

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 85th General Assembly
3 Regular Session, 2005

A Bill

HOUSE BILL 2678

4
5 By: Representatives Cowling, Norton, Ormond
6 By: Senator J. Jeffress

For An Act To Be Entitled

10 AN ACT TO ESTABLISH THE ARKANSAS TITLE INSURANCE
11 AND ESCROW AGENTS RECOVERY FUND; TO INCREASE THE
12 SUPERVISORY AUTHORITY OF THE ARKANSAS TITLE
13 INSURANCE AGENTS' LICENSING BOARD; AND FOR OTHER
14 PURPOSES.

Subtitle

16 AN ACT TO ESTABLISH THE ARKANSAS TITLE
17 INSURANCE AND ESCROW AGENTS RECOVERY
18 FUND; TO INCREASE THE SUPERVISORY
19 AUTHORITY OF THE ARKANSAS TITLE
20 INSURANCE AGENTS' LICENSING BOARD.
21

22
23
24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

25
26 SECTION 1. Arkansas Code Title 23, Chapter 103 is amended to add an
27 additional subchapter to read as follows:

28 23-103-501. Title – Purpose.

29 (a) This subchapter shall be known and may be cited as the "Arkansas
30 Title Insurance and Escrow Agents' Recovery Fund Act".

31 (b) The purpose of this subchapter is to provide:

32 (1) A source of recovery for persons injured by the wrongful
33 acts or omissions of title insurers, title insurance companies, title
34 insurance agents, escrow companies, or escrow agents; and

35 (2) Increased authority to the Arkansas Title Insurance and
36 Escrow Agents' Licensing Board to:



1 (A) Discipline licensees whose acts or omissions injure
2 persons who utilize the services of title insurance and escrow agents; and

3 (B) Provide a source of recovery for persons injured by
4 the wrongful acts or omissions of title insurers, title insurance companies,
5 title insurance agents, escrow companies, or escrow agents.

6
7 23-103-502. Construction.

8 Nothing in this subchapter shall be construed to limit:

9 (1) The pursuit of any other available civil or criminal remedy;
10 or

11 (2) The authority of the Arkansas Title Insurance and Escrow
12 Agents' Licensing Board to impose fines and sanctions upon its licensees.

13
14 23-103-503. Creation of recovery fund – Administration.

15 (a)(1) There is established on the books of the Treasurer of State,
16 Auditor of State, and the Chief Financial Officer of the State a fund to be
17 known as the “Arkansas Title Insurance and Escrow Agents’ Recovery Fund”.

18 (2) The fund shall be maintained and administered by the
19 Arkansas Title Insurance and Escrow Agents’ Licensing Board as provided in
20 this subchapter.

21 (b) The amount of the fund:

22 (1) Shall be reviewed annually by the board to determine its
23 adequacy to pay the anticipated claims of persons injured by the wrongful
24 acts or omissions of title insurance agents; and

25 (2) May be increased by the board up to a maximum of three
26 million dollars (\$3,000,000) if necessary to ensure the solvency of the fund.

27
28 23-103-504. Recovery fund fees.

29 (a) In addition to the other fees provided for in this chapter and
30 regulations of the Arkansas Title Insurance Agents’ Licensing Board, each
31 licensee shall pay to the board for the benefit of the Title Insurance and
32 Escrow Agents’ Recovery Fund a fee of twenty-five dollars (\$25.00) per
33 initial license fee or annual license renewal.

34 (b) By January 31 each title insurer shall pay an annual recovery fund
35 fee of five thousand dollars (\$5,000) to the board for the benefit of the
36 recovery fund.

1 (c)(1) Upon closing a sale or refinancing of real property, an escrow
 2 agent licensed in this state shall collect the following recovery fund fees:

3 (A) One dollar (\$1.00) as part of the seller's or owner's
 4 closing costs;

5 (B) One dollar (\$1.00) as part of the buyer's closing
 6 costs, if applicable; and

7 (C) One dollar (\$1.00) from the escrow agent.

8 (2) The recovery fund fees shall be remitted quarterly by the
 9 escrow agent to the Treasurer of State for deposit into the recovery fund.

10 (d) Any fees collected under this section that exceed the maximum
 11 amount of the fund under § 23-103-503 shall be paid by the Treasurer of State
 12 into the General Revenue Fund Account of the State Apportionment Fund.

13
 14 23-103-505. Recovery fund fees – Use of fund.

15 (a) The assets of the fund may be invested and reinvested as the
 16 Arkansas Title Insurance and Escrow Agents' Licensing Board may determine,
 17 with the advice of the State Board of Finance.

18 (b) Any amounts in the fund shall be used exclusively by the Arkansas
 19 Title Insurance Agents' Licensing Board to pay:

20 (1) Damages to persons injured by the wrongful acts or omissions
 21 of title insurers, title insurance companies, title insurance agents, escrow
 22 companies, or escrow agents; and

23 (2) All expenses of the Arkansas Title Insurance and Escrow
 24 Agents' Licensing Board directly related to the administration of this
 25 subchapter.

26
 27 23-103-506. Claims of aggrieved parties – Procedure.

28 (a) Before any claim from the Arkansas Title Insurance and Escrow
 29 Agents' Recovery Fund may be considered, a claimant shall provide to the
 30 Arkansas Title Insurance and Escrow Agents' Licensing Board:

31 (1) A certified copy of a final entry of judgment by a court of
 32 competent jurisdiction or an arbitrator against:

33 (A) A title insurer;

34 (B) A title insurance company;

35 (C) A title insurance agent;

36 (D) An escrow company; or

1 (E) An escrow agent;

2 (2) An abstract of the proximate cause of the claim and the
3 findings of the court or arbitrator; and

4 (3) The affidavit of the claimant certifying:

5 (A) That forty-five (45) days have elapsed since the entry
6 of final judgment;

7 (B) To what extent the judgment has been paid; and

8 (C) That no appeal of the judgment has been filed or is
9 pending.

10 (b)(1) Upon receipt of all documentation of a claim, the board shall
11 determine the proper award, if any, from the recovery fund in accordance with
12 policies and procedures it shall adopt.

13 (2) The board shall not award punitive damages.

14 (3) Interest shall not accrue upon the award determined by the
15 board.

16 (c) If the amount of the award has not been paid within thirty (30)
17 days following entry of the board's final order in the matter and the order
18 has not been appealed to the circuit court, then to the extent permitted
19 under subsection (d) of this section, the board shall pay the award from the
20 recovery fund.

21 (d)(1) The board shall not pay damages and the fund shall not be
22 obligated in excess of the lesser of:

23 (A) One hundred thousand dollars (\$100,000) for any one
24 (1) wrongful act or omission or two hundred fifty thousand dollars (\$250,000)
25 for a continuing series of wrongful acts or omissions, regardless of the
26 number of parties who participated in the act, omission, or continuing series
27 of acts or omissions; or

28 (B) The fund balance.

29 (2) Whether or not a claim is one (1) wrongful act or omission
30 or part of a continuing series of wrongful acts or omissions shall be
31 determined by the board.

32 (e) When unsatisfied or pending claims exceed the limits payable under
33 subsection (d) of this section, the board may allocate the fund balance among
34 the aggrieved parties.

35
36 23-103-507. Jurisdiction of circuit court.

1 (a) The circuit court's jurisdiction over the Arkansas Title Insurance
 2 and Escrow Agents' Recovery Fund shall be limited to appeals from the orders
 3 of the Arkansas Title Insurance and Escrow Agents' Licensing Board under the
 4 Arkansas Administrative Procedure Act, § 25-15-201 et seq.

5 (b) The circuit court shall have no jurisdiction or authority to order
 6 payments from the fund in excess of:

7 (1) The amount determined by the board; or

8 (2) The limits set forth in § 23-103-506.

9
 10 23-103-508. Subrogation – Suspension of license.

11 Upon the payment of any amount of money by the Arkansas Title Insurance
 12 and Escrow Agents' Licensing Board under § 23-103-506:

13 (1) The recipient of a payment to the extent of the payment
 14 shall assign to the board all rights and claims the recipient may have
 15 against the licensee, licensees, or other party or parties involved;

16 (2) The board shall be subrogated to the extent of the payment
 17 to all of the rights of the recipient of the payment; and

18 (3)(A) In addition to any other disciplinary action taken
 19 against a licensee that causes the board to make a payment from the recovery
 20 fund, the licensee's license shall be immediately suspended until the board
 21 has been completely reimbursed for the payment, plus interest at a rate to be
 22 determined by the board.

23 (B) The interest rate shall not exceed ten percent (10%)
 24 per annum.

25
 26 SECTION 2. Arkansas Code Title 23, Chapter 103, Subchapter 1 is
 27 amended to read as follows:

28 23-103-101. Title - Purpose.

29 (a) This chapter shall be known and may be cited as the "Arkansas
 30 Title Insurance and Escrow Agents' Licensing Act".

31 (b) The purpose of this chapter is to provide the procedures for the
 32 licensing and regulation of title insurance and escrow agents.

33
 34 23-103-102. Definitions.

35 As used in this chapter:

36 (1) "Business entity" means a corporation, firm, association,

1 partnership, joint venture, limited liability company, limited liability
 2 partnership, or other legal business entity;

3 (2)(A) "Closing" means the performance of acts necessary to
 4 complete a real estate transaction.

5 (B) "Closing" includes the engagement of a title insurance
 6 or escrow agent to perform services in contemplation of completing a real
 7 estate transaction;

8 ~~(2)(3)~~ "Commitment" means a contract or binder reporting the
 9 state of the title to the real property described and committing the title
 10 insurer to issue a contract of title insurance upon compliance with the
 11 requirements stated and subject to any exceptions set forth;

12 (4) "Escrow agent" means a person that conducts the closing of a
 13 real estate transaction or holds a deed, contract, other instrument, money,
 14 or property in escrow for the closing;

15 ~~(3)(5)~~ "Home state" means the District of Columbia and any state
 16 or territory of the United States in which a title insurance agent maintains
 17 a principal place of residence or principal place of business and is licensed
 18 to act as a title insurance agent;

19 ~~(4)(6)~~ "Inactive signing title insurance agent" means a person
 20 having a signing agent's license that has been placed in inactive status by
 21 the Arkansas Title Insurance Agents' Licensing Board;

22 ~~(5)(7)~~ "Issuing title insurance agent" means a person authorized
 23 to issue commitments and contracts of title insurance and to collect premiums
 24 in the name of a title insurer;

25 ~~(6)(8)~~ "Licensee" means a person that obtains a license or a
 26 renewal of a license under this chapter;

27 ~~(7)(9)~~ "Person" means any natural person, firm, corporation,
 28 partnership, association, limited liability company, limited liability
 29 partnership, or other business entity;

30 (10) "Referring party" means a person that recommends a title
 31 insurance or escrow agent or company and is a:

32 (A) Broker, agent, employee, or owner of a real estate
 33 company or mortgage lender;

34 (B) Loan officer;

35 (C) Builder; or

36 (D) Person with influence over the selection of a title

1 insurance or escrow agent or company based upon the nature of the
 2 transaction;

3 ~~(8)~~(11) "Sell" means to exchange a contract of title insurance
 4 for valuable consideration on behalf of a title insurer;

5 ~~(9)~~(12) "Signing title insurance agent" means a person
 6 authorized under this chapter to sign commitments and contracts of title
 7 insurance;

8 ~~(10)~~(13) "Title insurance" means the insurance defined in § 23-
 9 62-108;

10 ~~(11)~~(14) "Title insurance agent" means a person required to be
 11 licensed under the laws of the State of Arkansas to sell title insurance; and

12 ~~(12)~~(15) "Title insurer" means a person authorized by the State
 13 of Arkansas to underwrite and effectuate a contract of title insurance.

14
 15 23-103-103. Penalties.

16 (a)(1) Any person violating any of the provisions of this chapter
 17 shall be guilty of a misdemeanor and upon conviction shall be punished by a
 18 fine of not less than five hundred dollars (\$500) nor more than one thousand
 19 dollars (\$1,000) for each offense.

20 (2) Each succeeding day on which this chapter is violated shall
 21 be a separate offense.

22 (b) If any title insurance or escrow agent shall willfully and
 23 knowingly falsify any public record or information required to be furnished,
 24 the title insurance or escrow agent shall be guilty of a Class D felony in
 25 addition to any civil liability.

26
 27 23-103-104. Rebates and other inducements prohibited.

28 (a)(1) As an inducement to or from a referring party to obtain any
 29 title insurance or closing business, no title insurance agent or escrow agent
 30 shall pay, allow, accept, give, receive, or request directly or indirectly
 31 any:

32 (A) Rebate, reduction, referral fee, or abatement of any
 33 rate or charge made incident to the performance of title or closing services;

34 (B) Special favor or advantage not generally available to
 35 others of the same classification; or

36 (C) Money or other consideration.

1 (2) A "charge made incident to the performance of title or
 2 closing services" includes, but is not limited to, escrow, settlement,
 3 closing, and title charges.

4 (b) No referring party shall pay, allow, accept, give, receive, or
 5 request directly or indirectly any rebate, reduction, abatement of any
 6 charge, special favor, advantage, referral fee, monetary consideration, or
 7 inducement under subsection (a) of this section.

8 (c) Nothing in this section prohibits or limits any expense, item of
 9 value, or the division of rates and charges between or among a title
 10 insurance company and its agent, or one (1) or more title insurance companies
 11 and one (1) or more title insurance agents, if the expense, item of value, or
 12 the division of rates and charges does not constitute an unlawful rebate
 13 under the provisions of this section and is not in payment of a forwarding
 14 fee or a finder's fee.

15
 16 23-103-105. Controlled business.

17 (a) As used in this section:

18 (1) "Associate" means any:

19 (A) Firm, association, organization, partnership, business
 20 trust, corporation, or other legal entity organized for profit in which a
 21 producer is a director, officer, employee, contract agent, partner, or owner
 22 of a financial interest;

23 (B) Spouse or relative within the second degree by blood
 24 or marriage of a producer who is a natural person;

25 (C) Director, officer, employee, or agent of a producer or
 26 associate;

27 (D) Legal entity that controls, is controlled by, or is
 28 under common control with a producer or associate; or

29 (E) Natural person or legal entity with which a producer
 30 or associate has any agreement, arrangement, or understanding or pursues any
 31 course of conduct the purpose or effect of which is to evade the provisions
 32 of this section;

33 (2) "Board" means the Arkansas Title Insurance and Escrow
 34 Agents' Licensing Board;

35 (3) "Controlled business" means any business referred to a title
 36 insurer, title insurance agent, or escrow agent by a producer or associate

1 with a financial interest in the business of the title insurer, title
 2 insurance agent, or escrow agent;

3 (4) "Controlling party" means any person, entity, producer,
 4 associate, contractor, director, officer, employee, or agent that refers
 5 controlled business to a title insurance or escrow company or agent;

6 (5) "Financial interest" means any direct or indirect legal or
 7 beneficial interest, including, but not limited to, an ownership, marketing
 8 agreement, or rental contract interest:

9 (A) That entitles the holder of the interest to any of the
 10 net profits or net worth of the entity in which the interest is held; or

11 (B) If the primary purpose of the acquisition or retention
 12 of the interest is the financial benefit to be obtained as a consequence of
 13 the interest from the referral of title or closing business;

14 (6) "Person" means any natural person, partnership, association,
 15 cooperative, corporation, trust, or other legal entity;

16 (7) "Producer" means any person, including any officer,
 17 director, or owner of any equity or capital, or both, of any person engaged
 18 in this state in the trade, business, occupation, or profession of:

19 (A) Buying or selling interests in real property;

20 (B) Making loans secured by interests in real property; or

21 (C) Acting as broker, agent, or representative for a
 22 person that:

23 (i) Buys or sells any interest in real property; or

24 (ii) Lends or borrows money with any interest as
 25 security; and

26 (8) "Refer" means to direct or influence the direction of title
 27 insurance or closing business, whether or not the consent or approval of any
 28 other person is sought or obtained with respect to the direction of the
 29 business.

30 (b)(1) No title insurer, title insurance agent, or escrow agent shall
 31 accept any order from or provide title or closing services to a person if the
 32 insurer or agent knows or has reason to believe that the order for services
 33 results from controlled business unless:

34 (A) The controlling party has disclosed under subsection
 35 (h) of this section to its client or the referred party, if other than its
 36 client, the financial interest of the controlling party, producer, or

1 associate referring the business;

2 (B) The title insurer, title insurance agent, or escrow
3 agent obtains a copy of the disclosure from the controlling party prior to
4 accepting the order from the referred party; and

5 (C) Fifty percent (50%) or more of the closed orders of
6 the title insurer, title insurance agent, or escrow agent during the twelve
7 (12) full calendar months immediately preceding the month in which the
8 transaction takes place is not derived from controlled business.

9 (2) The prohibitions contained in this subsection (b) shall not
10 apply to transactions involving real estate located in a county that has a
11 population, as shown by the most recent decennial census, of ten thousand
12 (10,000) or fewer.

13 (3) The disclosure shall include a statement that the consumer
14 is not obligated to use the title insurer or agent in which the referring
15 producer, associate, or controlling party has a financial interest.

16 (4) A title insurer, title insurance agent, escrow agent, or
17 controlling party required to provide or obtain the written disclosure shall:

18 (A) Obtain the written disclosure signed and dated by the
19 person referred prior to opening an order or any agreement to use the
20 services of the insurer or agent; and

21 (B) Retain the written disclosure for a period of five (5)
22 years in a separate, readily accessible file subject to inspection by the
23 board upon request.

24 (c) No licensee or controlling party shall exchange, manipulate, or
25 swap the controlled business of a licensee or controlling party for the
26 business of another licensee or controlling party in circumvention of
27 subsection (b) of this section.

28 (d) No controlling party shall require directly or indirectly as a
29 condition to selling or furnishing any other person any loan, loan extension,
30 credit, sale, property, contract, lease, or service that the other person
31 shall purchase title or closing services of any kind through any title or
32 escrow agent or title insurer if the controlling party has a financial
33 interest in the agent or insurer.

34 (e) No title insurer, title insurance agent, or escrow agent shall
35 accept any order or perform any title or closing services for any person it
36 knows or has reason to believe entered a contract for services with the name

1 of the title or escrow company preprinted in the contract prior to the buyer
 2 or seller selecting a title or escrow company.

3 (f) Nothing in this section shall prohibit any producer or associate
 4 from referring title or closing business to the title insurer, title
 5 insurance agent, or escrow agent of the producer's or associate's choice,
 6 and, if the producer or associate of the producer has any financial interest
 7 in the title insurer, title insurance agent, or escrow agent, from receiving
 8 income, profits, or dividends produced or realized from the financial
 9 interest, so long as:

10 (1) The financial interest is disclosed to the purchaser of
 11 title or closing services in accordance with this section;

12 (2) The payment of income, profits, or dividends is not in
 13 exchange for the referral of business;

14 (3) The receipt of income, profits, or dividends constitutes
 15 only a return on the investment of the producer or associate; and

16 (4) Fifty percent (50%) or more of the closed orders of the
 17 title insurer, title insurance agent, or escrow agent during the twelve (12)
 18 full months immediately preceding the month in which the transaction takes
 19 place is not derived from controlled business.

20 (g)(1) Any title insurer, title insurance agent, or escrow agent that
 21 accepts an order for title or closing services knowing that it is in
 22 violation of this section, in addition to any other action which may be taken
 23 by the Arkansas Title Insurance and Escrow Agents' Licensing Board, shall be
 24 subject to a fine by the board in an amount not to exceed ten (10) times the
 25 total amount charged for title and closing services.

26 (2) A controlling party, producer, or associate that refers
 27 business in violation of this section shall be:

28 (A) Considered to be engaging in the title insurance or
 29 escrow business and subject to the fines, penalties, and sanctions applicable
 30 to title insurance and escrow agents under this chapter; and

31 (B) Reported by the board to any other licensing or
 32 regulatory body having jurisdiction over the controlling party, producer, or
 33 associate, including, but not limited to, the Real Estate Commission, the
 34 State Bank Department, and the Securities Department.

35 (3) As used in this subsection (g), "title or closing services"
 36 include, but are not limited to, the title insurance premium or premiums,

1 escrow settlement services, loan closing services, and title search fees.

2 (h) The use of the following disclosure form fulfills the disclosure
3 requirements of subsection (b) of this section:

4
5 "ARKANSAS CONTROLLED BUSINESS ARRANGEMENT DISCLOSURE

6
7 YOU ARE ENTERING INTO A CONTROLLED BUSINESS ARRANGEMENT. ARKANSAS LAW ALLOWS
8 YOU TO SELECT ANY TITLE INSURANCE COMPANY, CLOSING COMPANY, OR ESCROW AGENT
9 OF YOUR CHOOSING FOR THIS TRANSACTION.

10
11 In accordance with Arkansas law, before any commitment can be made to a title
12 insurer, title insurance agent, or escrow agent to perform services related
13 to the real estate transaction involving

14
15 _____ the following written
16 (street address, city, and property description)
17 disclosure must be made:

18
19 _____ has a _____ % financial
20 (Name of producer of business)
21 interest in _____ .
22 (Name of insurer, title agent, or escrow agent)

23
24 Because of this financial interest, a referral to

25
26 _____ to perform
27 (Name of insurer, title agent, or escrow agent)
28 services related to this real estate transaction will provide
29 the controlling party a financial benefit.

30
31 You are NOT required to use the services of any particular title insurer,
32 title agent, or escrow agent as a condition of this real estate transaction
33 and may select any title or closing company to perform any or all title and
34 closing services. You are free to shop around and determine that you are
35 receiving the best services and best rates for services related to this real
36 estate transaction.

1
2 ACKNOWLEDGEMENT

3
4 _____ DATE: _____
5 Signature of Consumer
6

7 If you have any questions regarding this disclosure, please contact the
8 Arkansas Title Insurance and Escrow Agents' Licensing Board, 501 Woodlane,
9 Suite 105-C, Little Rock, Arkansas 72201, via phone at (501)683-3630."

10
11 (i)(1) The failure of a title insurer, title insurance agent, or
12 escrow agent to comply with the requirements of this section shall be grounds
13 for the suspension or revocation of a license or other disciplinary action.

14 (2) The board may mitigate any disciplinary action if the title
15 insurer, title insurance agent, or escrow agent is found to be in substantial
16 compliance with competitive behavior as defined by the United States
17 Department of Housing and Urban Development statement of policy 1996-2.

18
19 23-103-106. Title insurance rates.

20 (a) Title insurers and title insurance agents shall charge the
21 following minimum rates for the issuance of a contract or policy of title
22 insurance:

23 (1) Three dollars and fifty cents (\$3.50) for each one thousand
24 dollars (\$1,000) of coverage up to five hundred thousand dollars (\$500,000)
25 of coverage;

26 (2) Two dollars and fifty cents (\$2.50) for each one thousand
27 dollars (\$1,000) of coverage from five hundred thousand dollars (\$500,000) up
28 to five million dollars (\$5,000,000) of coverage; and

29 (3) One dollar and fifty cents (\$1.50) for each one thousand
30 dollars (\$1,000) of coverage over five million dollars (\$5,000,000) of
31 coverage.

32 (b) Except as provided in subsection (c) of this section, title
33 insurers and title insurance agents may charge up to a maximum of two (2)
34 times the amount of the rates specified in subsection (a) of this section.

35 (c) Title insurers and title insurance agents located in counties that
36 adjoin a surrounding state may charge the rates customarily charged in the

1 surrounding state if the rates customarily charged in the surrounding state
 2 are equal to or greater than the rates charged under subsection (a) of this
 3 section.

4 (d) The rates prescribed by this section do not apply to a loan or
 5 mortgagee's policy issued simultaneously with an owner's policy by the same
 6 title insurance agent and title insurer for both policies.

7 (e)(1) Each violation of this section is punishable by a fine
 8 determined by the Arkansas Title Insurance and Escrow Agents' Licensing Board
 9 not to exceed ten thousand dollars (\$10,000).

10 (2) The fine shall be paid to the board.

11
 12 SECTION 3. Arkansas Code Title 23, Chapter 103, Subchapter 2 is
 13 amended to read as follows:

14 23-103-201. Creation - Members.

15 (a) There is created the Arkansas Title Insurance and Escrow Agents'
 16 Licensing Board.

17 (b)(1) The board shall consist of five (5) members appointed by the
 18 Governor, who shall serve four-year terms, subject to confirmation by the
 19 Senate.

20 (2) Two (2) members shall have been actively engaged in the
 21 title insurance and closing business in the state for a period of five (5)
 22 years prior to appointment and shall serve an initial term of four (4) years
 23 each.

24 (3) ~~One (1) member~~ Two (2) members shall be knowledgeable of the
 25 title insurance and closing business and shall serve an initial term of three
 26 (3) years.

27 (4) ~~Two (2) members~~ One (1) member shall be ~~citizens~~ a citizen
 28 of the State of Arkansas and shall serve an initial term of two (2) years
 29 each.

30 (c) Vacancies on the board caused by death, resignation, or otherwise
 31 shall be filled by appointment of the Governor, subject to confirmation by
 32 the Senate.

33 (d) Any member may be appointed to successive terms, but no two (2)
 34 members shall be appointed from the same county.

35 (e) Each member shall serve without compensation but shall be
 36 reimbursed for travel and expenses in accordance with § 25-16-902.

1 (f) The Insurance Commissioner or his or her designee shall serve as
 2 an ex officio nonvoting member of the board without compensation.

3
 4 23-103-202. Organization and proceedings.

5 (a)(1) The Arkansas Title Insurance and Escrow Agents' Licensing Board
 6 shall organize by the election of a chair and a secretary-treasurer.

7 (2) The chair and secretary-treasurer shall have the power to
 8 administer oaths.

9 (b) The board shall have a seal and shall have the power to compel the
 10 attendance of witnesses by issuance of subpoena.

11
 12 23-103-203. Duties and powers.

13 (a) The Arkansas Title Insurance and Escrow Agents' Licensing Board
 14 shall keep a register of the names of each applicant for licensure, with the
 15 applicant's place of business and other information as may be deemed
 16 appropriate, including a notation of the action taken by the board and the
 17 date upon which any licenses are issued. In addition, the board shall
 18 maintain other records, registers, and files as may be necessary for the
 19 proper administration of its duties under this chapter.

20 (b) The board may adopt rules and regulations as it shall deem
 21 necessary or desirable for the proper administration of its powers and duties
 22 and the carrying out of the purposes of this chapter.

23 (c) The board may employ or contract with persons as it deems
 24 necessary and desirable to discharge its duties and powers.

25 (d) In addition to its other powers, the board may institute suits and
 26 other legal proceedings in a court of competent jurisdiction in Pulaski
 27 County, Arkansas, as may be required for the enforcement of this chapter.

28 (e) If a member of the board recuses or is disqualified from
 29 participating in any proceeding before the board, the board members,
 30 including a recused or disqualified member if not disabled, shall select an
 31 appropriate replacement for purposes of the proceeding.

32
 33 23-103-204. License fees, disposition of funds, and Title Insurance
 34 Agents' Licensing Board Fund.

35 (a) The Except as provided in subsection (b) of this section, the
 36 Arkansas Title Insurance and Escrow Agents' Licensing Board shall collect

1 fees as follows:

2 (1) For an issuing agent's license, the original license fee
 3 shall not exceed three hundred fifty dollars (\$350), and the renewal fee
 4 shall not exceed three hundred fifty dollars (\$350) annually;

5 (2) For a signing agent's license, the original license fee
 6 shall not exceed twenty-five dollars (\$25.00), and the renewal fee shall not
 7 exceed twenty-five dollars (\$25.00) annually;

8 (3) For an inactive status license fee, the original fee shall
 9 not exceed twenty-five dollars (\$25.00), and the renewal fee shall not exceed
 10 twenty-five dollars (\$25.00) annually; and

11 (4) For an escrow agent's license, the original license fee
 12 shall not exceed three hundred fifty dollars (\$350), and the renewal fee
 13 shall not exceed three hundred fifty dollars (\$350) annually.

14 ~~(4)~~(5) The board shall have the authority to set reasonable fees
 15 established by regulation promulgated in accordance with the Arkansas
 16 Administrative Procedure Act, § 25-15-201 et seq., for the performance of its
 17 administrative duties, including, but not limited to, the testing of
 18 applicants for licenses, transferring licenses, replacing license
 19 certificates, and responding to inquiries from regulatory agencies in other
 20 states.

21 (b) If a person satisfies all conditions for the issuance of an
 22 issuing or signing agent's license and an escrow agent's license, then the
 23 original license fees or the renewal fees shall not exceed three hundred
 24 fifty dollars (\$350) for the issuance of both licenses.

25 ~~(b)~~(c) All fees and charges collected under this chapter shall be paid
 26 by the board within a period of thirty (30) days after their receipt together
 27 with a detailed statement to the Treasurer of State, who shall place the sums
 28 remitted to the credit of the Title Insurance and Escrow Agents' Licensing
 29 Board Fund which is created by this chapter.

30 ~~(e)~~(d) All moneys paid into State Treasury and credited to the fund, or
 31 so much as may be needed, shall be used by the board for the payment of all
 32 expenses and expenditures incurred under this chapter.

33 ~~(d)~~(e) Upon the request of the board, the Auditor of State shall draw
 34 warrants against the fund for expenses and expenditures, and the Treasurer of
 35 State shall pay the warrants out of the fund.

36

1 SECTION 4. Arkansas Code Title 23, Chapter 103, Subchapter 3 is
 2 amended to read as follows:

3 Subchapter 3 -- Title Insurance Agent Licensing Requirements.
 4 23-103-301. License Title insurance agent license required.

5 (a) On and after January 31, 2002, a person shall not sell or receive
 6 a premium for a commitment or a contract of title insurance pertaining to
 7 real property in this state unless the person is:

- 8 (1) A title insurer; or
- 9 (2) Licensed as an issuing title insurance agent under this

10 ~~chapter~~ subchapter.

11 (b) On and after January 31, 2002, no commitment or contract of title
 12 insurance pertaining to real property situated in the State of Arkansas shall
 13 be issued, sold, or exchanged unless the commitment and contract of title
 14 insurance is countersigned by a title insurance agent who is:

- 15 (1) A resident of this state; and
- 16 (2) Licensed under this ~~chapter~~ subchapter either as:

17 (A) An issuing title insurance agent whose principal place
 18 of business is in this state; or

19 (B) A signing title insurance agent for an issuing title
 20 insurance agent whose principal place of business is in this state.

21 (c) The commitment or contract of title insurance shall be based upon
 22 a title search provided directly to the issuing title insurance agent:

- 23 (1) By the individual who performed the search; or
- 24 (2) If the title search is supplied by a business entity, by a
 25 business entity whose principal place of business is in this state.

26 ~~(e)~~(d) The name of the signing agent making the countersignature and
 27 the number of the license certificate shall be printed or legibly written by
 28 hand underneath the countersignature.

29 (e) For purposes of this section, "principal place of business" means
 30 a bona fide established place of business where the primary business
 31 functions are conducted and title examination and underwriting decisions are
 32 routinely made.

33
 34 23-103-302. Application of act and construction with other laws.

35 Without any further qualification or examination, an attorney at law
 36 licensed to practice law by the State of Arkansas, upon written request to

1 the Arkansas Title Insurance and Escrow Agents' Licensing Board and payment
 2 of the original license fee, shall be immediately certified by the board as a
 3 licensed title insurance agent, and a license certificate shall be
 4 immediately issued to the attorney.

5
 6 23-103-303. License Title insurance agent license – Application.

7 (a) Any person desiring to become a licensed title insurance agent
 8 shall make application to the Arkansas Title Insurance and Escrow Agents'
 9 Licensing Board for license registration.

10 (b)(1) The application shall be in a form prepared by the board and
 11 shall contain information as may be necessary to assist the board in
 12 registration and to determine if the applicant is qualified to act as a title
 13 insurance agent.

14 (2)(A) The application shall include the applicant's consent to
 15 apply for or authorize the board to obtain state and national criminal
 16 background checks to be conducted by the Identification Bureau of the
 17 Department of Arkansas State Police and the Federal Bureau of Investigation.

18 (B) The criminal background checks shall conform to
 19 applicable federal standards and shall include the taking of fingerprints.

20 (C) The applicant shall authorize the release of the
 21 criminal background checks to the board and shall be responsible for the
 22 payment of any fee associated with the criminal background checks.

23 (D) Upon completion of the criminal background checks, the
 24 Identification Bureau of the Department of Arkansas State Police shall
 25 forward to the board all information obtained concerning the commission by
 26 the applicant of any offense listed in subdivision (b)(2)(E) of this section.

27 (E) A person convicted of a felony or crime involving
 28 moral turpitude or dishonesty in any state or federal court may not receive
 29 or hold a title insurance agent's license.

30 (F)(i) The provisions of subdivision (b)(2)(E) of this
 31 section may be waived by the board upon the request of:

32 (a) An affected applicant for licensure or
 33 registration; or

34 (b) The person holding a license or
 35 registration subject to revocation.

36 (ii) Circumstances for which a waiver may be granted

1 shall include, but not be limited to:

- 2 (a) The age at which the crime was committed;
- 3 (b) The circumstances surrounding the crime;
- 4 (c) The length of time since the crime;
- 5 (d) Subsequent work history;
- 6 (e) Employment references;
- 7 (f) Character references; and
- 8 (g) Other evidence demonstrating that the

9 applicant does not pose a threat to the public health, safety, or welfare.

10 (G)(i) Any information received by the board from the
 11 Identification Bureau of the Department of Arkansas State Police or the
 12 Federal Bureau of Investigation under this section is not available for
 13 examination except by:

14 (a) The affected applicant or the applicant's
 15 authorized representative; or

16 (b) The person whose license or registration
 17 is subject to revocation or his or her authorized representative.

18 (ii) No record, file, or document shall be removed
 19 from the custody of the Department of Arkansas State Police.

20 (iii) Only information pertaining to the person
 21 making the request may be made available to the affected applicant or the
 22 person whose license or registration is subject to revocation.

23 (iv) Rights of privilege and confidentiality
 24 established in this section shall not extend to any document created for
 25 purposes other than the criminal background checks.

26 (H) The board shall adopt rules to implement the
 27 provisions of this section.

28 (c) Except as provided in subsection (e) of this section, each
 29 application shall be accompanied by the examination fee prescribed in § 23-
 30 103-204.

31 (d) The board shall notify the applicant of the time and place of the
 32 next scheduled examination, and notice of the examination shall be given to
 33 the applicant by mail.

34 (e) If the person seeking to become a licensed title insurance agent
 35 is a business entity, the application shall show the names of all members,
 36 partners, ~~manager~~ managers, venturers, officers, and directors of the

1 business entity and shall designate each natural person who is to exercise
 2 the powers to be conferred by the license, and each natural person shall take
 3 the examination and pay the examination fee prescribed in § 23-103-204.

4
 5 23-103-304. ~~License~~ Title insurance agent license - Examination.

6 The examination shall be in the form of written interrogatories as may
 7 be prescribed by the Arkansas Title Insurance and Escrow Agents' Licensing
 8 Board from time to time to determine the proficiency of the applicant.

9
 10 23-103-305. ~~License~~ Title insurance agent license - Issuance or
 11 reapplication.

12 (a)(1) A person shall be certified as a licensed title insurance
 13 agent, and the license certificate provided for shall be issued to the person
 14 ~~If~~ if the person satisfactorily passes the examination and is found by the
 15 Arkansas Title Insurance and Escrow Agents' Licensing Board to:

16 ~~(1)(A)~~ (A) Be at least eighteen (18) years of age;

17 ~~(2)(B)~~ (B) Be a resident of the State of Arkansas for at least
 18 six (6) months;

19 ~~(3)(C)~~ (C) Have not committed any act that is a ground for
 20 denial, suspension, or revocation set forth in § 23-103-312;

21 ~~(4)(D)~~ (D) Have paid the original license fee prescribed by §
 22 23-103-204; and

23 ~~(5)(E)~~ ~~Be qualified~~ Have practiced under the supervision
 24 of a licensed issuing agent for at least one (1) year prior to taking the
 25 examination.

26 ~~the person shall be certified as a licensed title insurance agent, and the~~
 27 ~~license certificate provided for shall be issued to the person. The~~
 28 ~~privileges granted by the license certificate shall continue unless revoked~~
 29 ~~or surrendered to the board.~~

30 ~~(b)(2)~~ (2) If the person seeking to become a licensed title
 31 insurance agent is a business entity, the business entity has paid the
 32 original license fee prescribed by § 23-103-204, and the board finds each
 33 natural person designated by the business entity to exercise the powers to be
 34 conferred by the license is qualified under subdivision (a)(1) of this
 35 section+.

36 ~~(1) Is at least eighteen (18) years of age;~~

1 ~~(2) Is a resident of the State of Arkansas for at least six (6)~~
2 ~~months;~~

3 ~~(3) Has not committed any act that is a ground for denial,~~
4 ~~suspension, or revocation set forth in § 23-103-312;~~

5 ~~(4) Has paid the original license fee prescribed by § 23-103-~~
6 ~~204; and~~

7 ~~(5) Is determined by the board to be qualified,~~
8 ~~and the business entity has paid the original license fee prescribed by § 23-~~
9 ~~103-204,~~ the business entity shall be certified as a licensed title insurance
10 agent, and the license certificate provided for shall be issued to the
11 person.

12 (b) The privileges granted by the license certificate shall continue
13 unless the license is revoked, suspended, not renewed, or ~~unless the~~
14 ~~certificate is~~ surrendered to the board.

15 (c)(1) The license certificate shall be in a form prescribed by the
16 board and shall attest that the person possesses the knowledge, skill,
17 ability, and understanding to act as a title insurance agent and is
18 designated a licensed title insurance agent.

19 (2) The license certificate shall be prominently displayed in
20 the office where the person is employed.

21 (d) A person failing to satisfy the board that the applicant possesses
22 the qualifications or proficiency to become a licensed title insurance agent
23 may reapply for registration if the application is accompanied by the
24 examination fee provided for in § 23-103-204, but no application shall be
25 submitted sooner than five (5) months following the date on which the last
26 previous examination was administered to the applicant.

27 (e)(1) The license certificate shall indicate whether the license is
28 issued as:

- 29 (A) An issuing agent license;
- 30 (B) A signing agent license; ~~or~~
- 31 (C) A license for an inactive licensee; or
- 32 (D) An escrow agent's license in addition to an issuing or
33 signing agent's license.

34 (2) An issuing agent license shall be issued to an applicant if
35 the applicant:

- 36 (A) Provides evidence satisfactory to the board that the

1 applicant:

2 (i) May sell or receive premiums for commitments and
3 contracts for title insurance issued by the applicant in the name of a title
4 insurer; and

5 (ii) Is an insured under an errors and omissions
6 policy of insurance in an amount no less than two hundred fifty thousand
7 dollars (\$250,000) or other evidence of financial responsibility satisfactory
8 to the board; and

9 (B) Satisfies the requirements for licensure under
10 subsections (a) and (b) of this section.

11 (3) A signing agent license shall be issued to an applicant if
12 the applicant:

13 (A) Provides evidence satisfactory to the board that upon
14 licensure the applicant will be authorized by the issuing agent to
15 countersign commitments and contracts of title insurance on behalf of the
16 issuing agent; and

17 (B) Satisfies the requirements for licensure under
18 subsections (a) and (b) of this section.

19 (4) An inactive signing agent's license shall be issued to all
20 other applicants who otherwise would qualify for licensure under subsections
21 (a) and (b) of this section.

22

23 23-103-306. Nonresident licensing.

24 Unless denied licensure for having committed any act that is a ground
25 for denial, suspension, or revocation set forth in § 23-103-312, a
26 nonresident person shall receive a nonresident title insurance agent license
27 without complying with the examination requirement prescribed by § 23-103-304
28 if:

29 (1) The person is currently a licensed title insurance agent as
30 a resident and in good standing in that person's home state;

31 (2) The person has submitted the proper request for licensure as
32 prescribed by the Arkansas Title Insurance Agents' Licensing Board, including
33 proof of licensure in the home state, and has paid the original license fee
34 prescribed by § 23-103-204; and

35 (3) The person's home state awards nonresident title insurance
36 agent licenses to residents of this state on the same basis.

~~23-103-307. Abstractor's exemption from examination.~~

~~(a) Every person to whom the State of Arkansas has issued, as of January 1, 2001, a certificate of registration as a registered abstractor or a certificate of authority to engage in the business of abstracting shall be exempt from the examination required in § 23-103-304, and the person, including each natural person designated by a business entity to exercise the powers to be conferred by the title insurance agent's license, who is an Arkansas registered abstractor on January 1, 2001, upon payment of the original license fee, shall be certified by the Arkansas Title Insurance Agents' Licensing Board as a licensed title insurance agent, and the license certificate shall be immediately issued to the person.~~

~~(b) An Arkansas registered abstractor eligible for the exemption granted in this section shall become ineligible for the exemption after January 31, 2005.~~

23-103-308. Temporary title insurance agent license.

(a) The Arkansas Title Insurance and Escrow Agents' Licensing Board may issue a temporary title insurance agent's license for a period not to exceed one hundred eighty (180) days without requiring an examination, if the board deems that the temporary license is necessary in the following cases:

(1) To the surviving spouse or court-appointed personal representative of a licensed title insurance agent who dies or becomes mentally or physically disabled, to allow adequate time for the sale of the title insurance agent's business or for the recovery or return of the title insurance agent, or to provide for the training and licensing of new personnel to operate the title insurance agent's business; and

(2) Any circumstance in which the board deems that the public interest will best be served by the issuance of the temporary license.

(b) The board may revoke the temporary license at any time if the interest of the public is endangered.

23-103-309. Unregistered employees, officers, and assistants.

Nothing in this chapter shall be construed to prohibit any person holding a valid title insurance agent's license from having ~~the~~ directors, partners, or members, ~~and or~~ employing ~~the~~ officers, personnel, and clerical

1 and stenographic assistants as may be necessary in the conduct of its
 2 business who are not licensed under this chapter.

3
 4 23-103-310. ~~License~~ Title Insurance Agent License - Expiration -
 5 Renewal.

6 (a)(1) All licenses issued under this ~~chapter~~ subchapter shall expire
 7 on the same date.

8 (2) Expiration dates of the licenses, either renewal or
 9 original, shall be January 31 following the year from the preceding
 10 expiration date.

11 (b)(1) Current licenses shall be renewed ~~as provided for in~~ under this
 12 section for a one-year period upon:

13 (A) ~~payment~~ Payment of the renewal fee prescribed in § 23-
 14 103-204; and

15 (B)(i) Submission of a renewal application.

16 (ii) The renewal application shall include the
 17 applicant's signed certification:

18 (a) Of the annual audit under § 23-103-409;

19 (b)(1) That the applicant has not committed a
 20 felony or crime involving dishonesty or moral turpitude during the previous
 21 twelve (12) months.

22 (2) If the applicant has committed a
 23 felony or crime involving dishonesty or moral turpitude during the previous
 24 twelve (12) months, then a request to waive the resulting licensure
 25 disqualification under § 23-103-402 may be submitted by the applicant; and

26 (c) That the applicant has complied with the
 27 disclosure and record keeping requirements of § 23-103-105.

28 (2) The certification and application shall be in a form
 29 prepared by the board.

30 (3)(A) Upon determination by the board of the applicant's
 31 compliance with this subchapter, a renewal license shall be issued to the
 32 applicant.

33 (B) The renewal license shall indicate it is also issued
 34 as an escrow agent's license if all requirements for the issuance of an
 35 escrow agent's license have been met.

36 ~~(2)(4)~~ If the license is held by a business entity, the renewal

1 fee shall be paid for each natural person designated by the business entity
 2 to exercise the powers conferred by the license.

3 ~~(e)(1)(A)(c)(1)~~ No more than sixty (60) days nor less than thirty (30)
 4 days prior to the expiration date of the license issued, the Arkansas Title
 5 Insurance and Escrow Agents' Licensing Board shall cause a notice of
 6 expiration and application for renewal to be mailed to each of the holders of
 7 a title insurance agent's license.

8 ~~(B)(2)~~ The notice ~~and application~~ shall be in a form prepared by
 9 the board.

10 ~~(2) Upon determination by the board of the applicant's~~
 11 ~~compliance with this chapter, a renewal license shall be issued to the~~
 12 ~~applicant.~~

13 (d)(1)(A) If a holder of a license fails to apply for renewal and
 14 fails to pay the fee provided for renewal, the board shall cause to be mailed
 15 to the holder a notice that the license has expired and the person may no
 16 longer act as a title insurance agent.

17 (B) The notice shall be mailed not more than thirty (30)
 18 days following the license expiration date.

19 (C) The holder shall be granted an additional period of
 20 sixty (60) days from the date of mailing the notice within which to file an
 21 application for renewal.

22 (2)(A) The name of any holder failing to renew the license shall
 23 be stricken from the records of the board.

24 (B) The person shall no longer act as a title insurance
 25 agent until reinstated by the board.

26
 27 23-103-311. Access to public records.

28 Licensed title insurance agents shall have access to the public records
 29 ~~in~~ of any city, county, or state office ~~of any city or county or of the state~~
 30 and shall be permitted to make memoranda, notations, or copies and to occupy
 31 reasonable space with equipment for that purpose, subject to the reasonable
 32 regulation of the custodian of the public records and during the business
 33 hours of each office.

34
 35 23-103-312. ~~Revocation of license~~ Sanctions - Grounds.

36 (a) Upon finding that a licensee has committed one (1) or more of the

1 acts, conduct, or practices prohibited under subsection (b) of this section,
 2 the The Arkansas Title Insurance and Escrow Agents' Licensing Board is
 3 authorized, after a hearing, to:

4 (1) ~~eancel and revoke~~ Cancel, revoke, suspend, or refuse to
 5 renew any license issued to any person under this chapter+;

6 (2) Fine a licensee an amount not to exceed one thousand dollars
 7 (\$1,000) per violation;

8 (3) Reprimand, censure, or limit the scope of a licensee's
 9 practice; or

10 (4) Order a licensee to reimburse the board, with interest, for
 11 any award made under the Arkansas Title Insurance and Agents' Recovery Fund
 12 Act, § 23-103-501 et seq.

13 (b) The following acts, conduct, and practices are prohibited:

14 (1) ~~For a violation of~~ Violating any of the provisions of this
 15 chapter;

16 (2) ~~Upon a conviction of the holder of a license~~ Being convicted
 17 of a crime involving moral turpitude, fraud, dishonesty, untruthfulness, or
 18 untrustworthiness; ~~or~~

19 (3) ~~If the board finds the holder of the license to be guilty of~~
 20 habitual Habitual carelessness ~~or of fraudulent practices+;~~

21 (4) Making any substantial misrepresentation;

22 (5) Making, printing, publishing, distributing, or causing,
 23 authorizing, or knowingly permitting the making, printing, publication, or
 24 distribution of false statements, descriptions, or promises of such character
 25 as to reasonably induce, persuade, or influence any person to act thereon;

26 (6) Failing within a reasonable time to account for or to remit
 27 any moneys coming into his or her possession that belong to others;

28 (7) Obtaining a license by means of fraud, misrepresentation, or
 29 concealment;

30 (8) Violating any rule, regulation, or order issued by the board
 31 under the authority of this chapter; or

32 (9) Being the proximate or contributing cause to the
 33 circumstances resulting in an award to a claimant under the Arkansas Title
 34 Insurance and Agents' Recovery Fund Act, § 23-103-501 et seq.

35
 36 23-103-313. ~~Revocation of license~~ Sanctions - Procedure - Appeal.

1 (a)(1) Upon ~~the filing of a verified complaint's being filed~~ complaint
 2 with the Arkansas Title Insurance and Escrow Agents' Licensing Board, or upon
 3 the board's own motion filing a complaint charging the person holding a title
 4 insurance agent's license or any natural person designated by a business
 5 entity holding a title insurance agent's license to exercise the power
 6 conferred by that license with+

7 ~~(A) A violation of any of the provisions of this chapter;~~

8 ~~(B) Conviction of a crime involving moral turpitude; or~~

9 ~~(C) Habitual carelessness or fraudulent practices, any of~~
 10 the acts, conduct, or practices prohibited by § 23-103-312(b), the board
 11 shall immediately notify the person in writing by registered mail, with
 12 return receipt, of the filing of the complaint and furnish that person with a
 13 copy of the complaint.

14 (2) The board shall at the same time require the person to
 15 appear before it on a day fixed by the board, not less than twenty (20) days
 16 nor more than forty (40) days from the date of the service of the complaint
 17 on that person, and to show cause why ~~the license should not be canceled and~~
 18 ~~revoked~~ sanctions should not be imposed under § 23-103-312(a).

19 (3) Under the hand of its chair and the seal of the board, the
 20 board may subpoena witnesses and compel their attendance and may require the
 21 production of books, papers, and other documents.

22 (4) The Chair of the Arkansas Title Insurance and Escrow Agents'
 23 Licensing Board or the Secretary-treasurer of the Arkansas Title Insurance
 24 and Escrow Agents' Licensing Board may administer oaths or affirmations to
 25 witnesses appearing before the board.

26 (5)(A) If any person refuses to obey any subpoena so issued or
 27 refuses to testify or to produce any books, papers, or other documents, the
 28 board may present its petition to any court of record, setting forth the
 29 facts.

30 (B) In a proper case, the court shall issue its subpoena
 31 to the person requiring his or her attendance before the court and there to
 32 testify or produce the books, papers, and documents as may be deemed
 33 necessary and pertinent.

34 (6) The person holding the license shall be entitled to counsel
 35 at any hearing before the board or any other hearing ~~involving revocation of~~
 36 ~~his or her license~~ under this subchapter.

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

3 (b)(1)(A) Either the respondent or the complainant may appeal from the
 4 decision of the board to the circuit court in the county of the respondent's
 5 place of business.

6 (B) The appeal shall be taken within thirty (30) days
 7 after the decision of the board by causing a written notice of appeal to be
 8 served on the secretary-treasurer and executing a bond to the State of
 9 Arkansas, with surety to be approved by the secretary-treasurer, conditioned
 10 to pay all costs that may be adjudged against the appellant.

11 (2) Upon an appeal's being taken, the secretary-treasurer shall
 12 immediately make out a return of the proceedings in the matter before the
 13 board with its decision and file them together with the bond and all the
 14 papers pertaining thereto in his or her possession, including a certified
 15 record of testimony taken at the hearing, with the clerk of the court to
 16 which the appeal is taken.

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

20 (4) An appeal shall stay ~~the cancellation of any license~~ any
 21 sanction imposed under § 23-103-312 until the final decision is had on
 22 appeal.

23
 24 23-103-314. Commitment and policy as evidence.

25 A photostat or verbatim copy of any commitment or contract of title
 26 insurance pertaining to real property situated in the State of Arkansas ~~shall~~
 27 be is admissible in evidence on behalf of any party litigant in any court in
 28 the State of Arkansas and ~~shall be~~ is prima facie evidence of the facts
 29 therein recited and contained.

30
 31 23-103-315. Transfer and cancellation of title insurance agent license.

32 (a)(1) An issuing agent may effect the transfer of a signing agent's
 33 license or an inactive signing agent's license to the issuing agent by
 34 furnishing evidence satisfactory to the Arkansas Title Insurance and Escrow
 35 Agents' Licensing Board that the signing agent has:

36 (A) Been authorized to countersign commitments and

1 contracts of title insurance in the name of the issuing agent; and

2 (B) Otherwise satisfied the requirements for licensure
 3 under this ~~chapter~~ subchapter.

4 (2) The board shall then issue a replacement license certificate
 5 to the signing agent naming the issuing agent thereon.

6 (b)(1) An issuing agent shall effect the cancellation of a signing
 7 agent's license that has been placed with the issuing agent by providing
 8 evidence satisfactory to the board that the signing agent licensee no longer
 9 may countersign commitments and contracts of title insurance on behalf of the
 10 issuing agent.

11 (2) The board shall then cancel the license certificate issued
 12 to the signing agent licensee.

13 (3) The signing agent's license shall be placed on inactive
 14 status.

15
 16 23-103-316. Continuing education - Requirements.

17 (a) Beginning February 1, 2004, as a condition precedent to renewal or
 18 reactivation of title insurance agent licenses, ~~licensees~~ title insurance
 19 agents shall meet the following requirements:

20 (1)(A) Before activation of a license on inactive status, the
 21 ~~licensee~~ title insurance agent shall satisfactorily complete four (4)
 22 classroom hours or equivalent continuing education units or equivalent
 23 correspondence work of continuing education for each year inactive, not to
 24 exceed twenty (20) classroom hours.

25 (B) However, satisfying the requirements in subdivision
 26 (a)(1)(A) of this section will only satisfy the requirements for that
 27 particular license year and not for the following license year; and

28 (2)(A) Persons licensed as title insurance agents shall
 29 successfully complete four (4) classroom hours or equivalent continuing
 30 education units or equivalent correspondence work of continuing education
 31 annually.

32 (B) At least one (1) hour or equivalent continuing
 33 education unit shall be in a specific topic or topics as identified by the
 34 Arkansas Title Insurance and Escrow Agents' Licensing Board.

35 (C) Persons satisfying the requirements in subdivision
 36 (a)(2)(A) of this section shall be deemed to have successfully completed the

1 continuing education requirements for the licensing year following the year
 2 in which first licensed in Arkansas, ~~and~~.

3 (3) A nonresident licensee may meet this state's continuing
 4 education requirements by taking courses that meet the continuing education
 5 requirements of his or her resident state for the licensing year in question
 6 if:

7 (A) The course or courses consist of no fewer than four
 8 (4) classroom hours or equivalent continuing education units of title
 9 insurance-related subjects and otherwise comply with the minimum requirements
 10 of this chapter subchapter; and

11 (B) Evidence of compliance satisfactory to the board is
 12 submitted in a form, manner, and content prescribed by the board.

13 (b) ~~Licensees~~ Title insurance agents on inactive status are not
 14 required to comply with this subchapter during their inactive status.

15 (c) The board may waive all or part of the requirements of subsection
 16 (a) of this section for any ~~licensee~~ title insurance agent who submits
 17 satisfactory evidence of inability to meet the continuing education
 18 requirements due to health reasons or other hardship or extenuating
 19 circumstances beyond the ~~licensee's~~ agent's control.

20 (d) Licenses for persons who apply for renewal of their title
 21 insurance agent's license and who do not provide to the board evidence of
 22 meeting the continuing education requirements but who have otherwise met all
 23 requirements for license renewal shall be placed on inactive status until the
 24 evidence is provided to the board.

25 (e) If the ~~licensee~~ title insurance agent fails to complete the post-
 26 licensure education requirements within twelve (12) months after the date the
 27 license was issued, the board shall place the license on inactive status
 28 until the board receives documentation that the ~~licensee~~ agent has completed
 29 the post-licensure education requirements.

30 (f) The board may prescribe forms and certificates to be utilized by
 31 continuing education providers and ~~licensees~~ title insurance agents in the
 32 administration and completion of continuing education courses.

33 (g) The board may require continuing education providers to maintain
 34 course records and to make these records available to the board for audit and
 35 review.

36 (h) The board may require ~~licensees~~ title insurance agents to maintain

1 continuing education records and to provide the records to the board to
 2 ensure compliance with the continuing education requirements.

3 (i) Renewal of a license issued to an attorney licensed in this state
 4 under § 23-103-302 is subject to § 23-103-310 except that the renewal shall
 5 not be subject to the continuing education requirements of this ~~chapter~~
 6 subchapter.

7 (j) The continuing education requirements of this subchapter shall not
 8 apply to:

9 (1) A person holding a limited or restricted license that the
 10 board may exempt;

11 (2) Any natural person at least seventy (70) years of age who
 12 has been actively engaged in the title insurance business for the preceding
 13 fifteen (15) years;

14 (3) A business entity; and

15 (4) Any person called to active duty in any branch of the United
 16 States military services, including, but not limited to, the United States
 17 Coast Guard and Reserves, during the entire period of active duty service.

18
 19 23-103-317. Minimum title search and commitment required.

20 (a) No commitment or contract of title insurance shall be issued
 21 unless:

22 (1) Based upon one (1) or more searches of the real property and
 23 probate records covering a period of at least the previous ten (10) years
 24 preceding the date of the commitment or contract of title insurance; and

25 (2) Each search is conducted in accordance with customary and
 26 acceptable title industry standards.

27 (b) No contract of title insurance shall be issued unless based upon
 28 the satisfaction of requirements contained in a title commitment prepared in
 29 accordance with customary and acceptable title industry standards.

30
 31 23-103-318. Annual audit certification.

32 (a) No license for an issuing agent shall be issued or renewed unless
 33 the agent shall have caused every title insurer for which the agent is
 34 authorized to issue commitments and contracts of title insurance to issue a
 35 sworn statement certifying that the title insurer has within the previous
 36 twelve (12) months audited the accounts of the agent for the preceding twelve

1 (12) months and that the accounts, records, and funds of the agent have been
 2 properly used and maintained by the agent to the satisfaction of the title
 3 insurer.

4 (b) Effective January 1, 2007, the annual certification required by
 5 subsection (a) of this section shall accompany each issuing title insurance
 6 agent's original license or renewal application.

7
 8 23-103-319. Reporting to title insurers.

9 No less than every one hundred twenty (120) days the issuing agent
 10 shall transmit to the title insurer an accounting of all unreported policies
 11 issued on behalf of the title insurer.

12
 13 SECTION 5. Title 23, Chapter 103 is amended to add a new subchapter to
 14 read as follows:

15 23-103-401. Escrow agent license required -- Exemption.

16 (a) On and after January 31, 2006, no person shall conduct a closing
 17 pertaining to real property situated in the State of Arkansas unless the
 18 person:

19 (1) Is licensed as an escrow agent under this subchapter; and

20 (2) Maintains a bona fide established place of business in this
 21 state.

22 (b) Without any further qualification or examination, an attorney
 23 licensed to practice law by the State of Arkansas, upon written request to
 24 the Arkansas Title Insurance and Escrow Agents' Licensing Board and payment
 25 of the license fee, shall be immediately certified by the board as a licensed
 26 escrow agent, and a license certificate shall be immediately issued to the
 27 attorney.

28
 29 23-103-402. Escrow agent application.

30 (a) Unless exempt under § 23-103-401, any person desiring to become a
 31 licensed escrow agent shall make application to the Arkansas Title Insurance
 32 and Escrow Agents' Licensing Board.

33 (b)(1) The application shall be in a form prepared by the board and
 34 shall contain information to assist the board in registration and to
 35 determine if the applicant is qualified to act as an escrow agent.

36 (2)(A) The application shall include the applicant's consent to

1 apply for or authorize the board to obtain state and national criminal
 2 background checks to be conducted by the Identification Bureau of the
 3 Department of Arkansas State Police and the Federal Bureau of Investigation.

4 (B) The criminal background checks shall conform to
 5 applicable federal standards and shall include the taking of fingerprints.

6 (C) The applicant shall authorize the release of the
 7 criminal background checks to the board and shall be responsible for the
 8 payment of any fee associated with the criminal background checks.

9 (D) Upon completion of the criminal background checks, the
 10 Identification Bureau of the Department of Arkansas State Police shall
 11 forward to the board all information obtained concerning the commission by
 12 the applicant of any offense listed in subdivision (b)(2)(E) of this section.

13 (E) A person convicted of a felony or crime involving
 14 moral turpitude or dishonesty in any state or federal court may not receive
 15 or hold an escrow agent's license.

16 (F)(i) The provisions of subdivision (b)(2)(E) of this
 17 section may be waived by the board upon the request of:

18 (a) An affected applicant for licensure or
 19 registration; or

20 (b) The person holding a license or
 21 registration subject to revocation.

22 (ii) Circumstances for which a waiver may be granted
 23 shall include, but not be limited to:

24 (a) The age at which the crime was committed;

25 (b) The circumstances surrounding the crime;

26 (c) The length of time since the crime;

27 (d) Subsequent work history;

28 (e) Employment references;

29 (f) Character references; and

30 (g) Other evidence demonstrating that the
 31 applicant does not pose a threat to the public health, safety, or welfare.

32 (G)(i) Any information received by the board from the
 33 Identification Bureau of the Department of Arkansas State Police or the
 34 Federal Bureau of Investigation under this section is not available for
 35 examination except by:

36 (a) The affected applicant or the applicant's

1 authorized representative; or

2 (b) The person whose license or registration
 3 is subject to revocation or his or her authorized representative.

4 (ii) No record, file, or document shall be removed
 5 from the custody of the Department of Arkansas State Police.

6 (iii) Only information pertaining to the person
 7 making the request may be made available to the affected applicant or the
 8 person whose license or registration is subject to revocation.

9 (iv) Rights of privilege and confidentiality
 10 established in this section shall not extend to any document created for
 11 purposes other than the criminal background check.

12 (H) The board shall adopt rules and regulations to
 13 implement the provisions of this section.

14 (c) If the applicant is a business entity, the application shall show
 15 the names of all members, partners, managers, venturers, officers, and
 16 directors of the applicant and shall designate each natural person who will
 17 exercise the powers conferred by the license, and each natural person shall
 18 be separately licensed under this subchapter.

19
 20 23-103-403. Qualifications – Issuance of license.

21 (a) The Arkansas Title Insurance and Escrow Agents’ Licensing Board
 22 shall issue an escrow agent’s license to any applicant who:

23 (1) Is at least eighteen (18) years of age;

24 (2) Is a resident of the State of Arkansas for at least six (6)
 25 months;

26 (3) Has not committed any act that is a ground for denial,
 27 suspension, or revocation of a license under § 23-103-312;

28 (4) Has paid the original license fee prescribed by § 23-103-
 29 204;

30 (5) Submits a sworn statement of the applicant’s experience and
 31 qualifications to act as an escrow agent and is determined by the board to be
 32 qualified; and

33 (6) Is an insured under an errors and omissions policy of
 34 insurance in an amount no less than two hundred fifty thousand dollars
 35 (\$250,000) or provides other evidence of financial responsibility
 36 satisfactory to the board.

1 (b) If the applicant is a business entity, the board finds that each
 2 natural person designated by the entity to exercise the powers conferred by
 3 the license is qualified under this subchapter, and the entity has paid the
 4 original license fee prescribed by § 23-103-204, the entity shall be
 5 certified as a licensed escrow agent.

6 (c)(1) The license certificate shall:

7 (A) Be in a form prescribed by the board;

8 (B) Attest that the person possesses the knowledge, skill,
 9 ability, and understanding to act as an escrow agent and is designated a
 10 licensed escrow agent; and

11 (C) Indicate it is also issued as an issuing or signing
 12 title insurance license if all requirements for the issuance of an issuing or
 13 signing agent’s license have been met.

14 (2) The license certificate shall be prominently displayed in
 15 the office where the person is employed.

16 (d) An applicant failing to satisfy the board that the applicant
 17 possesses the qualifications or proficiency to become a licensed escrow agent
 18 may reapply for a license, but no application shall be submitted sooner than
 19 five (5) months following the date on which the previous application was
 20 denied.

21 (e) The privileges granted by the license shall continue unless
 22 revoked, suspended, not renewed, or surrendered to the board.

23
 24 23-103-404. Temporary escrow agent’s license.

25 (a) The Arkansas Title Insurance and Escrow Agents’ Licensing Board
 26 may issue a temporary escrow agent’s license for a period not to exceed one
 27 hundred eighty (180) days if the board determines that the temporary license
 28 is necessary in the following cases:

29 (1) To the surviving spouse or court-appointed personal
 30 representative of a licensed escrow agent who dies or becomes mentally or
 31 physically disabled, to allow adequate time:

32 (A) For the sale of the escrow agent’s business;

33 (B) For the recovery of the escrow agent; or

34 (C) To provide for the training and licensing of new
 35 personnel to operate the escrow agent’s business; and

36 (2) Any circumstance in which the board determines that the

1 public interest will best be served by the issuance of the temporary license.

2 (b) The board may revoke the temporary license at any time for good
 3 cause.

4
 5 23-103-405. Unregistered employees, officers, and assistants.

6 Nothing in this chapter shall be construed to prohibit any person
 7 holding a valid escrow agent's license from having directors, partners, or
 8 members, or employing officers, personnel, and clerical and stenographic
 9 assistants as may be necessary in the conduct of its business who are not
 10 licensed under this chapter.

11
 12 23-103-406. Escrow agent license – Expiration – Renewal.

13 (a) A license or renewal of a license issued under this subchapter
 14 shall expire on January 31 following the date it is issued.

15 (b)(1) Licenses shall be renewed under this section for a one-year
 16 period upon:

17 (A) Payment of the renewal fee prescribed in § 23-103-204;
 18 and

19 (B)(i) Submission of a renewal application.

20 (ii) The renewal application shall include the
 21 applicant's signed certification:

22 (a) Of the annual audit under § 23-103-408;

23 (b)(1) That the applicant has not committed a
 24 felony or crime involving dishonesty or moral turpitude during the previous
 25 twelve (12) months.

26 (2) If the applicant has committed a
 27 felony or crime involving dishonesty or moral turpitude during the previous
 28 twelve (12) months, then a request to waive the resulting licensure
 29 disqualification under § 23-103-402 may be submitted by the applicant; and

30 (c) That the applicant has complied with the
 31 disclosure and record keeping requirements of § 23-103-105.

32 (2) The certification and application shall be in a form
 33 prepared by the Arkansas Title Insurance and Escrow Agents' Licensing Board.

34 (3)(A) Upon determination by the board of the applicant's
 35 compliance with this subchapter, a renewal license shall be issued to the
 36 applicant.

1 (B) The renewal license shall indicate it is also issued
 2 as an issuing or signing title insurance agent's license if all requirements
 3 for the issuance of an issuing or signing agent's license have been met.

4 (c)(1)(A) If a holder of a license fails to apply for renewal and
 5 fails to pay the fee provided for renewal, the board shall cause to be mailed
 6 to the holder a notice that the license has expired and that the person may
 7 no longer act as a title insurance agent.

8 (B) The notice shall be mailed not more than thirty (30)
 9 days following the license expiration date.

10 (C) The holder shall be granted an additional period of
 11 sixty (60) days from the date of mailing the notice within which to file an
 12 application for renewal.

13 (2)(A) The name of any holder failing to renew the license shall
 14 be stricken from the records of the board.

15 (B) The person shall no longer act as an escrow agent
 16 until reinstated by the board.

17
 18 23-103-407. Sanctions – Grounds – Procedure – Appeal.

19 The Arkansas Title Insurance and Escrow Agents' Licensing Board may
 20 sanction escrow agents under §§ 23-103-312 and 23-103-313.

21
 22 23-103-408. Annual audit certification.

23 (a) Except as provided in subsection (b) of this section, no license
 24 for an escrow agent shall be issued or renewed unless the agent shall
 25 furnish:

26 (1) A sworn statement by a licensed certified public accountant
 27 certifying the results of the accountant's audit within the preceding six (6)
 28 months of the escrow accounts of the agent in accordance with the standards
 29 and procedures prescribed by the Arkansas Title Insurance and Escrow Agents'
 30 Licensing Board; or

31 (2) A fidelity bond in the amount of one million dollars
 32 (\$1,000,000).

33 (b) If an escrow agent is also a licensed title insurance agent, then
 34 the annual certification required by § 23-103-318 may be submitted to the
 35 board in lieu of the requirements of subsection(a) of this section.

36 (c) Effective January 1, 2007, the annual certification or bond

1 required by subsection (a) or (b) of this section shall accompany each escrow
 2 agent's original license or renewal application.

4 23-103-409. Escrow agent standards.

5 (a) Each escrow agent shall:

6 (1) Deposit all money held in trust by the escrow agent into one
 7 (1) or more federally insured escrow accounts in a state or federally
 8 chartered financial institution;

9 (2) Inform the financial institution of the purpose of the
 10 escrow account;

11 (3)(A) Maintain for a period of at least three (3) years after
 12 final disposition of an escrow or closing transaction:

13 (i) All records of the transaction, including,
 14 without limitation, checkbooks, cancelled checks, check stubs, vouchers,
 15 ledgers, journals, closing statements, accountings, and other statements of
 16 disbursements rendered to or for a client or other party with regard to the
 17 escrow account; and

18 (ii) Any records related to the escrow account which
 19 reflect the date, amount, source, and explanation for any receipt,
 20 withdrawal, delivery, or disbursement of the funds or other property of a
 21 client with regard to the closing or escrow account.

22 (B) The records shall be available for inspection by the
 23 Arkansas Title Insurance and Escrow Agents' Licensing Board upon its request;

24 (4)(A) Reconcile the bank statement of each escrow account
 25 within ninety (90) days of receipt of the statement.

26 (B) A statement of the person approving the reconciliation
 27 certifying its accuracy shall be attached to the reconciliation and retained
 28 as part of the reconciliation records for five (5) years, subject to
 29 inspection by the board upon its request.

30 (C) A licensee, agent, or insurer shall immediately file a
 31 written report with the board detailing any determination, evidence, or
 32 suspicion of any irregularity in an escrow account;

33 (5) Conduct the escrow agent's business openly, fairly, and
 34 honestly, and shall at all times conform to the accepted business ethics and
 35 practices of the escrow agency business;

36 (6) Be familiar with and knowledgeable of all documents

1 submitted for execution at each closing; and

2 (7)(A) Ensure that the escrow agent's escrow account at all
3 times contains sufficient money to pay all money due or owing to all clients.

4 (B) An escrow agent shall not make a disbursement from the
5 account unless authorized by:

6 (i) Escrow instructions;

7 (ii) A settlement statement prepared in accordance
8 with the instructions from the parties to the transaction; or

9 (iii) An agreement between the parties to the
10 transaction that the escrow agent may periodically withdraw money from the
11 account to pay for services performed for the client.

12 (b)(1) If the board determines that an escrow agent has not complied
13 with any provision of subdivisions (a)(3) – (6) of this section the board may
14 require the escrow agent to deliver an audited financial statement that is
15 prepared, using the records of the escrow agent, by a certified public
16 accountant who holds a license to engage in the practice of public accounting
17 in this state.

18 (2) The financial statement shall be submitted to the board
19 within sixty (60) days of the board's request unless a reasonable extension
20 of time is granted by the board.

21
22 SECTION 6. EFFECTIVE DATE. This act shall take effect on January 1,
23 2006.