

Stricken language would be deleted from present law. Underlined language would be added to present law.

1 State of Arkansas
2 81st General Assembly
3 Regular Session, 1997

As Engrossed: H3/7/97

A Bill

HOUSE BILL 1713

4
5 *By: Representatives Courtway and Lynn*

For An Act To Be Entitled

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

Subtitle

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

17
18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

19
20 SECTION 1. Title, Purpose.

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

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

26
27 SECTION 2. Application of Act and Construction with Other Laws.

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

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

32 (c) This act shall not apply to transactions involving the sale of
33 encumbering of property if the consideration or loan amount is greater than
34 three hundred thousand dollars (\$300,000).

35
36 SECTION 3. Definitions. For the purposes 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 and
3 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 services
7 commenced but not completed.

8 (3) "Escrow" means written instruments, money or other items deposited
9 by one party with a depository, escrow agent or escrow for delivery to another
10 party upon the performance of a specified condition or the happening of a
11 certain event.

12 (4) "Gross operating revenue" means all income received by a title
13 agent.

14 (5) "Licensing Board" means the Abstracters and Title Agents Licensing
15 Board.

16 (6) "Person" means any natural person, partnership, association,
17 cooperative, corporation, trust, or other legal entity that is a resident of,
18 or authorized to do business in this state.

19 (7) "Security" or "security deposit" means funds or other property
20 received by the title insurance agent as collateral to secure an indemnitors
21 obligation under an indemnity agreement pursuant to which a title insurer is
22 granted a perfected security interest in the collateral in exchange for
23 agreeing to provide coverage in a title insurance policy for a specific title
24 exception to coverage.

25 (8) "Title Agent" or "Agent" means any person who:

26 (A) Solicits title insurance business;

27 (B) Collects premiums;

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

30 (D) Issues title insurance commitments or policies.

31 (9) "Title insurance commitment" means a preliminary report on the
32 status of a land title, and which sets out the conditions under which a title
33 or interest will be insured.

34 (10) "Title insurance business" or the "Business of title insurance"
35 means:

36 (A) Transacting or proposing to transact by a title agent any of

1 the following activities when conducted or performed in contemplation of the
2 issuance of a title commitment or a title insurance policy:

3 (1) Soliciting or negotiating the issuance of a title
4 insurance policy;

5 (2) Guaranteeing, warranting or otherwise insuring the
6 correctness of title searches;

7 (3) Execution of title insurance policies; and

8 (4) Searching or examining titles of land;

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

12 (11) "Title insurance policy" or "Policy" means a contract insuring or
13 indemnifying against loss or damage arising from any or all of the following
14 existing on or before the policy date:

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

16 (B) Unmarketability of the insured title; or

17 (C) Invalidity or unenforceability of liens or encumbrances on
18 the stated property.

19 (12) "Title insurer" or "Insurer" means a company organized under the
20 laws of this state for the purpose of transacting as insurer, the business of
21 title insurance and any foreign or alien title insurer engaged in this state
22 in the business of title insurance as insurer.

23 (13) "Title plant" means a set of records in which an entry has been
24 made of all recorded documents or matters which under the law impart
25 constructive notice of matters affecting title to all real property or any
26 interest therein or encumbrances thereon, which have been recorded in the
27 jurisdiction for which such title plant is maintained for a minimum of thirty
28 (30) years after the effective date of this act, and which is updated to
29 within sixty (60) days of the date of issuance of any title commitment or
30 policy. Such records shall consist of an index or set of indices in which
31 notations of or references to any such documents that describe the property
32 affected thereby are posted, entered or otherwise included, according to the
33 property described thereon, or copies or briefs of all such documents
34 describing the property affected and which are sorted and filed according to
35 the property described therein. Documents only affecting oil, gas, or other
36 mineral interests are exempt from this requirement provided no insurance is

1 issued covering such interests. The records may be maintained in tract book
2 form, by magnetic media, or other media approved by the board.

3

4 SECTION 4. Record Retention.

5 Evidence of the examination of title and determination of insurability
6 shall be preserved and retained by the title agent for a period of not less
7 than five (5) years after the title insurance policy has been issued. Instead
8 of the retention of the original evidence, a title agent may in the regular
9 course of business establish a system whereby all or part of the evidence is
10 recorded, copied, or reproduced by any process that accurately and legibly
11 reproduces or forms a durable medium for reproducing the contents of the
12 original.

13

14 SECTION 5. General Qualification for Title Insurance Plant License.

15 (a) Except for applications accompanied by a currently verified
16 Certificate of Authority as an abstract plant in accordance with Arkansas Code
17 17-11-102(5), or evidence of contractual access to a currently certified
18 abstract plant or currently certified title insurance plant, no license shall
19 be issued to a title insurance plant unless:

20 (1) The Licensing Board shall cause an inspection by its
21 appointee to determine the sufficiency of the set of records of the proposed
22 title insurance plant;

23 (2) After inspection of the set of records proposed, the
24 Licensing Board shall notify the applicant by certified mail of the adequacy
25 or inadequacy of the set of records inspected. Insufficiencies or
26 inadequacies shall be noted to the entity making the application within two
27 (2) weeks after the inspection.

28 (3) If after an inspection it finds an adequate set of records to
29 meet the definition of title insurance plant, the Licensing Board shall
30 approve the application for title insurance plant and send notice of approval
31 within two (2) weeks.

32

33 SECTION 6. Application, Issuance, Expiration and Renewal of Title
34 Insurance Plant License.

35 (a) Application for title insurance plant license shall be made in
36 writing in the form and manner prescribed by the Licensing Board. A non-

1 refundable application fee in an amount to be established by the Licensing
2 Board shall be paid at the time of application.

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

7 (c) Each title insurance plants license shall expire June 30 of each
8 year, and may be renewed by the Licensing Board, prior to expiration, by a
9 properly completed application in the form and manner prescribed by the board,
10 and upon payment of the appropriate renewal fee, providing the prospective
11 licensee has met all requirements of the Licensing Board.

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

14 The Licensing Board may suspend or revoke a title insurance plant
15 license, after providing notice and an opportunity to be heard pursuant to
16 regulations promulgated by the Licensing Board, upon finding that a title
17 insurance plant:

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

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

22

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

24 No person shall act as a title agent or issue title insurance
25 commitments and policies unless licensed in accordance with the provisions of
26 this act, or unless licensed to practice law in this state.

27

28 SECTION 9. General Qualifications for Title Insurance Agent s License.

29 (a) No license shall be issued to, continued for, or permitted to exist
30 for any natural person acting as an agent, unless the natural person:

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

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

33 (3) Is appointed as an agent by a title insurer, subject to the
34 issuance of a title agent s license;

35 (4) Has successfully demonstrated comprehension of principles of
36 title examination and title insurance, and the practical application of those

1 principles through a testing procedure administered by the Licensing Board, or
2 is currently licensed as a "registered abstracter" in accordance with Arkansas
3 Code § 17-11-101, et. seq.;

4 (5) Meets continuing educational and other administrative
5 requirements of the Licensing Board; and

6 (6) Maintains the following insurance coverage under terms and
7 conditions, and in minimum amounts to be established by the board:

8 (A) An errors and omissions policy which includes coverage
9 for an agents delegation of any agent functions; and

10 (B) Surety or fidelity coverage if the agent handles escrow
11 or security deposits.

12 (b) Any person, other than a natural person, to whom an agents license
13 is issued, shall designate to the Licensing Board those natural persons who
14 are and will be exercising the powers and performing the duties of the agent.

15 The designated individuals, except persons performing only clerical
16 functions, shall be subject to the requirements of subsection (a) of this
17 section.

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

22

23 SECTION 10. Application for Title Agents License.

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

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

31

32 SECTION 11. Issuance, Expiration, and Renewal of Title Agents License.

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

35 (1) the prospective licensee files an application pursuant to
36 Section 10 of this act;

1 (2) the prospective licensee meets the requirements of Section 9
2 of this act;

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

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

11

12 SECTION 12. Conditions for Providing Escrow, Closing, or Settlement
13 Services, and Maintaining Escrow and Security Deposit Accounts.

14 A title insurance agent may operate as an escrow, security, settlement
15 or closing agent, provided that:

16 (a) All funds deposited with the title insurance agent in settlement,
17 closing or security deposit shall be submitted for collection to or deposited
18 in a separate fiduciary trust account or accounts in a federally insured
19 financial institution no later than the close of the next business day
20 following closing, in accordance with the following requirements:

21 (1) The funds shall be the property of the person or persons
22 under the provision of the escrow, settlement, security deposit or closing
23 agreement and shall be segregated for each depository by escrow, settlement,
24 security deposit or closing in the records of the title insurance agent in a
25 manner that permits the funds to be identified on an individual basis; and

26 (2) The funds shall be applied only in accordance with the terms
27 of the instructions or agreements under which the funds were accepted.

28 (b) Funds held in an escrow account shall be disbursed only pursuant to
29 a written instruction or agreement specifying how and to whom such funds may
30 be disbursed.

31 (c) Nothing in this section is intended to amend, alter, or supersede
32 other sections of this act, or the laws of this state or the United States,
33 regarding an escrow holder's duties and obligation.

34

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

1 (a) The Licensing Board may refuse to license any person as an agent,
2 or may suspend or revoke an agent s license, after providing notice and an
3 opportunity to be heard pursuant to regulations provided by the Licensing
4 Board, upon a finding that the person:

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

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

9 (3) Has made a material misstatement in an application for an
10 agent s license or has obtained an agent s license by fraud or by willful
11 misrepresentation;

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

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

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

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

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

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

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

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

34

35 SECTION 14. Title Underwriting Standards. No commitment of title
36 insurance or title policy shall be issued except on the basis of one of the

1 following, or a combination thereof:

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

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

5 (c) A thorough search of the records of the jurisdiction, personally
6 conducted by an attorney licensed to practice law within this state, at the
7 site where the recorded documents or matters imparting constructive notice
8 affecting title to real property have been recorded and maintained within the
9 jurisdiction;

10 (d) In counties within this state with fewer than two (2) licensed
11 plants, irrespective of the number of districts, a thorough search of the
12 records of the jurisdiction at the site where the recorded documents or
13 matters imparting constructive notice affecting title to real property have
14 been recorded and maintained within the jurisdiction, personally conducted by
15 an abstracter licensed under Arkansas Code 17-11-101 et seq. with a minimum of
16 ten (10) years of experience since obtaining such license.

17

18 SECTION 15. Graduated implementation of Title Plant Standards.

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

24 (b) In order for any title insurance agent to transact title insurance
25 business without the benefit of a title plant after the effective date of this
26 act until its first anniversary date, such agent must complete the following
27 requirements:

28 (1) Execute a letter of intent in form and substance approved by
29 the board to provide satisfactory evidence of the agents intention to comply
30 with the title plant requirements set out herein; and

31 (2) Provide a cash bond or letter of credit in form and amount
32 approved by the board in order to establish the agents financial ability to
33 meet the title plants requirements of this act.

34

35 SECTION 16. Regulations.

36 In addition to any other powers granted under this act, the Licensing

1 Board may adopt rules or regulations as it deems necessary for the proper
2 administration of its power and duties consistent with this act.

3

4 SECTION 17. Enforcement.

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

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

16 (c) The procedure for enforcement of this act, together with rights of
17 appeal from board actions, shall be as set forth in Arkansas Code Annotated
18 17-11-341.

19 (d) The provisions of this act shall be enforced by the Abstracters
20 Board of Examiners, as created by Arkansas Code 17-11-201. This board shall
21 henceforth be known as the Abstracters and Title Agents Licensing Board.

22

23 SECTION 18. Policy not Invalidated by Agent s Action.

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

27

28 SECTION 19. Exemption of Licensed Attorneys.

29 Persons licensed to practice law in this state are exempted from the
30 licensing provisions of this act.

31

32 SECTION 20. The Licensing Board is hereby empowered to establish rules,
33 procedures and regulations for the timely and effective implementation of this
34 act; provided, however, that the complete implementation shall not be longer
35 than eighteen (18) months after its effective date.

36

1 SECTION 21. All provisions of this act of a general and permanent
2 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
3 Code Revision Commission shall incorporate the same in the Code.

4

5 SECTION 22. If any provision of this act or the application thereof to
6 any person or circumstance is held invalid, such invalidity shall not affect
7 other provisions or applications of the act which can be given effect without
8 the invalid provision or application, and to this end the provisions of this
9 act are declared to be severable.

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11 SECTION 23. All laws and parts of laws in conflict with this act are
12 hereby repealed.

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/s/Rep. Courtway et al

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