

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas

2 83rd General Assembly

3 Regular Session, 2001

A Bill

SENATE BILL 513

4
5 By: Senators D. Malone, Fitch, Miller
6

For An Act To Be Entitled

8 AN ACT PROVIDING MINIMUM STANDARDS AND LICENSING
9 GUIDELINES FOR TITLE INSURANCE AGENTS AND TITLE
10 INSURANCE PLANTS; AND FOR OTHER PURPOSES.

Subtitle

11
12 AN ACT PROVIDING MINIMUM STANDARDS AND
13 LICENSING GUIDELINES FOR TITLE INSURANCE
14 AGENTS AND TITLE INSURANCE PLANTS.
15
16
17

18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
19

SECTION 1. Title.

20 This act shall be known and may be cited as the "Title Insurance Agents'
21 Standards and Licensing Act".
22
23

SECTION 2. Purpose.

24 It is the purpose of this act to regulate title insurance agents and
25 title plants in the State of Arkansas to protect real estate consumers from
26 the adverse consequences of inaccurate or incomplete determinations of
27 insurability and dilution or devaluation of title insurance policy protection
28 through:
29

30 (1) Requiring accurate supporting evidence to determine insurability of
31 title by regulating the source of evidence, the title plant;

32 (2) Licensing requirements similar to those imposed upon abstract
33 plants regulated by the Abstracters' Board of Examiners; and

34 (3) Assuring title insurance agent competency through testing and

1 licensing requirements similar to those imposed upon abstracters regulated by
2 the Abstracters' Board of Examiners.

3
4 SECTION 3. Definitions.

5 As used in this act, unless the context otherwise requires:

6 (1) "Board" means the Abstracters' Board of Examiners;

7 (2) "Certificate of authority" means the authorization to engage in the
8 title insurance business in the State of Arkansas granted to a person, firm,
9 or private corporation;

10 (3) "Licensed title insurance agent" means an individual licensed under
11 this act to prepare insurance of title to real property in the State of
12 Arkansas;

13 (4) "Licensed title insurance plant" means a set of records:

14 (A) In which an entry has been made of all documents or matters
15 which under the law impart constructive notice of matters affecting title to
16 all real property surface rights or any interest therein or encumbrances
17 thereon;

18 (B) Which are filed or recorded in the county or district for
19 which the licensed title insurance plant is maintained; and

20 (C) Which is updated to within thirty (30) days of the date of
21 issuance of any title commitment or policy;

22 (5) "Title insurance" means any policy, commitment, or instrument
23 purporting to indemnify or provide loss coverage as a result of any real
24 estate title defect resulting in loss of priority, mortgage impairment, or
25 ownership impairment, providing that any person, firm, partnership,
26 association or corporation may provide indemnities regarding real property
27 defects occurring during or as a result of their ownership of the property;

28 (6) "Title insurance agent" means any individual or company authorized
29 to bind title insurance; and

30 (7) "Title insurance business" means a business which issues or sells
31 title insurance on any sale or encumbrance of real property.

32
33 SECTION 4. Penalties.

34 (a) Any person, firm, partnership, association, or corporation
35 violating this act shall be guilty of a misdemeanor and upon conviction shall
36 be punished by a fine of not less than twenty-five dollars (\$25.00) nor more

1 than one thousand dollars (\$1,000) for each offense.

2 (b) Each succeeding day on which the provisions of this act are
3 violated shall be a separate offense.

4
5 SECTION 5. Duties and authority of the Abstracters' Board of Examiners.

6 (a) The Abstracters' Board of Examiners shall examine and license title
7 insurance plants and title insurance agents in the State of Arkansas.

8 (b) The board shall have authority to promulgate all necessary rules
9 and regulations to administer and enforce this act.

10
11 SECTION 6. Certificate of registration required.

12 (a) No later than January 1, 2002, every person, firm, or private
13 corporation engaged in the title insurance business in the State of Arkansas
14 shall be or have in its employ a licensed title insurance agent.

15 (b) As of January 1, 2002, no person shall execute or otherwise attest
16 to the accuracy of a title insurance policy or commitment unless the person is
17 a licensed title insurance agent.

18 (c) No licensed title insurance agent employed by a title insurance
19 business may work for more than one (1) company at any one (1) time.

20
21 SECTION 7. Application for certificate of registration.

22 (a) Any person desiring to become a licensed title insurance agent
23 shall make application to the Abstracters' Board of Examiners for
24 registration.

25 (b) The application shall:

26 (1) Be in a form prepared by the board;

27 (2) Contain all information necessary to assist the board
28 in registration; and

29 (3) Contain all information necessary to determine if the
30 applicant is of good moral character.

31 (c)(1) Each application shall be accompanied by an examination fee in
32 the sum of twenty-five dollars (\$25.00).

33 (2) However, any Arkansas resident authorized to practice law in
34 the state shall be issued a title insurance agent license upon application,
35 without examination or payment of a fee.

36 (d) After receipt of an application and fee, the board shall notify the

1 applicant by mail of the time and place of the next scheduled examination.

2
3 SECTION 8. Examination for certificate of registration.

4 The examination shall be in the form of written interrogatories prepared
5 by the board to determine the proficiency of the applicant.

6
7 SECTION 9. Issuance of certificate of registration.

8 (a)(1) If the applicant satisfactorily passes the examination and is of
9 good moral character, the applicant shall be certified as a licensed title
10 insurance agent, and a certificate of registration shall be issued to the
11 applicant.

12 (2) The privileges granted by the certificate shall continue
13 unless the certificate is revoked or otherwise surrendered to the board.

14 (b)(1) The certificate shall be in a form prescribed by the board and
15 shall attest that the holder possesses the knowledge, skill, ability, and
16 understanding of title and is a licensed title insurance agent.

17 (2) The certificate shall be prominently displayed in the office
18 where the person is employed.

19 (c)(1) An applicant failing to satisfy the board that he or she
20 possesses the qualifications or proficiency to become a licensed title
21 insurance agent may reapply for registration upon resubmission of application
22 and tender of the fee.

23 (2) No application shall be submitted sooner than six (6) months
24 following the date on which the previous examination was administered to the
25 applicant unless waiver is granted by the board under rules and regulations
26 promulgated by the board.

27 (d) Each holder of a certificate shall pay an annual fee to be set by
28 the board.

29
30 SECTION 10. Temporary certificate of registration.

31 (a) Upon application, the board may grant a temporary certificate of
32 registration to:

33 (1) Any person succeeding to the ownership of any licensed title
34 insurance plant or business by any means other than purchase; or

35 (2) Any person, by reason of the incapacity of the licensed title
36 insurance agent or owner of any licensed title insurance plant or business,

1 who is required to assume the operation of the licensed title insurance plant
2 or business.

3 (b) The fee for a temporary certificate of registration shall be
4 fifteen dollars (\$15.00).

5 (c)(1) The temporary certificate of registration shall expire six (6)
6 months after its issuance or upon the expiration of sixty (60) days following
7 the next regularly scheduled examination, whichever period is longer.

8 (2) If a temporary certificate of registration is issued, the
9 board shall notify the applicant by mail of the time and place of the
10 examination.

11
12 SECTION 11. Unlicensed assistants.

13 Nothing in this act shall be construed as prohibiting any person, firm,
14 or corporation holding a valid existing certificate of authority from
15 employing unlicensed clerical and stenographic assistants necessary to the
16 conduct of its business.

17
18 SECTION 12. Certificate of authority required.

19 Beginning January 1, 2002, no person, firm, or corporation shall engage
20 in the title insurance business in this state until a certificate of authority
21 has been issued to the person, firm, or corporation by the board.

22
23 SECTION 13. Application and issuance of certificate of authority.

24 (a) Any person, firm, or corporation desiring to engage in the title
25 insurance business in this state shall make application to the board for a
26 certificate of authority.

27 (b) The application shall:

28 (1) Be in a form prepared by the board;

29 (2) Contain all information as may be necessary to assist the
30 board in determining whether the applicant has complied with the provisions of
31 this act; and

32 (3) Be accompanied by an application fee in the sum of twenty-
33 five dollars (\$25.00).

34 (c) The applicant shall furnish proof that the applicant is or has
35 employed a licensed title insurance agent.

36 (d)(1) Upon proper application and approval by the board, the board

1 shall issue:

2 (A) A certificate of authority; and

3 (B) A title plant license, if applicable.

4 (2) Certificates of authority and licenses, if any, shall be
5 prominently displayed in the office of the applicant.

7 SECTION 14. Expiration and renewal of the certificate of authority.

8 (a)(1) All certificates of authority issued under this act shall expire
9 on the same date, irrespective of when issued.

10 (2) Expiration dates of the certificates, either renewal or
11 original, shall be July 1 of each year.

12 (b) Valid and existing certificates of authority shall be renewed for a
13 one (1) year period upon payment of a renewal fee in a sum to be set by the
14 board.

15 (c)(1)(A) No more than sixty (60) days nor less than thirty (30) days
16 prior to the expiration date of the certificate issued, the board shall mail a
17 notice of expiration and application for renewal to each certificate holder.

18 (B) The notice and application shall be in a form prepared
19 by the board.

20 (2) Upon determination by the board of the applicant's compliance
21 with this act, a renewal certificate of authority shall be issued to the
22 applicant.

23 (d)(1)(A) If a holder of a certificate of authority fails to apply for
24 renewal or to pay the fee required, the board shall mail the holder a notice
25 that the holder's certificate has expired and is no longer valid authority for
26 the person, firm, or corporation to engage in the title insurance business.

27 (B)(i) The notice shall be mailed not more than thirty (30)
28 days following the certificate expiration date.

29 (ii) The holder shall be granted sixty (60) days from
30 the date of postage within which to file his or her application for renewal
31 and pay the required fee.

32 (2) The name of any holder failing to renew his or her authority
33 pursuant to the terms of this subsection (d) shall be stricken from the
34 records of the board, and he or she shall no longer engage in the title
35 insurance business in this state until so authorized by the board.

1 SECTION 15. Access to public records.

2 (a) Holders of certificates of authority and their employees in the
3 conduct of the title insurance business, shall have access to the public
4 records affecting title to real property in any office of any city or county
5 of the state.

6 (b) No persons other than the custodian of the records shall remove or
7 alter real estate records from the recorder's office.

8
9 SECTION 16. Grounds for revocation of certificates.

10 (a) After a hearing, the board may cancel and revoke any certificate of
11 registration issued to any person, firm, or corporation under this act:

12 (1) For a violation of any provision of this act;

13 (2) Upon a conviction of the holder of a certificate of a crime
14 involving moral turpitude; or

15 (3) If the board finds the holder guilty of habitual carelessness
16 or fraudulent practices in the conduct of the title insurance business.

17 (b) After a hearing, the board may cancel and revoke any certificate of
18 authority issued to any person, firm, or corporation under this act for:

19 (1) Failure to utilize or properly maintain, if applicable, a
20 licensed title insurance plant;

21 (2) Failure to have employed a licensed title insurance agent as
22 provided in this act; or

23 (3) Otherwise violating any of the provisions of this act.

24
25 SECTION 17. Procedure and appeal for revocation of certificates.

26 (a)(1) Upon a verified complaint being filed with the board or upon the
27 board's own motion filing a complaint, the board shall immediately notify the
28 holder of the certificate in writing by registered mail return receipt
29 requested of the filing of the complaint and serve the holder with a copy of
30 the complaint.

31 (2)(A) The board shall at the same time require the holder of the
32 certificate to appear before it to show cause why the certificate should not
33 be cancelled and revoked.

34 (B) The hearing shall be held on a day fixed by the board
35 not less than twenty (20) days nor more than forty (40) days from the date of
36 the service of the complaint on the holder of the certificate.

1 (3) Under the hand of its president, the board may subpoena
2 witnesses, compel their appearance, and require the production of books,
3 papers, and other documents.

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

6 (5)(A) If any person refuses to obey a subpoena, or refuses to
7 testify or to produce any books, papers, or other documents demanded, the
8 board may present its petition to any court of record, setting forth the
9 facts.

10 (B) The court shall issue its subpoena to the person
11 requiring appearance in the court, testimony and production of books, papers,
12 and documents demanded.

13 (6) The holder of the certificate shall be entitled to counsel at
14 any hearing before the board or any other hearing involving revocation of the
15 holder's certificate.

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

18 (b)(1)(A) Either the respondent or the complainant may appeal the
19 decision of the board to the circuit court in the county in which the
20 respondent's place of business is located.

21 (B) The appeal shall be taken within thirty (30) days after
22 the decision of the board by causing a written notice of appeal to be served
23 on the secretary of the board and executing a bond to the State of Arkansas,
24 with surety to be approved by the secretary of the board, conditioned to pay
25 all costs that may be adjudged against the appellant.

26 (2) Upon an appeal being taken, the secretary of the board shall
27 immediately make out a return of the proceedings in the matter before the
28 board with its decision thereon and file them together with the bond and all
29 the papers pertaining thereto, including a certified record of testimony taken
30 at the hearing, with the clerk of the court to which the appeal is taken.

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

34 (4) An appeal shall stay the cancellation of any certificate of
35 registration or certificate of authority until the final decision is had on
36 appeal.

1
2 SECTION 18. Title insurance policy as evidence.

3 A photostat or verbatim copy of any title insurance policy shall be
4 admissible in evidence, if otherwise admissible, on behalf of any party
5 litigant, in any court in the State of Arkansas and shall be prima facie
6 evidence of the facts recited therein.

7
8 SECTION 19. Title Insurance.

9 (a) No title insurance policy or commitment to insure shall be issued
10 until:

11 (1) A reasonable search and examination of the title is conducted
12 by a certified title agent;

13 (2) Excepting commercial real estate transactions, a search and
14 examination made from a licensed title insurance plant; and

15 (3) A determination of insurability of title in accord with
16 sound underwriting practices is made.

17 (b)(1) Any title insurance policy or commitment shall recite:

18 (A) The license number of the title insurance agent; and

19 (B) The license number of the licensed title insurance
20 plant.

21 (2) The phrase "commercial exempt" shall be noted in place of any
22 title plant license number required on the title insurance commitment or
23 policy in a commercial real estate transaction.

24 (c) Evidence of examination of title and the determination of
25 insurability of title shall be maintained by the title insurance agent for
26 five (5) years after the title insurance policy is issued.

27 (d) Any attorney licensed to practice law in Arkansas with five (5)
28 years experience in searching real estate titles may issue title commitments
29 and policies without search and examination from a licensed title insurance
30 plant provided that:

31 (1) This authority for Arkansas licensed attorneys shall apply
32 only to title searches and the issuance of title commitments and policies for
33 real property in the county of the attorney's principal business domicile;

34 (2) Any title search is personally conducted by the attorney;

35 (3)(A) The principal business domicile of the attorney shall be
36 registered with the Abstracters' Board of Examiners and accompanied with proof

1 of either:

2 (i) Professional liability insurance coverage; or

3 (ii) Errors and omission insurance coverage.

4 (B) Coverage insuring the attorney from errors and
5 omissions in his or her title search and title insurance issuance practice
6 shall be in an amount of not less than five hundred thousand dollars
7 (\$500,000); and

8 (4) The phrase "bar exempt" shall be noted in place of any title
9 plant license number required on any title insurance commitment or policy
10 issued by an attorney under this act.

11
12 SECTION 20. Licensed title insurance plant standards.

13 (a) One (1) year from the effective date of this act, licensed title
14 insurance plants must include all records required to cover a minimum of ten
15 (10) years preceding the effective date.

16 (b) Within two (2) years from the effective date of this act, licensed
17 title insurance plants must include all records required to cover a minimum of
18 twenty (20) years preceding the effective date.

19 (c) Within three (3) years from the effective date of this act,
20 licensed title insurance plants must include all records required to cover a
21 minimum of thirty (30) years preceding the effective date.

22 (d) These standards do not apply in any county having less than two (2)
23 licensed title insurance plants.

24
25 SECTION 21. Exemption for currently licensed abstracters.

26 Upon application, abstracters licensed by the Abstracters' Board of
27 Examiners on the effective date of this act are eligible to receive, at no
28 charge, a title insurance agent's license.

29
30 SECTION 22. Exemption for currently licensed abstract plants.

31 Upon application, abstract plants licensed by the Abstracters' Board of
32 Examiners are eligible to receive, at no charge, a title insurance plant
33 license under this act in the counties they are licensed in on the effective
34 date of this act.

35
36 SECTION 23. Arkansas Code 17-11-201(b) is amended to read as follows:

1 (b)(1) The board shall consist of ~~three (3)~~ seven (7) members, appointed
2 by the Governor, subject to confirmation by the Senate, for a term of six (6)
3 years.

4 ~~(1)(2)(A)~~ Two (2) members shall have been actively engaged in the
5 making of abstracts of real estate titles in the state for a period of five
6 (5) years prior to appointment.

7 ~~(2)(B)~~ One (1) member shall be knowledgeable of the
8 abstract business.

9 (C) Two (2) members shall have been actively engaged in the
10 real estate title insurance business in the state for a period of five (5)
11 years prior to appointment.

12 (D) One (1) member shall be knowledgeable of the real
13 estate title insurance business.

14 (E) One (1) member shall be a consumer representative.