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1 **State of Arkansas**
2 **79th General Assembly**
3 **Regular Session, 1993**
4 **By: *Senator Walters***

A Bill

SENATE BILL 745

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."

Subtitle

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

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

18 SECTION 1. Title, Purpose.

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

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

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

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

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

31 SECTION 3. Definitions.

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

1 (b) "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 (c) "Title Agent" or "Agent" means any person who:

- 5 (1) Solicits title insurance business;
- 6 (2) Collects premiums;
- 7 (3) Determines insurability in accordance with underwriting
8 rules and standards prescribed by its title insurer; or
- 9 (4) Issues title insurance commitments or policies.

10 (d) "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 (e) "Title Insurance Business" or the "Business of Title Insurance"
14 means:

15 (1) 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 title insurance policy:

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

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

22 (C) Execution of title insurance policies;

23 (D) Searching or examining titles of land.

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

27 (f) "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 (1) Defects in or liens or encumbrances on the insured title;

31 (2) Unmarketability of the insured title; or

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

34 (g) "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

1 title insurance and any foreign or alien title insurer engaged in this state
2 in the business of title insurance as insurer.

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

14

15 SECTION 4. Underwriting Standard and Record Retention. No title
16 insurance policy may be written unless and until a reasonable search and
17 examination of the title from a title plant has been conducted, and a
18 determination of insurability of title in accordance with sound underwriting
19 practices has been made. Evidence of the examination of title and
20 determination of insurability shall be preserved and retained for a period of
21 not less than fifteen (15) years after the title insurance policy has been
22 issued. Instead of the retention of the original evidence, title agents may
23 in the regular course of business establish a system whereby all or part of
24 the evidence is recorded, copied, or reproduced by any process that accurately
25 and legibly reproduces or forms a durable medium for reproducing the contents
26 of the original.

27

28 SECTION 5. Title Agents, License Required. No person shall, after
29 January 1, 1994, act as a title agent, or issue title insurance commitments
30 and policies, unless licensed in accordance with the provisions of this act.

31

32 SECTION 6. General Qualifications for Title Insurance Agent_s License.

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

- 1 (1) Is at least eighteen (18) years old;
- 2 (2) Is a bona fide resident of, and resides within, this state;
- 3 (3) Is appointed as an agent by a title insurer, subject to the
4 issuance of a title agent_s license;
- 5 (4) Has successfully demonstrated comprehension of the
6 principles of title insurance, the practical application of those principles
7 through a testing procedure administered by the Licensing Board;
- 8 (5) Met continuing educational and other administrative
9 requirements of the Licensing Board.

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

16 (c) Any person, other than a natural person, to whom a title insurance
17 agent_s license is issued, must demonstrate that each natural person
18 designated to exercise the powers and perform the duties of the title agent
19 meets the requirements of subsection (a) of this section.

20

21 SECTION 7. Application for Title Agent_s License.

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

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

29

30 SECTION 8. Issuance, Expiration, and Renewal of Title Agent_s License.

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

- 33 (1) The prospective licensee files an application pursuant to
34 Section 7 of this act;
- 35 (2) The prospective licensee meets the requirements of Section 6

1 of this act; and

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

5 (b) Each title agent_s license shall expire on June 30 of each year,
6 and may be renewed by the Licensing Board upon filing by the licensee, prior
7 to the application in the form prescribed by the Licensing Board and upon
8 payment of the appropriate renewal fee, providing the licensee has met all
9 requirements of the Licensing Board.

10

11 SECTION 9. Refusal, Suspension, or Revocation of Title Agent_s License;
12 Fine in Lieu of Suspension.

13 (a) The Licensing Board may refuse to license any person as an agent,
14 or may suspend or revoke an agent_s license, after providing due notice and an
15 opportunity to be heard pursuant to regulations promulgated by the Licensing
16 Board, upon a finding that the person:

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

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

21 (3) Has made a material misstatement in an application for an
22 agent_s license or has obtained an agent_s license by fraud or by willful
23 misrepresentation;

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

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

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

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

1 act; or

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

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

5 (c) Without imposing the foregoing penalties, the Licensing Board may
6 additionally impose a civil penalty not to exceed one thousand dollars
7 (\$1,000) for each violation of this act or of any rule or regulation
8 promulgated pursuant to it.

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

12

13 SECTION 10. Title Plant Standards. (a) No commitment of title insurance
14 or title policy shall be issued except on the basis of one of the following:

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

17 (2) An abstract of title certified by a licensed abstracter.

18 (b) *The provisions of this section shall not apply to attorneys*
19 *described in Section 14 of this act.*

20

21 SECTION 11. Regulations. In addition to any other powers granted under
22 this act, the Licensing Board may adopt rules or regulations not inconsistent
23 with the provisions of this act to protect the interest of the public
24 including but not limited to regulations governing sales practices, coverage
25 standards, the approval of agency contracts; unfair trade practices and fraud,
26 statistical plans for data collection; consumer education or any other
27 consumer matter, continuing education of agents, licensing fees, the business
28 of title insurance, or any regulation otherwise necessary for implementing or
29 interpreting the provisions of this act.

30

31 SECTION 12. Enforcement.

32 (a) Any violation of this act shall carry with it, in addition to or
33 in lieu of suspension or revocation of the violator_s license, a civil penalty
34 in an amount not to exceed one thousand dollars (\$1,000) as set by the
35 Licensing Board. For purposes of this act, each individual transaction which

1 is not in conformance with the provisions of this act shall be considered a
2 violation.

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

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

11

12 SECTION 13. Creation of Title Insurance Agents Licensing Board.

13 (a) There is created a Title Insurance Agents Licensing Board
14 consisting of seven (7) members who shall be appointed by the governor and
15 confirmed by the Senate. Each member shall be at least twenty-five (25) years
16 of age, and be a resident of this state. Members of the Licensing Board shall
17 consist of five (5) licensed agents and two (2) lay people not affiliated with
18 the title insurance business. Members shall serve seven (7) year terms which
19 shall expire on December 31 of the seventh (7th) year, but shall hold over
20 after the expiration of their term until a successor shall be appointed. If a
21 vacancy shall occur, the governor shall appoint a successor for the remainder
22 of the term. The governor may remove any member of the Licensing Board for
23 incompetency or neglect of duty. Each member of the board shall receive a
24 certificate of appointment from the governor, and before entering upon the
25 discharge of duties of office, shall file with the secretary of state the
26 constitutional oath of office. Each member shall receive reimbursement for
27 necessary expenses incurred in the performance of their duties. The Board
28 shall annually elect in January of each year, a chairman, vice chairman, and
29 secretary to serve in their respective capacity for one (1) year. The Board
30 may elect other officers, if the Board deems it appropriate. Regular,
31 special, or adjourned meetings may be held at such times as the Board may
32 provide by the rules and regulations which it shall adopt, or at such times as
33 the Board may by reasonable resolution provide. Due notice of each meeting
34 time and place shall be given to each member in such manner as the rules and
35 regulations shall provide. Four (4) members of the Board shall constitute a

1 quorum. The Board shall adopt a seal for its own use and shall have on it the
2 words "TITLE INSURANCE AGENTS LICENSING BOARD, STATE OF ARKANSAS, SEAL", and
3 the secretary shall have charge and custody of it.

4 (b) Initially, the governor shall appoint members of the Licensing
5 Board who shall serve staggered, ascending terms of one (1) through seven (7)
6 years. The governor shall consult an Advisory Board consisting of the Board
7 of Governors of the Arkansas Land Title Association for appointee
8 recommendations. Ongoing, the Advisory Board shall be consulted for appointee
9 recommendations to the Licensing Board when an opening occurs or is
10 anticipated through expiration of term.

11 (c) The Title Insurance Agents Licensing Board shall have power to
12 make such rules and regulations for its operation as it shall consider
13 appropriate, provided that they are not in conflict with the laws of the state
14 of Arkansas. All expenses incurred by the Board for the administration of
15 this act are authorized to be paid by the Board. The Board, or any committee
16 thereof, shall be entitled to the services of the attorney general as deemed
17 appropriate in connection within the operation of the affairs, administration,
18 rules or regulations of the Licensing Board. Additional legal counsel may be
19 employed by the Board from time to time as it may deem necessary. The Board
20 shall employ an administrator, who shall possess such qualifications as may be
21 determined by the Board, and who shall serve at the pleasure of the Board. In
22 addition, the Board may employ such additional professional and clerical
23 employees as may be necessary for the operation of the Board_s various
24 functions and pay wages and salaries thereto.

25 (d) All monies collected by the Title Insurance Agents Licensing Board
26 shall be deposited in financial institutions designated by the board.

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28 *SECTION 14. All licensed abstractors and attorneys shall be entitled to*
29 *licensing under this act without examination.*

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31 *SECTION 15. All provisions of this act of a general and permanent*
32 *nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas*
33 *Code Revision Commission shall incorporate the same in the Code.*

34

35 *SECTION 16. If any provision of this act or the application thereof to*

1 any person or circumstance is held invalid, such invalidity shall not affect
2 other provisions or applications of the act which can be given effect without
3 the invalid provision or application, and to this end the provisions of this
4 act are declared to be severable.

5

6 SECTION 17. All laws and parts of laws in conflict with this act are
7 hereby repealed.

8

/s/Senator Smith