer assuming liability through a contract of reinsurance; or

2. A title insurer acting as a coinsurer if one of the other coinsuring title insurers has complied with this section.

B. Except as allowed by regulations promulgated by the commissioner, no title insurer or title agent shall knowingly issue any title policy or commitment to insure without showing all outstanding, enforceable recorded liens or other interests against the property, the title of which is to be insured.

SECTION 13. Unearned Premium Reserve. The provisions of Arkansas Code 23-63-610 shall be followed with respect to maintenance of unearned premium reserves.

SECTION 14. Use of Unearned Premium Reserve on Liquidation, Dissolution or Insolvency. The provision of Arkansas Code 23-68-101 et seq. shall be followed with respect to the use of unearned premium on liquidation, dissolution or insolvency of title insurers.

SECTION 15. Loss and Loss Expense Reserve. A. All title insurers licensed in this State shall establish and maintain reserves against unpaid losses and loss expenses.

B. Upon receiving notice from or on behalf of the insured of a title defect in or lien or adverse claim against the title insured that may result in a loss or cause expense to be incurred in the proper disposition of the claim, the title insurer shall determine the amount to be added to the reserve, which amount shall reflect a careful estimate of the loss or loss expense likely to result by reason of the claim.

C. Reserves required under this section may be revised by the commissioner from time to time and shall be redetermined at least once each year.

SECTION 16. Reinsurance. A. A title insurer may obtain reinsurance for all or any part of its liability under one or more of its title insurance policies or reinsurance agreements and may also reinsure title insurance policies issued by other title insurers on risks located in this State or elsewhere. Reinsurance on policies issued on properties located in this State must be obtained from title insurers licensed to transact title insurance business in this State.

B. Upon application by a title insurer, the commissioner may permit the insurer to obtain reinsurance from a title insurer not licensed in this State upon the following conditions:

1. The title insurer is unable to obtain reinsurance from a title insurer certificated in this State; and
2. The capital and surplus of the uncertificated title insurer

meets the requirements for certificated companies under section 7 of this act.

SECTION 17. Investments. A. Except as otherwise expressly provided in this section, the provisions of Arkansas Code 23-63-801 et seq. shall apply to all domestic title insurers.

B. A domestic title insurer may invest in title plants. For determination of the financial condition of such title insurer, title plants will be treated as an asset valued at actual cost to the title insurer, not to exceed fifty percent (50%) of the surplus as regards policyholders as shown on the most recent annual statement of the title insurer.

C. Any investments of a domestic title insurer acquired before the effective date of this act and which, under this section, would be considered ineligible as an investment on that date shall be disposed of within two (2) years after the effective date of this act. The commissioner, upon application and proof that forced sale of any such investment would be contrary to the best interests of the title insurer or its policyholders, may extend the period for disposal of the investment for a reasonable time.

SECTION 18. Conditions for Providing Closing or Settlement Services or Maintaining Title Indemnification Accounts. A title insurer, title agent or closing or settlement agent who charges a fee for services may engage in the business of closing or settlement services, or prepare instruments pertaining thereto, and operate as a closing or settlement agent, provided that:

A. Funds deposited in connection with any closing or settlement or title indemnification shall be deposited in a separate fiduciary trust account or accounts in a bank or other financial institution insured by an agency of the Federal Government. Such funds shall be the property of the person or persons entitled thereto under the provisions of the closing or settlement or title indemnification and shall be segregated by records of each closing or settlement or title indemnification transaction in the records of the title insurer, title agent or closing or settlement agent. Such funds shall not be subject to any debts of the title insurer, title agent or closing or settlement agent and shall be used only in accordance with the terms of the individual closing or settlement or title indemnification under which the funds were accepted.

B. The title insurer, title agent or closing or settlement agent shall

maintain separate records of all receipts and disbursements of closing or settlement or title indemnification funds.

C. The title insurer, title agent or closing agent shall comply with any rules or regulations promulgated by the commissioner pertaining to closing, settlement or title indemnification transactions.

SECTION 19. Identification of Title Agents, Closing or Settlement Agents. A. A title insurer shall provide to the commissioner on an annual basis a list of all of its title agents within this State.

B. Closing or settlement agents who charge a fee for those services, except duly licensed attorneys of this State, shall submit an application to the commissioner yearly pursuant to regulations promulgated by the commissioner.

SECTION 20. Title Agents, Closing or Settlement Agents Licenses Required. A. No person shall act as a title agent unless licensed in accordance with the provisions of this act.

B. No person who, for a fee or charge, shall act as a closing or settlement agent unless licensed in accordance with the provisions of this act, except duly licensed attorneys of this State.

SECTION 21. General Qualifications for any Agent, who Charges a Fee for their Services as a Title, Closing or Settlement Agent. A. No license shall be issued to, continued, or permitted to exist for any natural person to act as an agent for the above services, unless the natural person:

1. Is at least eighteen (18) years old;
- any other state which has entered into a reciprocal agent licensing agreement with the commissioner;
3. Is appointed as a title agent by a title insurer, subject to the issuance of a title agent's license; and,
 4. Has successfully completed a requisite course of study proposed and administered by the Arkansas Land Title Association, as approved by the commissioner.

B. Any person, other than a natural person, to whom an agent's license is issued, concerning the services herein mentioned, shall designate to the commissioner those natural persons who are or will be exercising the powers

and performing the duties of the agent herein. The designated individuals, except persons performing only clerical functions, shall be subject to the requirements of subsection "A" of this section.

SECTION 22. Application for Title Agent, Closing or Settlement Agent's License. A. Application for a license to act as a title agent, closing or settlement agent shall be made in writing in the form and manner prescribed by the commissioner. A non-refundable application fee will be determined by the commissioner.

B. The application shall be deemed to be a continuing one, and any licensee or prospective licensee shall inform the commissioner promptly if any information set forth in the application changes or is no longer accurate, or if any other relevant information regarding the application arises after the original application.

SECTION 23. Issuance, Expiration, and Renewal of Title Agent, Closing or Settlement Agent License. A. The Commissioner shall issue a license to act as a title agent, closing or settlement agent to any person if:

1. The prospective licensee files an application pursuant to Section 22 of this act;
2. The prospective licensee meets the requirements of Section 21 of this act; and
3. The prospective licensee has provided the commissioner with evidence of financial responsibility in the form and in a minimum amount required by regulations of the commissioner.

B. Each title agent, closing or settlement agent license shall expire on January first (1st) of each year, and may be renewed by the commissioner upon filing by the licensee, prior to the expiration of their license, of a properly completed application in the form prescribed by the commissioner, and upon payment of the appropriate renewal fee.

SECTION 24. Title Agent, Closing or Settlement Agent Records and Reports. A. The agent, herein referred to, shall keep books of account, records and vouchers pertaining to the business of title insurance, real estate closing or settlement transactions, or title indemnification business transacted under Section 18 of this act. All such records shall be maintained

in such a manner that the commissioner or his authorized representative may readily ascertain from time to time whether the agent has complied with all applicable provisions of this act.

B. The commissioner, or his representative may, upon receipt of a bona fide and specific complaint in writing, at any time during normal business hours, examine, audit, and inspect books and records maintained by agents under the provisions of this act. The agent so examined shall be liable for the cost of such examination and shall pay the same to the commissioner, if agent culpability is substantiated and found, upon presentation of a written statement of charges within sixty (60) days by the commissioner to the agent so examined.

SECTION 25. Title Agent Claims Report. A title agent shall immediately report every loss claim to the title insurer that issued the policy against which the claim is presented.

SECTION 26. Refusal, Suspension, or Revocation of Title Agent, Closing or Settlement Agent License; Fine in Lieu of Suspension. A. In addition to any other grounds stated in this act, the commissioner may refuse to license any person as an agent, or may suspend or revoke an agent's license, after providing due notice and an opportunity to be heard upon a finding that the person:

1. Fails to meet or fails to continue to meet the qualifications of licensure under this act;

2. Has violated any provision of this act or any rule or regulation of the commissioner;

3. Has made a material mis-statement in an application for an agent's license or has obtained an agent's license by fraud or by willful misrepresentation;

4. Has misappropriated, commingled, or converted to their own use, funds belonging to applicants, title insurers, insureds, or real estate closing or settlement participants, or others;

5. Has intentionally misrepresented the terms of a title insurance policy to any applicant or policyholder, or has misrepresented material facts to, or concealed material facts from, or made false statements to any party to a closing or settlement transaction;

6. Has, in the conduct of their affairs, under their agent's license, used fraudulent, coercive, or dishonest practices, or has shown themselves to be incompetent, untrustworthy, financially irresponsible or a source of injury or loss to the consumer, public or parties involved; or

7. Has aided, abetted or assisted another person in violating the provisions of this act, or any rule or regulation promulgated under this act.

B. The commissioner may revoke the title agent's, closing or settlement agent's license of any person who pleads guilty or nolo contendere or is found guilty of a felony.

C. In addition to or without imposing the foregoing penalties, the commissioner may, in his discretion, impose a fine in an amount not to exceed \$2500 for each violation of this section or of any rule or regulation promulgated under this section.

D. Any of the penalties provided under this section may be imposed on a title agent, closing or settlement agent other than a natural person for action of individuals designated by that title agent, settlement agent or closing agent under section 21 "B" of this act.

SECTION 27. Rebates, Discounts and Inducements Prohibited. A. No title insurer, title agent, closing or settlement agent shall:

1. Pay, directly or indirectly, to the insured, to any producer of title business, to any associate of a producer, or to any other person any commission, any part of its premiums, fees, or other charges or any other consideration as inducement or compensation for the referral of title insurance business or for performance of any service by the title insurer or title agent or closing or settlement agent; or

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

B. No insured named in a title insurance policy, no seller of real estate, no producer, no associate of a producer, nor any person may knowingly receive or accept, directly or indirectly, any commission, discount, rebate, or inducement referred to in subsection "A".

C. Nothing in this section shall be construed as prohibiting reasonable payments, other than for the referral of title insurance, closing or

settlement business, for services actually rendered to either a title insurer, title agent, closing or settlement agent in connection with their business.

SECTION 28. Division of Premiums and Charges. Nothing in this act shall be construed as prohibiting the division of premiums and charges between or among a title insurer and its title agent, two or more title insurers, one or more title insurers and one or more title agents, or two or more title agents, provided such divisions of premiums and charges do not constitute:

1. An unlawful rebate, discount or inducement under the provisions of this act; or
2. Payment of a forwarding fee or finder's fee.

SECTION 29. Controlled Business. A. No title insurer, title agent, closing or settlement agent may accept any order for, issue a title policy to, or provide services to, any applicant if it knows or has reason to believe that the applicant was referred to it by any producer or any associate of such producer of title insurance, closing or settlement business where the producer, the associate or both, have a financial interest in the title insurer, title agent, closing or settlement agent to which business is referred unless the producer has disclosed to the buyer, seller and lender, the financial interest of the producer of title, closing or settlement business, or associate referring said business. The disclosure must be made in writing prior to the ordering of title or settlement work from any title agent or closing agent on forms prescribed by the commissioner. The title insurer, title agent, closing or settlement agent shall maintain the disclosure forms for a period of three (3) years.

B. Each title insurer, title agent, closing or settlement agent shall file with the commissioner on forms prescribed by the commissioner, reports setting forth the names and addresses of those persons, if any, who have had a financial interest in the title insurer, title agent, closing or settlement agent during the calendar year, who are known by the agent or title insurer to be producers of title business or associates of producers.

1. Each title insurer and each agent herein mentioned shall file the report required under this subsection with its application for a license and at any time there is a change in the information provided in the last report.

2. Each title insurer and each agent herein licensed on the effective date of this act shall file the report required under this subsection within ninety (90) days after the effective date of this act.

C. No title insurer, title agent, closing or settlement agent may accept an order for business, issue a title insurance policy, or receive or retain any premium, fee or charge in connection with any transaction if:

1. The title insurer or agent knows or has reason to believe that the transaction will constitute controlled business for that title insurer, title agent, closing or settlement agent; and if

2. The title insurer or agent knows or has reason to believe that twenty percent (20%) or more of the gross operating revenue of that title insurer, or agent in the calendar year in which the transaction takes place is derived from controlled business.

D. For the purposes of subsection "C" of this section, the percentage limitation set forth in paragraph "2" of subsection "C" shall be eighty percent (80%) in the first calendar year after the effective date of this act; sixty percent (60%) in the second calendar year after the effective date of this act; forty percent (40%) in the third calendar year after the effective date of this act; and twenty percent (20%) in any later calendar year.

E. No license may be issued, renewed, or continued for a title insurer, title agent, closing or settlement agent who fails to comply with this section. Provided, however, that the provision of this section shall not apply to title insurers, title agents, closing or settlement agents, producers of title business, or associates of producers residing or domiciled in any county or district thereof within this State which has a population not greater than thirty-five thousand (35,000) people, according to the latest United States of America decennial census.

SECTION 30. Favored Title Insurer, Title Agent, or closing or Settlement Agent. A. No producer shall require, directly or indirectly, or through any trustee, director, officer, agent, employee, or affiliate, as a condition, agreement, or understanding to selling or furnishing any other person any loan, or extension thereof, credit, sale, property, contract, lease or service, that such other person shall place any contract of title insurance or contract for closing or settlement service of any kind through any particular title agent or title insurer, or closing or settlement agent. No title agent, no title

insurer or closing or settlement agent shall knowingly participate in any such prohibited plan or transaction. No person shall fix a price charged for such thing or service, or discount from or rebate upon price, on the condition, agreement or understanding that any title insurance or closing or settlement transaction is to be obtained through a particular title insurer, title agent, closing or settlement agent.

B. Any producer who violates the provisions of this section, or any title insurer, title agent or closing or settlement agent who accepts an order for title insurance or order for a closing transaction knowing that it is in violation of the provisions of this section shall, in addition to any other action which may be taken by the regulatory authority having jurisdiction, be subject to a fine by the commissioner in an amount equal to five (5) times the premium for the title insurance or five (5) times the amount of the closing or settlement fee.

C. The commissioner may invoke the aid of the courts in enforcing any fines imposed under this section.

SECTION 31. Premium Rate Standards. A. Premium rates shall not be inadequate, excessive or unfairly discriminatory:

1. Premium rates are excessive if in the aggregate they are likely to produce a long run profit that is unreasonably high in relation to the riskiness or the class of business, or if expenses are unreasonably high in relation to the services rendered.

2. Premium rates are inadequate if they are clearly insufficient, together with investment income attributable to them, to sustain projected losses and expenses, or if the continued use of such rates will have the effect of substantially lessening competition or the effect of tending to create a monopoly.

3. Premium rates are unfairly discriminatory if the premium charged for any classification is not reasonably related to the services rendered or the risks assumed by the insurer. Provided, however, within rate classifications premiums may, to a reasonable degree, be less in the case of smaller insurances, and the excess may be charged against larger insurances, without rendering the rate unfairly discriminatory.

B. In making or reviewing premium rates, due consideration shall be given to past and prospective loss experience, to exposure to loss, to underwriting

practice and judgment, to past and prospective expenses including amounts paid to or retained by title agents, to investment income, to a reasonable margin for profit and contingencies, and to all other relevant factors both within and outside of this State. A five (5) year experience period is required for all filings of premium rates, provided that the filing of any insurer in existence less than five (5) years shall be supported by experience consistent with the period of its existence.

SECTION 32. Premium Rate Schedules. A. A title insurer shall file with the commissioner the premium rate schedules it proposes to use in this State. If the commissioner finds in his reviews of a filing that it does not violate Section 31 of this act, the commissioner shall approve the schedule within thirty (30) days of filing. Prior to such approval, the commissioner may conduct public hearings with respect to the filing. Filings that the commissioner has failed to approve or disapprove within thirty (30) days after filing shall be deemed approved. Upon notice to the title insurer, the period for review of rate filing may be extended for an additional thirty (30) days.

B. If any time after the approval of filing, the commissioner has reason to believe that the filing does not meet the requirements of this section or is otherwise contrary to law, or if any party having an interest in the filing makes a written complaint to the commissioner setting forth reasonable and specific grounds for the complaint, or if any insurer, upon notice of disapproval by the commissioner of a filing pursuant to this section, should so request, the commissioner shall hold a hearing within thirty (30) days and shall give written notice of the hearing to all interested parties. The commissioner may confirm, modify, change, or rescind any previous action, if warranted by the facts shown at the hearing.

C. No title insurer may use or collect any premiums after the effective date of this act except in accordance with the premium rate schedule filed with and approved by the commissioner as required by this section. The commissioner may provide by regulation for interim use of premium rate schedules in effect prior to the effective date of this act.

D. No title insurer may file more than one (1) amendment to its premium rate schedule which has been approved by the commissioner during any calendar year. Provided, however, that the commissioner, upon application and proof that an additional amendment is necessary to the economic survival of the title

insurer or is in the best interest of the public, may permit the filing of additional amendments.

SECTION 33. Title Agent, Closing or Settlement Agent Schedule of Fees and Charges. A. Title agents and closing agents shall file with the commissioner a schedule of fees and charges they propose to use in this state. Filings that the commissioner has failed to approve or disapprove within thirty (30) days after filing shall be deemed approved. Upon notice to the title or closing agent, the period for review of fees and charges filing may be extended for an additional thirty (30) days.

B. If any time after the approval of filing, the commissioner has reason to believe that the filing does not meet the requirements of this section or is otherwise contrary to law, or if any party having an interest in the filing makes a written complaint to the commissioner setting forth specific and reasonable grounds for the complaint, or if any title or closing agent upon notice of disapproval by the commissioner of a filing pursuant to this section, should so request, the commissioner shall hold a hearing within thirty (30) days and shall give written notice of the hearing to all interested parties. The commissioner may confirm, modify, change or rescind any previous action, if warranted by the facts shown at the hearing.

C. No title agent, closing or settlement agent may use or collect any fees or charges after the effective date of this act except in accordance with the schedule of fees and charges filed with and approved by the commissioner as required by this section.

D. No title agent, closing or settlement agent may file more than one (1) amendment to its schedule of fees and charges which has been approved by the commissioner during any calendar year. Provided, however, that the commissioner, upon application and proof that an additional amendment is necessary to the economic survival of the title or closing agent, or is in the best interest of the public, may permit the filing of additional amendments.

E. Each title agent, closing or settlement agent shall print and make available to the public schedules of their currently effective fees and charges. The schedules shall:

1. Be dated to show the date the fees and charges become effective;
2. Be kept available to the public during normal business hours in

each office of the title or closing or settlement agent in this state; and

3. Set forth the total fee and charge for each type of title insurance policy or service issued or provided by the title agent or closing or settlement agent either by stating the fee or charge for each type of title insurance policy in given amounts of coverage, or for each service, or by stating the fee or charge rate per unit amount of coverage, or by a combination of the two.

F. Each title and closing or settlement agent shall keep a complete file of its schedules of fees and charges and of all changes and amendments to those schedules until at least five (5) years after they have ceased to be in effect.

SECTION 34. Form Filing. A. A title insurer shall file with the commissioner all forms it proposes to use in this state, including:

1. Title insurance policies, including standard form endorsements; and

2. "Preliminary Reports", "Commitments", "Binders", or any reports issued prior to the issuance of a title insurance policy.

B. If the Commissioner finds in his review of a filing that it does not violate Section 35 of this act, the commissioner shall approve the form within thirty (30) days of filing. Prior to such approval, the commissioner may conduct public hearings with respect to the filing. Filings that the commissioner has failed to approve or disapprove within thirty (30) days after filing shall be deemed approved. Upon notice to the title insurer, the period for review of a form filing may be extended for an additional thirty (30) days.

C. A title insurer need not file reinsurance contracts and agreements.

D. No title insurer may issue, directly or through a title agent, any policy after the effective date of this act, unless the policy form has been approved pursuant to this section. The commissioner may provide by regulation for interim use of forms in effect prior to the effective date of this act.

SECTION 35. Form Standards. The Commissioner shall approve any form filed under Section 34 of this act only if the form:

1. Is written in simple language logically and clearly arranged and is understandable to a person of normal intelligence without special insurance or

legal knowledge or training;

2. Does not contain or incorporate by reference any inconsistent, ambiguous, or misleading clauses, exceptions, or conditions deceptively affecting the risk purported to be assumed in the affirmative coverage of the contract;

3. Does not contain any misleading title, heading, or other indication of its coverage; and

4. Is not printed or otherwise reproduced in such a manner as to render any provision of the form substantially illegible.

SECTION 36. Notice of Issuance of Mortgage Policy. A. A title insurer or title agent that issues a mortgagee's policy of title insurance on a loan made simultaneous to the purchase of all or part of the property securing the loan, where no owner's policy has been ordered, shall inform the borrower in writing that the mortgagee's policy does not protect the borrower, and that the borrower may obtain an owner's title policy for their protection. This notice must be provided before disbursement of the loan proceeds and before issuance of the mortgagee policy. The notice must be on a form prescribed by the commissioner.

B. If the borrower elects not to purchase an owner's title insurance policy, the title insurer or title agent shall obtain from him a written statement that the notice has been received and that the borrower waives the right to purchase an owner's title insurance policy. If the buyer refuses to provide the statement and waiver, the title insurer or title agent shall so note in the file. The statement and waiver must be on a form prescribed by the commissioner, and must be retained by the title insurer or title agent for at least five (5) years after receipt.

SECTION 37. Title Plant Standards. No commitment of title insurance or title policy shall be issued except on the basis of one of the following:

A. A thorough search of the records of the jurisdiction by a licensed title insurance agent using a title plant;

B. An abstract of title certified by a licensed abstracter; or

C. An opinion given by an attorney licensed to practice law in this state of an abstract of title certified by a licensed abstracter.

SECTION 38. Regulations. In addition to any other powers granted under this act, the commissioner may adopt rules or regulations not inconsistent with the provisions of this act to protect the interest of the public including but not limited to regulations governing sales practices, collection, settlement or closing procedures; policy coverage standards; rebates; discounts, and inducements; controlled business; the approval of agency contracts, unfair trade practices and fraud; statistical plans for data collection; consumer education; any other consumer matter; the business of title insurance or closing or settlement business or any regulation otherwise implementing or interpreting the provisions of this act.

SECTION 39. Enforcement. A. Except as provided in Section 26 and 30, any violation of this act shall carry with it, in addition to or in lieu of suspension or revocation of the violator's license, a civil penalty of five hundred dollars (\$500) per violation. For purposes of this act, each individual transaction which is not in conformance with the provisions of this act shall be considered a violation.

B. In addition to actions by the commissioner to enforce this act, any title insurer or title agent that is a competitor of any title insurer or title agent that subsequent to the effective date of this act, has violated or is violating the provisions of this act, shall have a cause of action against such title insurer or title agent and, upon establishing the existence of a violation of any such provision, shall be entitled, in addition to any other damages or remedies provided by law, to such equitable or injunctive relief as the court deems proper. In any such action under this subsection, the court may award to the successful party the court costs of the action together with reasonable attorney's fees.

C. Any person or business, except duly licensed attorneys in this state, who engages in title insurance business, handling closing or settlement services for a fee without benefit of current license from the commissioner, as set forth in this act, shall be subject to a civil penalty of five thousand dollars (\$5,000) per transaction, plus costs of investigation by the commissioner.

D. The commissioner may invoke the aid of the courts in enforcing the provisions of this act.

SECTION 40. Effective Date. This act shall become effective on January 1, 1990.

SECTION 41. All provisions of this act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

