

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
4

As Engrossed: H3/29/05

A Bill

HOUSE BILL 2678

5 By: Representatives Cowling, Norton, Ormond
6 By: Senator J. Jeffress
7

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

15
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) Two dollars and fifty cents (\$2.50) as part of the
4 seller's or owner's closing costs; and

5 (B) Two dollars and fifty cents (\$2.50) as part of the
6 buyer's closing costs, if applicable.

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

9 (d) The board may reduce one (1) or more of the fees required by this
10 section if it determines that the full amount of the fees are not necessary
11 to ensure the solvency of the fund under § 23-103-503.

12 23-103-505. Recovery fund fees – Use of fund.

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

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

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

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

24
25 23-103-506. Claims of aggrieved parties – Procedure.

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

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

31 (A) A title insurer;

32 (B) A title insurance company;

33 (C) A title insurance agent;

34 (D) An escrow company; or

35 (E) An escrow agent;

36 (2) An abstract of the proximate cause of the claim and the

1 findings of the court or arbitrator; and

2 (3) The affidavit of the claimant certifying:

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

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

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

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

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

12 (3) Interest shall not accrue upon the award determined by the
13 board.

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

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

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

26 (B) The fund balance.

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

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

33
34 23-103-507. Jurisdiction of circuit court.

35 (a) The circuit court's jurisdiction over the Arkansas Title Insurance
36 and Escrow Agents' Recovery Fund shall be limited to appeals from the orders

1 of the Arkansas Title Insurance and Escrow Agents' Licensing Board under the
2 Arkansas Administrative Procedure Act, § 25-15-201 et seq.

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

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

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

7
8 23-103-508. Subrogation – Suspension of license.

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

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

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

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

21 (B) The interest rate shall not exceed the maximum legal
22 rate.

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

25 23-103-101. Title - Purpose.

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

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

30
31 23-103-102. Definitions.

32 As used in this chapter:

33 (1) "Business entity" means a corporation, firm, association,
34 partnership, joint venture, limited liability company, limited liability
35 partnership, or other legal business entity;

36 (2)(A) "Closing" means the performance of services by a person

1 subject to this chapter that benefit the parties to a real estate transaction
2 involving the purchase, sale, lease, encumbrance, mortgage, or creation of a
3 secured interest in or to real property for the purpose of completing the
4 transaction.

5 (B) "Closing" includes the:

6 (i) Receipt and disbursement of money in connection
7 with the real estate transaction; and

8 (ii) Engagement of a title insurance or escrow agent
9 to perform services in contemplation of completing the real estate
10 transaction.

11 (C) "Closing" does not include the performance of services
12 for a person's own benefit to complete a purchase, sale, lease, encumbrance,
13 mortgage, or the creation of a security interest in or to real property that
14 the person owns or acquires as a result of a real estate transaction;

15 ~~(2)~~(3) "Commitment" means a contract or binder reporting the
16 state of the title to the real property described and committing the title
17 insurer to issue a contract of title insurance upon compliance with the
18 requirements stated and subject to any exceptions set forth;

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

22 (5) "Escrow company" means a business that performs closings
23 through one (1) or more escrow agents;

24 ~~(3)~~(6) "Home state" means the District of Columbia and any state
25 or territory of the United States in which a title insurance agent maintains
26 a principal place of residence or principal place of business and is licensed
27 to act as a title insurance agent;

28 ~~(4)~~(7) "Inactive signing title insurance agent" means a person
29 having a signing agent's license that has been placed in inactive status by
30 the Arkansas Title Insurance Agents' Licensing Board;

31 ~~(5)~~(8) "Issuing title insurance agent" means a person authorized
32 to issue commitments and contracts of title insurance and to collect premiums
33 in the name of a title insurer;

34 ~~(6)~~(9) "Licensee" means a person that obtains a license or a
35 renewal of a license under this chapter;

36 ~~(7)~~(10) "Person" means any natural person, firm, corporation,

1 partnership, association, limited liability company, limited liability
2 partnership, or other business entity;

3 (11) "Referring party" means a person that recommends a title
4 insurance or escrow agent or company and is a:

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

7 (B) Loan officer;

8 (C) Builder; or

9 (D) Person with influence over the selection of a title
10 insurance or escrow agent or company based upon the nature of the
11 transaction;

12 ~~(8)~~(12) "Sell" means to exchange a contract of title insurance
13 for valuable consideration on behalf of a title insurer;

14 ~~(9)~~(13) "Signing title insurance agent" means a person
15 authorized under this chapter to sign commitments and contracts of title
16 insurance;

17 ~~(10)~~(14) "Title insurance" means the insurance defined in § 23-
18 62-108;

19 ~~(11)~~(15) "Title insurance agent" means a person required to be
20 licensed under the laws of the State of Arkansas to sell title insurance; ~~and~~

21 (16) "Title insurance company" means a business that issues
22 title insurance policies through one (1) or more title insurance agents; and

23 ~~(12)~~(17) "Title insurer" means a person authorized by the State
24 of Arkansas to underwrite and effectuate a contract of title insurance.

25
26 23-103-103. Penalties.

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

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

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

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

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

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

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

(C) Money or other consideration.

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

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

(c) Nothing in this section prohibits or limits any:

(1) Expense, item of value, or the division of rates and charges between or among a title insurance company and its agent, or one (1) or more title insurance companies and one (1) or more title insurance agents, if the expense, item of value, or the division of rates and charges does not constitute an unlawful rebate under the provisions of this section and is not in payment of a forwarding fee or a finder's fee; or

(2) Act or practice permitted by applicable federal law.

23-103-105. Controlled business.

(a) As used in this section:

(1) "Associate" means any:

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

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

1 (C) Director, officer, employee, or agent of a producer or
2 associate;

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

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

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

11 (3)(A) "Controlled business" means any business referred to a
12 title insurer, title insurance agent, or escrow agent by a producer or
13 associate with a financial interest in the business of the title insurer,
14 title insurance agent, or escrow agent.

15 (B) "Controlled business" does not include any business
16 referred to a title insurer, title insurance agent, or escrow agent by:

17 (i) A federally insured bank;

18 (ii) An affiliate of a federally insured bank; or

19 (iii) A title insurance company if greater than
20 fifty percent (50%) of the company is owned by a federally insured bank or an
21 affiliate of a federally insured bank;

22 (4)(A) "Controlling party" means any person, entity, producer,
23 associate, contractor, director, officer, employee, or agent that refers
24 controlled business to a title insurance or escrow company or agent.

25 (B) "Controlling party" does not include:

26 (i) A federally insured bank;

27 (ii) An affiliate of a federally insured bank; or

28 (iii) A title insurance company if greater than
29 fifty percent (50%) of the company is owned by a federally insured bank or an
30 affiliate of a federally insured bank;

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

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

36 (B) If the primary purpose of the acquisition or retention

1 of the interest is the financial benefit to be obtained as a consequence of
2 the interest from the referral of title or closing business;

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

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

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

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

10 (C) Acting as broker, agent, or representative for a
11 person that:

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

13 (ii) Lends or borrows money with any interest as
14 security; and

15 (8) "Refer" means to direct or influence the direction of title
16 insurance or closing business, whether or not the consent or approval of any
17 other person is sought or obtained with respect to the direction of the
18 business.

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

23 (A) The controlling party has disclosed under subsection
24 (h) of this section to its client or the referred party, if other than its
25 client, the financial interest of the controlling party, producer, or
26 associate referring the business;

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

30 (C) Twenty-five percent (25%) or more of the closed orders
31 of the title insurer, title insurance agent, or escrow agent during the
32 twelve (12) full calendar months immediately preceding the month in which the
33 transaction takes place is not derived from controlled business.

34 (2)(A) The prohibitions contained in this subsection (b):

35 (i) Apply to a title insurer, title insurance
36 company, or escrow company:

1 (a) In existence on December 31, 2004,
2 effective July 1, 2007; and

3 (b) Established between January 1, 2005, and
4 December 31, 2005, effective April 1, 2007; and

5 (ii) May be waived by the Arkansas Title Insurance
6 and Escrow Agents' Licensing Board for a newly established title insurer,
7 title insurance company, or escrow company during its first year of business
8 if:

9 (a) The business submits a detailed business
10 plan to the board that explains how the business intends to comply with this
11 subsection (b) by the end of its first year of business; and

12 (b) The board finds that the business will be
13 in compliance with this subsection (b) by the end of its first year of
14 business.

15 (B) For purposes of this subdivision (b)(2):

16 (i)(a) "Newly established" means the opening of a
17 business on or after January 1, 2006, for the purpose of offering title or
18 closing services to others for compensation.

19 (b) A business is not "newly established" if
20 the business resulted from a:

21 (1) Change in name or form; or

22 (2) Merger or acquisition until the
23 resulting business has operated for at least one (1) year; and

24 (ii) "First year of business" means the three
25 hundred sixty-five (365) days immediately following the first closing by a
26 newly established business.

27 (C) The board shall adopt rules and regulations to
28 implement this subdivision (b)(2).

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

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

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

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

4 (c) No licensee or controlling party shall exchange, manipulate, or
5 swap the controlled business of a licensee or controlling party for the
6 business of another licensee or controlling party in circumvention of
7 subsection (b) of this section.

8 (d) No controlling party shall require directly or indirectly as a
9 condition to selling or furnishing any other person any loan, loan extension,
10 credit, sale, property, contract, lease, or service that the other person
11 shall purchase title or closing services of any kind through any title or
12 escrow agent or title insurer if the controlling party has a financial
13 interest in the agent or insurer.

14 (e) No title insurer, title insurance agent, or escrow agent shall
15 accept any order or perform any title or closing services for any person it
16 knows or has reason to believe entered a contract for services with the name
17 of the title or escrow company preprinted in the contract prior to the buyer
18 or seller selecting a title or escrow company.

19 (f) Nothing in this section shall prohibit any producer or associate
20 from referring title or closing business to the title insurer, title
21 insurance agent, or escrow agent of the producer's or associate's choice,
22 and, if the producer or associate of the producer has any financial interest
23 in the title insurer, title insurance agent, or escrow agent, from receiving
24 income, profits, or dividends produced or realized from the financial
25 interest, so long as:

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

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

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

32 (4) At least the percentage stated in subdivision (b) of this
33 section of the closed orders of the title insurer, title insurance agent, or
34 escrow agent during the twelve (12) full months immediately preceding the
35 month in which the transaction takes place is not derived from controlled
36 business.

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

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

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

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

16 (3) As used in this subsection (g), "title or closing services"
17 include, but are not limited to, the title insurance premium or premiums,
18 escrow settlement services, loan closing services, and title search fees.

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

21
22 "ARKANSAS CONTROLLED BUSINESS ARRANGEMENT DISCLOSURE

23
24 YOU ARE ENTERING INTO A CONTROLLED BUSINESS ARRANGEMENT. ARKANSAS LAW ALLOWS
25 YOU TO SELECT ANY TITLE INSURANCE COMPANY, CLOSING COMPANY, OR ESCROW AGENT
26 OF YOUR CHOOSING FOR THIS TRANSACTION.

27
28 In accordance with Arkansas law, before any commitment can be made to a title
29 insurer, title insurance agent, or escrow agent to perform services related
30 to the real estate transaction involving

31
32 _____ the following written
33 (street address, city, and property description)
34 disclosure must be made:

35
36 _____ has a _____ % financial

1 (Name of producer of business)
2 interest in _____.
3 (Name of insurer, title agent, or escrow agent)

4
5 Because of this financial interest, a referral to
6
7 _____ to perform
8 (Name of insurer, title agent, or escrow agent)
9 services related to this real estate transaction will provide
10 the controlling party a financial benefit.

11
12 You are NOT required to use the services of any particular title insurer,
13 title agent, or escrow agent as a condition of this real estate transaction
14 and may select any title or closing company to perform any or all title and
15 closing services. You are free to shop around and determine that you are
16 receiving the best services and best rates for services related to this real
17 estate transaction.

18
19 ACKNOWLEDGEMENT

20
21 _____ DATE: _____
22 Signature of Consumer

23
24 If you have any questions regarding this disclosure, please contact the
25 Arkansas Title Insurance and Escrow Agents' Licensing Board, 501 Woodlane,
26 Suite 105-C, Little Rock, Arkansas 72201, via phone at (501)683-3630."

27
28 (i)(1) The failure of a title insurer, title insurance agent, or
29 escrow agent to comply with the requirements of this section shall be grounds
30 for the suspension or revocation of a license or other disciplinary action.

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

35
36 23-103-106. Title insurance rates.

1 (a) Title insurers and title insurance agents shall not charge less
2 than the following minimum rates for the issuance of a contract or policy of
3 title insurance:

4 (1) Two hundred dollars (\$200) plus an additional three dollars
5 and fifty cents (\$3.50) for each one thousand dollars (\$1,000) of coverage in
6 excess of thirty thousand dollars (\$30,000) up to five hundred thousand
7 dollars (\$500,000) of coverage;

8 (2) Two dollars (\$2.00) for each one thousand dollars (\$1,000)
9 of coverage from five hundred thousand dollars (\$500,000) up to five million
10 dollars (\$5,000,000) of coverage; and

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

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

17 (c) Title insurers and title insurance agents located in counties that
18 adjoin a surrounding state may charge the rates customarily charged in the
19 surrounding state if the rates customarily charged in the surrounding state
20 are equal to or greater than the rates charged under subsection (a) of this
21 section.

22 (d) The rates prescribed by this section do not apply to:

23 (1) A loan or mortgagee's policy issued simultaneously with an
24 owner's policy by the same title insurance agent and title insurer for both
25 policies; or

26 (2) An endorsement or enhanced coverage issued in connection
27 with a contract or policy of title insurance.

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

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

32
33 SECTION 3. Arkansas Code Title 23, Chapter 103, Subchapter 2 is
34 amended to read as follows:

35 23-103-201. Creation - Members.

36 (a) There is created the Arkansas Title Insurance and Escrow Agents'

1 Licensing Board.

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

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

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

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

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

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

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

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

24

25 23-103-202. Organization and proceedings.

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

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

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

32

33 23-103-203. Duties and powers.

34 (a) The Arkansas Title Insurance and Escrow Agents' Licensing Board
35 shall keep a register of the names of each applicant for licensure, with the
36 applicant's place of business and other information as may be deemed

1 appropriate, including a notation of the action taken by the board and the
2 date upon which any licenses are issued. In addition, the board shall
3 maintain other records, registers, and files as may be necessary for the
4 proper administration of its duties under this chapter.

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

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

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

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

17
18 23-103-204. License fees, disposition of funds, and Title Insurance
19 Agents' Licensing Board Fund.

20 (a) The Except as provided in subsection (b) of this section, the
21 Arkansas Title Insurance and Escrow Agents' Licensing Board shall collect
22 fees as follows:

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

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

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

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

35 ~~(4)~~(5) The board shall have the authority to set reasonable fees
36 established by regulation promulgated in accordance with the Arkansas

1 Administrative Procedure Act, § 25-15-201 et seq., for the performance of its
2 administrative duties, including, but not limited to, the testing of
3 applicants for licenses, transferring licenses, replacing license
4 certificates, and responding to inquiries from regulatory agencies in other
5 states.

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

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

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

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

21
22 SECTION 4. Arkansas Code Title 23, Chapter 103, Subchapter 3 is
23 amended to read as follows:

24 Subchapter 3 -- Title Insurance Agent Licensing Requirements.

25 23-103-301. ~~License~~ Title insurance agent license required.

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

29 (1) A title insurer; or

30 (2) Licensed as an issuing title insurance agent under this
31 ~~chapter~~ subchapter.

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

36 (1) A resident of this state; and

1 (2) Licensed under this ~~chapter~~ subchapter either as:

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

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

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

8 (1) By the individual who performed the search; or

9 (2) If the title search is supplied by a business entity, by a
10 business entity whose principal place of business is in this state.

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

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

18
19 23-103-302. Application of act and construction with other laws.

20 Without any further qualification or examination, an attorney at law
21 licensed to practice law by the State of Arkansas, upon written request to
22 the Arkansas Title Insurance and Escrow Agents' Licensing Board and payment
23 of the original license fee, shall be immediately certified by the board as a
24 licensed title insurance agent, and a license certificate shall be
25 immediately issued to the attorney.

26
27 23-103-303. ~~License~~ Title insurance agent license – Application.

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

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

35 (2)(A) The application shall include the applicant's consent to
36 apply for or authorize the board to obtain state and national criminal

1 background checks to be conducted by the Identification Bureau of the
2 Department of Arkansas State Police and the Federal Bureau of Investigation.

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

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

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

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

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

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

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

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

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

24 (b) The circumstances surrounding the crime;

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

26 (d) Subsequent work history;

27 (e) Employment references;

28 (f) Character references; and

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

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

35 (a) The affected applicant or the applicant's
36 authorized representative; or

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

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

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

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

11 **(H) The board shall adopt rules to implement the**
12 **provisions of this section.**

13 (c) Except as provided in subsection (e) of this section, each
14 application shall be accompanied by the examination fee prescribed in § 23-
15 103-204.

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

19 (e) If the person seeking to become a licensed title insurance agent
20 is a business entity, the application shall show the names of all members,
21 partners, ~~manager~~ managers, venturers, officers, and directors of the
22 business entity and shall designate each natural person who is to exercise
23 the powers to be conferred by the license, and each natural person shall take
24 the examination and pay the examination fee prescribed in § 23-103-204.

25
26 23-103-304. ~~License~~ Title insurance agent license - Examination.

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

30
31 23-103-305. ~~License~~ Title insurance agent license - Issuance or
32 reapplication.

33 **(a)(1) A person shall be certified as a licensed title insurance**
34 **agent, and the license certificate provided for shall be issued to the person**
35 **if if the person satisfactorily passes the examination and is found by the**
36 **Arkansas Title Insurance and Escrow Agents' Licensing Board to:**

- 1 ~~(1)(A)~~ Be at least eighteen (18) years of age;
- 2 ~~(2)(B)~~ Be a resident of the State of Arkansas for at least
- 3 six (6) months;
- 4 ~~(3)(C)~~ Have not committed any act that is a ground for
- 5 denial, suspension, or revocation set forth in § 23-103-312;
- 6 ~~(4)(D)~~ Have paid the original license fee prescribed by §
- 7 23-103-204; and
- 8 ~~(5)(E)~~ ~~Be qualified~~ Have practiced under the supervision
- 9 of a licensed issuing agent for at least one (1) year prior to taking the
- 10 examination.

11 ~~the person shall be certified as a licensed title insurance agent, and the~~

12 ~~license certificate provided for shall be issued to the person. The~~

13 ~~privileges granted by the license certificate shall continue unless revoked~~

14 ~~or surrendered to the board.~~

15 ~~(b)(2)~~ If the person seeking to become a licensed title

16 insurance agent is a business entity, the business entity has paid the

17 original license fee prescribed by § 23-103-204, and the board finds each

18 natural person designated by the business entity to exercise the powers to be

19 conferred by the license is qualified under subdivision (a)(1) of this

20 section+.

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

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

23 ~~months;~~

24 ~~(3)~~ ~~Has not committed any act that is a ground for denial,~~

25 ~~suspension, or revocation set forth in § 23-103-312;~~

26 ~~(4)~~ ~~Has paid the original license fee prescribed by § 23-103-~~

27 ~~204; and~~

28 ~~(5)~~ ~~Is determined by the board to be qualified,~~

29 ~~and the business entity has paid the original license fee prescribed by § 23-~~

30 ~~103-204,~~ the business entity shall be certified as a licensed title insurance

31 agent, and the license certificate provided for shall be issued to the

32 person.

33 **(b)** The privileges granted by the license certificate shall continue

34 unless the license is revoked, suspended, not renewed, or ~~unless the~~

35 ~~certificate is~~ surrendered to the board.

36 **(c)(1)** The license certificate shall be in a form prescribed by the

1 board and shall attest that the person possesses the knowledge, skill,
2 ability, and understanding to act as a title insurance agent and is
3 designated a licensed title insurance agent.

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

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

12 (e)(1) The license certificate shall indicate whether the license is
13 issued as:

14 (A) An issuing agent license;

15 (B) A signing agent license; ~~or~~

16 (C) A license for an inactive licensee; or

17 (D) An escrow agent's license in addition to an issuing or
18 signing agent's license.

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

21 (A) Provides evidence satisfactory to the board that the
22 applicant:

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

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

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

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

34 (A) Provides evidence satisfactory to the board that upon
35 licensure the applicant will be authorized by the issuing agent to
36 countersign commitments and contracts of title insurance on behalf of the

1 issuing agent; and

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

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

7

8 23-103-306. Nonresident licensing.

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

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

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

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

22

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

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

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

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

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

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

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

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

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

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

1 (ii) The renewal application shall include the
2 applicant's signed certification:

3 (a) Of the annual audit under § 23-103-318;

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

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

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

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

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

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

21 ~~(2)(4)~~ If the license is held by a business entity, the renewal
22 fee shall be paid for each natural person designated by the business entity
23 to exercise the powers conferred by the license.

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

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

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

34 (d)(1)(A) If a holder of a license fails to apply for renewal and
35 fails to pay the fee provided for renewal, the board shall cause to be mailed
36 to the holder a notice that the license has expired and the person may no

1 longer act as a title insurance agent.

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

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

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

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

11

12 23-103-311. Access to public records.

13 Licensed title insurance agents shall have access to the public records
14 ~~in~~ of any city, county, or state office of any city or county or of the state
15 and shall be permitted to make memoranda, notations, or copies and to occupy
16 reasonable space with equipment for that purpose, subject to the reasonable
17 regulation of the custodian of the public records and during the business
18 hours of each office.

19

20 23-103-312. ~~Revocation of license~~ Sanctions - Grounds.

21 (a) Upon finding that a licensee has committed one (1) or more of the
22 acts, conduct, or practices prohibited under subsection (b) of this section,
23 the The Arkansas Title Insurance and Escrow Agents' Licensing Board is
24 authorized, after a hearing, to:

25 (1) ~~cancel and revoke~~ Cancel, revoke, suspend, or refuse to
26 renew any license issued to any person under this chapter;

27 (2) Fine a licensee an amount not to exceed one thousand dollars
28 (\$1,000) per violation;

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

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

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

35 (1) ~~For a violation of~~ Violating any of the provisions of this
36 chapter;

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

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

6 (4) Making any substantial misrepresentation;

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

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

13 (7) Obtaining a license by means of fraud, misrepresentation, or
 14 concealment;

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

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

20
 21 23-103-313. ~~Revocation of license~~ Sanctions - Procedure - Appeal.

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

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

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

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

35 (2) The board shall at the same time require the person to
 36 appear before it on a day fixed by the board, not less than twenty (20) days

1 nor more than forty (40) days from the date of the service of the complaint
2 on that person, and to show cause why ~~the license should not be canceled and~~
3 ~~revoked~~ sanctions should not be imposed under § 23-103-312(a).

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

7 (4) The Chair of the Arkansas Title Insurance and Escrow Agents'
8 Licensing Board or the Secretary-treasurer of the Arkansas Title Insurance
9 and Escrow Agents' Licensing Board may administer oaths or affirmations to
10 witnesses appearing before the board.

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

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

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

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

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

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

32 (2) Upon an appeal's being taken, the secretary-treasurer shall
33 immediately make out a return of the proceedings in the matter before the
34 board with its decision and file them together with the bond and all the
35 papers pertaining thereto in his or her possession, including a certified
36 record of testimony taken at the hearing, with the clerk of the court to

1 which the appeal is taken.

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

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

8

9 23-103-314. Commitment and policy as evidence.

10 A photostat or verbatim copy of any commitment or contract of title
11 insurance pertaining to real property situated in the State of Arkansas ~~shall~~
12 ~~be~~ is admissible in evidence on behalf of any party litigant in any court in
13 the State of Arkansas and ~~shall be~~ is prima facie evidence of the facts
14 therein recited and contained.

15

16 23-103-315. Transfer and cancellation of title insurance agent license.

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

21 (A) Been authorized to countersign commitments and
22 contracts of title insurance in the name of the issuing agent; and

23 (B) Otherwise satisfied the requirements for licensure
24 under this ~~chapter~~ subchapter.

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

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

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

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

36

1 23-103-316. Continuing education - Requirements.

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

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

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

13 (2)(A) Persons licensed as title insurance agents shall
14 successfully complete four (4) classroom hours or equivalent continuing
15 education units or equivalent correspondence work of continuing education
16 annually.

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

20 (C) Persons satisfying the requirements in subdivision
21 (a)(2)(A) of this section shall be deemed to have successfully completed the
22 continuing education requirements for the licensing year following the year
23 in which first licensed in Arkansas; ~~and~~.

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

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

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

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

36 (c) The board may waive all or part of the requirements of subsection

1 (a) of this section for any licensee title insurance agent who submits
2 satisfactory evidence of inability to meet the continuing education
3 requirements due to health reasons or other hardship or extenuating
4 circumstances beyond the licensee's agent's control.

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

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

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

18 (g) The board may require continuing education providers to maintain
19 course records and to make these records available to the board for audit and
20 review.

21 (h) The board may require licensees title insurance agents to maintain
22 continuing education records and to provide the records to the board to
23 ensure compliance with the continuing education requirements.

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

28 (j) The continuing education requirements of this subchapter shall not
29 apply to:

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

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

35 (3) A business entity;

36 (4) Any person called to active duty in any branch of the United

1 States military services, including, but not limited to, the United States
2 Coast Guard and Reserves, during the entire period of active duty service;
3 and

4 (5) Any person that is in compliance with the education
5 requirements of the Real Estate License Law § 17-42-101 et seq.

6
7 23-103-317. Minimum title search and commitment required.

8 (a) No commitment or contract of title insurance shall be issued
9 unless:

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

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

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

18
19 23-103-318. Annual audit certification.

20 (a) No license for an issuing agent shall be issued or renewed unless
21 the agent shall have caused every title insurer for which the agent is
22 authorized to issue commitments and contracts of title insurance to issue a
23 sworn statement certifying that the title insurer has within the previous
24 twelve (12) months audited the accounts of the agent for the preceding twelve
25 (12) months and that the maintenance of the accounts, records, and funds of
26 the agent are satisfactory to the title insurer.

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

30
31 23-103-319. Reporting to title insurers.

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

35
36 SECTION 5. Title 23, Chapter 103 is amended to add a new subchapter to

1 read as follows:

2 23-103-401. Escrow agent license required -- Exemption.

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

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

7 (B) Maintains a bona fide established place of business in
8 this state; or

9 (2) Is licensed as a title insurance agent under this chapter.

10 (b) Without any further qualification or examination, an attorney
11 licensed to practice law by the State of Arkansas, upon written request to
12 the Arkansas Title Insurance and Escrow Agents' Licensing Board and payment
13 of the license fee, shall be immediately certified by the board as a licensed
14 escrow agent, and a license certificate shall be immediately issued to the
15 attorney.

16 (c) Without any further qualification or examination, a federally
17 insured bank or its affiliate or title insurance company if greater than
18 fifty percent (50%) of the company is owned by a federally insured bank or
19 its affiliate, upon written request to the Arkansas Title Insurance and
20 Escrow Agents' Licensing Board and payment of the license fee, shall be
21 immediately certified by the board as a licensed escrow agent, and a license
22 certificate shall be immediately issued to the bank, affiliate, or title
23 insurance company.

24

25 23-103-402. Escrow agent application.

26 (a) Any person desiring to become a licensed escrow agent shall make
27 application to the Arkansas Title Insurance and Escrow Agents' Licensing
28 Board.

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

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

36 (B) The criminal background checks shall conform to

1 applicable federal standards and shall include the taking of fingerprints.

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

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

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

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

14 (a) An affected applicant for licensure or
15 registration; or

16 (b) The person holding a license or
17 registration subject to revocation.

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

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

21 (b) The circumstances surrounding the crime;

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

23 (d) Subsequent work history;

24 (e) Employment references;

25 (f) Character references; and

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

28 (G)(i) Any information received by the board from the
29 Identification Bureau of the Department of Arkansas State Police or the
30 Federal Bureau of Investigation under this section is not available for
31 examination except by:

32 (a) The affected applicant or the applicant's
33 authorized representative; or

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

36 (ii) No record, file, or document shall be removed

1 from the custody of the Department of Arkansas State Police.

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

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

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

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

15
16 23-103-403. Qualifications – Issuance of license.

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

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

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

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

24 (4) Has paid the original license fee prescribed by § 23-103-
25 204;

26 (5) Submits a sworn statement of the applicant's experience and
27 qualifications to act as an escrow agent and is determined by the board to be
28 qualified; and

29 (6) Is an insured under an errors and omissions policy of
30 insurance in an amount no less than two hundred fifty thousand dollars
31 (\$250,000) or provides other evidence of financial responsibility
32 satisfactory to the board.

33 (b)(1) If the applicant is a business entity, the board finds that
34 each natural person designated by the entity to exercise the powers conferred
35 by the license is qualified under this subchapter, and the entity has paid
36 the original license fee prescribed by § 23-103-204, the entity shall be

1 certified as a licensed escrow agent.

2 (2) A licensed title insurance agent may designate and authorize
3 one (1) or more issuing or signing agents to exercise the powers conferred by
4 the license upon payment of a license fee of twenty-five dollars (\$25.00) to
5 the board for each designee.

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.

3
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 23-103-410. Exemptions -- Use of Recovery Fund.

23 (a) Except for the optional licensing provision for attorneys
24 contained in § 23-103-401, this subchapter does not apply to:

25 (1) An attorney licensed to practice law by the State of
26 Arkansas; or

27 (2) A licensed principal real estate broker while closing a
28 transaction in which the broker earns a commission for services as a broker.

29 (b) No claim against a person exempt from this subchapter under
30 subsection (a) of this section shall be made against or paid from the
31 Arkansas Title Insurance and Escrow Agents' Recovery Fund.

32
33 SECTION 6. EFFECTIVE DATE. This act shall take effect on January 1,
34 2006.

35
36 /s/ Cowling, et al