

1 **State of Arkansas**
2 **78th General Assembly**
3 **Regular Session, 1991**
4 **By: Senator Scott**

A Bill

SENATE BILL 43

For An Act To Be Entitled

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

11
12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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14 SECTION 1. Title, Purpose. (a) This act shall be known and may be
15 cited as the "Arkansas Title Insurance Agent's Licensing Act".

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

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20 SECTION 2. Application of Act and Construction with Other Laws. (a)
21 This act shall apply to all title agents, applicants for title insurance and
22 title insurance policyholders.

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

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

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

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

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

1 (4) "Person" means any natural person, partnership, association,
2 cooperative, corporation, trust, or other legal entity that is a resident of,
3 or authorized to do business in this state.

4 (5) "Title Agent", or "Agent" means any person who:

5 (A) Solicits title insurance business;

6 (B) Collects premiums;

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

9 (D) Issues title insurance commitments or policies.

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

13 (7) "Title insurance business", or the "Business of title insurance"
14 means:

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

18 (1) Soliciting or negotiating the issuance of a title
19 insurance policy;

20 (2) Guaranteeing, warranting or otherwise insuring the
21 correctness of title searches;

22 (3) Execution of title insurance policies;

23 (4) Searching or examining titles of land;

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

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

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

31 (B) Unmarketability of the insured title; or

32 (C) Invalidity or unenforceability of liens or encumbrances on
33 the stated property.

34 (9) "Title insurer" or "Insurer" means a company organized under the
35 laws of this state for the purpose of transacting as insurer, the business of
36 title insurance and any foreign or alien title insurer engaged in this state

1 in the business of title insurance as insurer.

2 (10) "Title plant" means a set of records in which an entry has been
3 made of all recorded documents or matters imparting constructive notice under
4 the law of matters affecting title to all real property or any interest
5 therein or encumbrances thereon, which have been recorded in the jurisdiction
6 for which such title plant is maintained from inception of title. Such
7 records shall consist of an index or set of indices in which notations of or
8 references to any such documents that describe the property affected thereby
9 are posted, entered or otherwise included, according to the property described
10 thereon, or copies or briefs of all such documents describing the property
11 affected and which are sorted and filed according to the property described
12 therein.

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14 SECTION 4. Underwriting Standard and Record Retention.

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

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27 SECTION 5. TITLE INSURANCE PLANT, LICENSE REQUIRED.

28 No title insurance commitment or policy shall be issued except from a
29 search from a licensed title insurance plant.

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31 SECTION 6. GENERAL QUALIFICATION FOR TITLE INSURANCE PLANT LICENSE.

32 (a) Except for applications accompanied by a currently verified
33 Certificate of Authority as an abstract plant, or evidence of contractual
34 access to a currently certified abstract plant or currently certified title
35 insurance plant, no license shall be issued to a title insurance plant unless:

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

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

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

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15 SECTION 7. APPLICATION, ISSUANCE, EXPIRATION AND RENEWAL OF TITLE
16 INSURANCE PLANT LICENSE.

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

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

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

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31 SECTION 8. SUSPENSION, OR REVOCATION OF TITLE INSURANCE PLANT LICENSE.

32 The Licensing Board may suspend or revoke a title insurance plant
33 license, after providing due notice and an opportunity to be heard pursuant to
34 regulations promulgated by the Licensing Board, upon finding that a title
35 insurance plant:

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

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

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7 SECTION 9. Title Agents, License Required, Attorneys Exempted.

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

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12 SECTION 10. General Qualifications for Title Insurance Agent's License.

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

- 16 (1) Is at least eighteen (18) years old;
- 17 (2) Is a bona fide resident of, and resides within, this state;
- 18 (3) Is appointed as an agent by a title insurer, subject to the
19 issuance of a title agent's license;
- 20 (4) Has successfully demonstrated comprehension of the principles
21 of title examination and title insurance, the practical application of those
22 principles through a testing procedure administered by the Licensing Board;
- 23 and
- 24 (5) Met continuing educational and other administrative
25 requirements of the Licensing Board.

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

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

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SECTION 11. Application for Title Agent's License.

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

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

SECTION 12. Issuance, Expiration, and Renewal of Title Agent's License.

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

- (1) The prospective licensee files an application pursuant to *Section 11* of this act;
- (2) The prospective licensee meets the requirements of *Section 10* of this act; and
- (3) The prospective licensee has provided the Licensing Board with evidence of financial responsibility in the form and in a minimum amount required by the regulations of the Licensing Board.

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

SECTION 13. Refusal, Suspension, or Revocation of Title Agent's License; Fine in Lieu of Suspension.

(a) The Licensing Board 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 pursuant to regulations provided by the Licensing Board, 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

1 regulation of the Licensing Board;

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

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

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

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

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

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

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

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

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

27

28 SECTION 14. Rebates and Inducements Prohibited.

29 (a) No title agent shall:

30 (1) Pay, directly or indirectly, to the insured or to any other
31 person, any commission, any part of its premiums, fees, other charges, or any
32 other consideration as inducement or compensation for the referral of title
33 insurance business or for the performance of any escrow or other service by
34 the title agent; or

35 (2) Issue any title insurance policy or perform any service in

1 connection with any transaction in which it has paid or intends to pay
2 commission, rebate, discount or inducement which it knows to be in violation
3 of this section.

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

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9 SECTION 15. Title Agent Premium or Fees, Division of Fees, Charges or
10 Premiums. (a) Nothing in this act shall be construed as prohibiting a title
11 agent from charging any fee deemed appropriate for services rendered.

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

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

17 (2) Payment of a forwarding fee or finder's fee.
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19 SECTION 16. Title Plant Standards. No commitment of title
20 insurance or title policy shall be issued except on the basis of one of the
21 following:

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

24 (2) An abstract of title certified by a licensed abstracter; or

25 (3) *An opinion given by an attorney licensed to practice law in this*
26 *State based on a sufficient examination of the title records to determine*
27 *merchantability of title.*
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29 SECTION 17. Regulations. In addition to any other powers granted under
30 this act, the Licensing Board may adopt rules or regulations not inconsistent
31 with the provisions of this act to protect the interest of the public
32 including but not limited to regulations governing sales practices; coverage
33 standards; rebates and inducements; the approval of agency contracts; unfair
34 trade practices and fraud; statistical plans for data collection; consumer
35 education or any other consumer matter; continuing education of agents;

1 licensing fees; the business of title insurance or any regulation otherwise
2 necessary for implementing or interpreting the provisions of this act.

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4 SECTION 18. Enforcement. (a) Any violation of this act shall carry
5 with it, in addition to or in lieu of suspension or revocation of the
6 violator's license, a civil penalty in an amount as set by the Licensing
7 Board. For purposes of this act, each individual transaction which is not in
8 conformance with the provisions of this act shall be considered a violation.

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

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

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

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

18 (c) The Title Insurance Agents Licensing Board shall have power to make
19 such rules and regulations for its operation as it shall consider appropriate,
20 provided that they are not in conflict with the laws of the State of Arkansas.
21 All expenses incurred by the board for the administration of this act are
22 authorized to be paid by the board. The board, or any committee thereof,
23 shall be entitled to the services of the Attorney General or other state legal
24 counsel as deemed appropriate in connection with the operation of the affairs,
25 administration, rules or regulations of the Licensing Board. Additional legal
26 counsel may be employed by the board from time to time as it may deem
27 necessary. The board shall employ an administrator, who shall possess such
28 qualifications as may be determined by the board, and who shall serve at the
29 pleasure of the board. In addition, the board may employ such additional
30 professional and clerical employees as may be necessary for the operation of
31 the board's various functions and pay wages and salaries thereto.

32 (d) All fees and charges collected under this act shall be paid by the
33 Licensing Board within a period of thirty (30) days after receipt of same
34 together with a statement thereof to the Treasurer of the State who shall
35 place ten percent (10%) of such sums remitted to the credit of the general

1 fund of the state, and ninety percent (90%) to the credit of the Title
 2 Insurance Agent's Licensing Board Fund, which fund is hereby expressly
 3 created. All moneys so paid into the State Treasury and credited to the fund,
 4 or so much thereof as may be needed, are hereby appropriated to the use of the
 5 Licensing Board under its direction for the payment of all expenses and
 6 expenditures incurred under the provisions of this act. Upon request of the
 7 Licensing Board, the State Auditor shall draw warrants for such expenses and
 8 expenditures and the State Treasurer shall pay the same from the fund. No
 9 expenditures under this act shall be made except from moneys in such fund.
 10 The fees of the Title Insurance Agents Licensing Board shall be deposited in
 11 banks to be used by the board in the manner prescribed by law, similar to the
 12 accounts of other examining and licensing boards of the state, and shall be
 13 audited under rules and regulations prescribed by the Director of the
 14 Department of Finance and Administration.

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16 *SECTION 20. Policy not Invalidated by Agent's Action. It is the intent*
 17 *of this act that no action of a title agent in violation of the provisions of*
 18 *this act shall render invalid any title insurance policy issued by that agent.*

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20 *SECTION 21. Exemption of Licensed Attorneys. Persons licensed to*
 21 *practice law in this State are exempted from the licensing provisions of this*
 22 *act.*

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24 *SECTION 22. Effective Date. This act shall be effective July 1, 1991.*
 25 *The Licensing Board is hereby empowered to establish rules, procedures and*
 26 *regulations for the timely and effective implementation of this act; provided,*
 27 *however, that the complete implementation shall not be longer than eighteen*
 28 *(18) months from its effective date.*

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

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34 *SECTION 24. If any provision of this act or the application thereof to*
 35 *any person or circumstance is held invalid, such invalidity shall not affect*

1 other provisions or applications of the act which can be given effect without
2 the invalid provision or application, and to this end the provisions of this
3 act are declared to be severable.

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

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/s/Scott