

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 84th General Assembly  
3 Regular Session, 2003

# A Bill

SENATE BILL 914

4  
5 By: Senator J. Bookout  
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7

## For An Act To Be Entitled

8  
9 AN ACT TO PROVIDE LICENSING STANDARDS FOR TITLE  
10 INSURANCE PLANTS; AND FOR OTHER PURPOSES.  
11

### Subtitle

12  
13 AN ACT TO PROVIDE LICENSING STANDARDS  
14 FOR TITLE INSURANCE PLANTS.  
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17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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19 SECTION 1. Title.

20 This act may be cited as the "Title Insurance Plant Standards and  
21 Licensing Act."  
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23 SECTION 2. Definitions.

24 As used in this act:

25 (1) "Board" means the Title Insurance Agents Licensing Board.

26 (2) "Certificate of authority" means the authorization to engage in  
27 the title insurance business in the State of Arkansas granted to a person,  
28 firm, or corporation;

29 (3) "Holder" means any person, firm, or corporation that has been  
30 issued a certificate to conduct title insurance business under this act.

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

32 (A) In which an entry has been made of information related to  
33 constructive notice required under Arkansas law for matters affecting title  
34 to all real property surface rights, any interest therein, or encumbrances  
35 thereon;

36 (B) Which are filed or recorded in the county or district for



1 which the licensed title insurance plant is maintained; and  
2 (C) Which is updated within thirty (30) days of the date of  
3 issuance of any title commitment or policy.

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5 SECTION 3. Duties and authority of the Arkansas Title Insurance  
6 Agents' Licensing Board.

7 (a) The Arkansas Title Insurance Agents' Licensing Board shall examine  
8 and license title insurance plants in the State of Arkansas.

9 (b) The board may promulgate all rules and regulations necessary to  
10 administer and enforce this act.

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12 SECTION 4. Certificate of authority required.

13 Beginning January 1, 2004, no person, firm, or corporation shall engage  
14 in the title insurance business in Arkansas unless the Arkansas Title  
15 Insurance Agents' Licensing Board has issued to the person, firm, or  
16 corporation a certificate of authority.

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18 SECTION 5. Application and issuance of certificate of authority.

19 (a) Beginning October 1, 2004, any person, firm, or corporation who  
20 wishes to engage in the title insurance business in Arkansas shall submit to  
21 the Arkansas Title Insurance Agents' Licensing Board an application for a  
22 certificate of authority.

23 (b) The application shall:

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

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

28 (3) Be accompanied by an application fee of twenty-five dollars  
29 (\$25.00).

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

32 (d)(1) Upon proper application and approval by the board, the board  
33 shall issue:

34 (A) A certificate of authority; and

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

36 (2) A holder shall conspicuously display in the his or her place

1 of business any certificate of authority issued under this act and any  
 2 license otherwise issued to him or her.

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 4 SECTION 6. Expiration and renewal of the certificate of authority.

5 (a)(1) Any certificate of authority issued under this act shall expire  
 6 on July 1 of each year, regardless of when it was issued and regardless of  
 7 whether it is an original certificate or certificate of renewal.

8 (b) Valid and existing certificates of authority shall be renewed for  
 9 a one (1) year period upon payment of a renewal fee as determined by the  
 10 Arkansas Title Insurance Agents' Licensing Board.

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

14 (B) The notice and application shall be in a form  
 15 determined by the board.

16 (2) If the board determines that a holder has complied with this  
 17 act, it shall issue a renewal certificate of authority to the holder.

18 (d)(1)(A) If a holder fails to apply for renewal or to pay the renewal  
 19 fee required, the board shall mail the holder a notice stating that the  
 20 holder's certificate has expired and that the holder is not authorized to  
 21 engage in the title insurance business in Arkansas.

22 (B)(i) The notice shall be mailed not more than thirty  
 23 (30) days following the certificate's expiration date.

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

27 (2) If a holder fails to renew its certificate of authority  
 28 under subsection (d) of this section, the board shall strike his or her name  
 29 from the board's records, and the holder shall not engage in the title  
 30 insurance business in this state until further authorized by the board.

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 32 SECTION 7. Access to public records.

33 (a) Holders of certificates of authority and their employees in the  
 34 conduct of the title insurance business shall have access to the public  
 35 records affecting title to real property in any office of any city or county  
 36 of the state.

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

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4       SECTION 8. Grounds for revocation of certificates.

5       After a hearing, the Arkansas Title Insurance Agents' Licensing Board  
6 may cancel and revoke any certificate of registration issued to a holder  
7 under this act:

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

9               (2) Upon a conviction of the holder of a certificate of a crime  
10 involving moral turpitude;

11              (3) If the board finds the holder guilty of habitual  
12 carelessness or fraudulent practices in the conduct of the title insurance  
13 business;

14              (4) For failure to utilize or properly maintain a licensed title  
15 insurance plant;

16              (5) Failure to have employed a licensed title insurance agent  
17 under this act; or

18              (6) For otherwise violating any of the provisions of this act.

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20       SECTION 9. Procedure and appeal for revocation of certificates.

21       (a)(1) If the Arkansas Title Insurance Agents' Licensing Board  
22 receives a verified complaint or if the board, on its own motion, files a  
23 complaint, the board shall:

24                   (A) Immediately serve the holder with a copy of the  
25 complaint by registered mail return receipt requested; and

26                   (B) Require the holder of the certificate to appear before  
27 the board to show cause why the certificate should not be canceled and  
28 revoked.

29              (2) The hearing shall be held on a day fixed by the board not  
30 less than twenty (20) days, nor more than forty (40) days from the date that  
31 the complaint is served on the holder.

32              (3) The board may subpoena witnesses and require the production  
33 of books, papers, and other documents.

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

36              (5)(A) If any person refuses to appear as a witness when

1 subpeonaed, or refuses to testify or produce any books, papers, or other  
 2 documents demanded, the board may petition to any court of competent  
 3 jurisdiction in Arkansas to compel compliance with the board's orders.

4 (B) The court shall issue a subpoena to the person  
 5 requiring appearance in the court, testimony, or the production of the books,  
 6 papers, or documents the board demanded.

7 (6) A holder may be represented by counsel before the board or  
 8 in any other proceeding involving the revocation of the holder's certificate.

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

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

14 (B) An appeal may be taken within thirty (30) days after  
 15 the board's decision by serving a written notice of appeal with the secretary  
 16 of the board and by executing with the secretary of the board a bond to the  
 17 State of Arkansas, with surety to be approved by the secretary of the board,  
 18 and conditioned to pay all costs that may be adjudged against the appellant.

19 (2) If the secretary of the board receives notification that an  
 20 appeal has been taken, the secretary shall transmit to the court to which the  
 21 appeal is taken within the time period for filing an appeal to that court, a  
 22 transcript of the proceedings, the board's written decision, the bond filed,  
 23 and all the papers pertaining thereto.

24 (3)(A) The court shall hear the appeal as a trial de novo.

25 (B) The original or photocopy of any title insurance  
 26 policy shall be admissible into evidence, on behalf of any party litigant, if  
 27 otherwise admissible, and shall be prima facie evidence of the facts recited  
 28 in the title insurance policy.

29 (c) The costs of the appeal, including the cost of  
 30 furnishing testimony, shall be taxed as the court may direct.

31 (4) An appeal shall stay the cancellation of any certificate of  
 32 registration or certificate of authority until the final decision is had on  
 33 appeal.

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 35 SECTION 10. Title Insurance.

36 (a) No title insurance policy or commitment to insure shall be issued

1 until:

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

4 (2) A search and examination made from a licensed title  
 5 insurance plant; and

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

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

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

10 (B) The license number of the licensed title insurance  
 11 plant.

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

15 (d)(1) Any attorney licensed to practice law in Arkansas with five (5)  
 16 years experience in searching real estate titles, may issue title commitments  
 17 and policies without search and examination from a licensed title insurance  
 18 plant only if:

19 (A) The attorney is only conducting a title search or  
 20 issuing title commitments and policies for real property in the county of the  
 21 attorney's principal business domicile;

22 (B) The attorney personally conducts the title search; and

23 (C)(i) The attorney's principal business domicile is  
 24 registered with the Abstracters' Board of Examiners and is accompanied with  
 25 proof that the attorney has procured professional liability insurance  
 26 coverage or errors and omission insurance coverage of not less than five  
 27 hundred thousand dollars (\$500,000).

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

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32 SECTION 11. Licensed title insurance plant standards.

33 (a) No later than one (1) year after the effective date of this act,  
 34 licensed title insurance plants must include all records required to cover a  
 35 minimum of ten (10) years preceding the effective date.

36 (b) No later than two (2) years after the effective date of the act,

1 licensed title insurance plants must include all records required to cover a  
2 minimum of twenty (20) years preceding the effective date.

3 (c) No later than three (3) years after the effective date of this  
4 act, licensed title insurance plants must include all records required to  
5 cover a minimum of twenty-five (25) years preceding the effective date.

6 (d) This section does not apply in any county having fewer than two  
7 (2) licensed title insurance plants.

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9 SECTION 12. Exemption for currently licensed abstract plants.

10 Any abstract plants licensed by the Abstracters' Board of Examiners as  
11 of the effective date of this act may apply to the Arkansas Title Insurance  
12 Agents' Licensing Board to receive, at no charge, a title insurance plant  
13 license in each county for which the abstract plant is licensed on the  
14 effective date of this act.

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