

Stricken language would be deleted from and underlined language would be added to law as it existed prior to the 82nd General Assembly.

1 State of Arkansas  
2 82nd General Assembly  
3 Regular Session, 1999

# A Bill

HOUSE BILL 2046

4  
5 By: Representative Courtway  
6  
7

## For An Act To Be Entitled

8  
9 "AN ACT TO REGULATE TITLE INSURANCE INSURERS; TO  
10 PROVIDE MINIMUM TITLE PLANT STANDARDS; AND FOR OTHER  
11 PURPOSES. "

## Subtitle

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14 "TO REGULATE TITLE INSURANCE INSURERS; TO  
15 PROVIDE MINIMUM TITLE PLANT STANDARDS. "

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18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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### SECTION 1. Title - Purpose.

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22 (a) This act shall be known and may be cited as the "Arkansas Title  
23 Insurance Insurers Minimum Title Standards Act".

24 (b) The purpose of this act is to provide minimum standards for the  
25 issuance of title insurance within the state.  
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### SECTION 2. Application of act and construction with other laws.

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28 (a) This act shall apply to all title insurance insurers authorized to  
29 transact title insurance business in this state.

30 (b) This act shall not apply to transactions involving the sale or  
31 encumbrance of property if the consideration or loan amount is greater than  
32 three hundred thousand dollars (\$300,000).  
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### SECTION 3. Definitions. For the purpose of this act:

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35 (a) "Title insurance" means the insurance of owners of property or  
36 others having an interest therein, or liens or encumbrances thereon, against

1 loss by encumbrance, invalidity or unenforceability of lien, or other claims  
 2 of defect or unmarketability adverse to the title of the insured;

3 (b) "Title insurance insurers" means any person, firm, corporation, or  
 4 entity, either organized under the laws of this state or as a foreign entity  
 5 authorized to do business in this state, for the purpose of transacting title  
 6 insurance business as insurer of title to real estate interests;

7 (c) "Title insurance agent" means any person, firm, corporation, or  
 8 entity authorized to issue policies of title insurance on behalf of a title  
 9 insurance insurer; and

10 (d) "Title plant" means a set of records in which an entry has been  
 11 made of all documents or matters which under law impart constructive notice of  
 12 matters affecting title to all real property or any interest therein or  
 13 encumbrance thereon, which have been filed or recorded in the county for which  
 14 such title plant is maintained for a minimum continuous period of at least  
 15 thirty (30) years prior to the effective date of this act and continually  
 16 thereafter. Such records shall consist of an index or indices in which  
 17 notations or references to any such documents that describe the property  
 18 affected thereby are posted, entered or otherwise included, according to the  
 19 property described therein, or copies or briefs of all such documents that  
 20 describe the property affected thereby which are sorted and filed according to  
 21 the property described therein. Documents only affecting oil, gas, or other  
 22 mineral interests are exempt from this requirement provided no insurance is  
 23 issued covering such interests.

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 25 SECTION 4. Minimum standards.

26 No title insurance insurer shall issue or permit to be issued, nor  
 27 authorize any title agent to issue, a commitment or policy of title insurance,  
 28 unless the title evidence supporting such commitment or policy shall be the  
 29 result of a prudent search from one of the following, or a combination  
 30 thereof:

31 (1) An abstract of title certified by a licensed abstracter covering a  
 32 minimum of thirty (30) years prior to the effective date of this act and  
 33 continually thereafter;

34 (2) A title plant as defined under this act;

35 (3) A thorough search of the records of the jurisdiction conducted at  
 36 the site where the recorded documents or matters imparting constructive notice

1 affecting title to real property have been recorded and maintained within the  
 2 jurisdiction, personally conducted by;

3 (A) An attorney licensed to practice law within this state; or

4 (B) Any individual who (i) has been a title insurance agent for a  
 5 continuous period of at least one (1) year prior to the effective date of this  
 6 act, either in his or her own right or through an entity owned by him or her,  
 7 and (ii) no later than one (1) year after the effective date of this act has  
 8 registered with the Office of the Arkansas Insurance Commissioner as a title  
 9 insurance agent for that jurisdiction; or

10 (C) Any entity which, at the time of the search in question is  
 11 conducted, is owned by an individual or individuals described in subdivision  
 12 (3)(B) above; or

13 (D) Any individual who, at the time the search in question is  
 14 conducted, is a bona fide employee of an individual or entity described in  
 15 subdivisions (3)(B) or (C) above.

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 17 SECTION 5. Implementation of minimum standards.

18 Within one (1) year after the effective date of this act, a title plant,  
 19 as defined in Section 3, must cover a minimum period of ten (10) years  
 20 preceding the effective date of this act. Within two (2) years after the  
 21 effective date of this act that coverage must be extended to thirty (30) years  
 22 preceding such effective date. Regardless of implementation phases, all  
 23 plants shall be continuous to within thirty (30) days of issuance of any  
 24 commitment or policy of insurance.

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 26 SECTION 6. Regulation.

27 The Arkansas Insurance Commissioner may adopt rules or regulations as it  
 28 deems necessary for the proper administration of the commissioner's powers and  
 29 duties consistent with the act.

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 31 SECTION 7. Enforcement.

32 (a) Each violation of the act by a title insurance insurer may, in  
 33 addition to or in lieu of suspension or revocation of a license or certificate  
 34 of authority to transact business in the State of Arkansas, be punishable by a  
 35 fine by the Arkansas Insurance Commissioner of not less than two hundred fifty  
 36 dollars (\$250), nor more than twenty-five hundred dollars (\$2,500).

1        (b) Upon establishing the existence of a violation of any provision of  
 2 this act, any person, or title agent, shall be entitled, in addition to any  
 3 other damages or remedies provided by law, to such equitable or injunctive  
 4 relief as the court deems proper. In any such action, the court may award to  
 5 the successful party the court costs of the action together with reasonable  
 6 attorney's fees.

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 8        SECTION 8. All provisions of this act of a general and permanent nature  
 9 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code  
 10 Revision Commission shall incorporate the same in the Code.

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 12        SECTION 9. If any provision of this act or the application thereof to  
 13 any person or circumstance is held invalid, such invalidity shall not affect  
 14 other provisions or applications of the act which can be given effect without  
 15 the invalid provision or application, and to this end the provisions of this  
 16 act are declared to be severable.

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 18        SECTION 10. All laws and parts of laws in conflict with this act are  
 19 hereby repealed.

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 21        SECTION 11. EMERGENCY CLAUSE. It is hereby found and determined by the  
 22 Eighty-second General Assembly that the title insurance industry is not  
 23 adequately regulated in this state; that this act enhances the regulation of  
 24 the title industry; and that this act should go into effect as soon as  
 25 possible to properly protect the customers of the title insurance industry.  
 26 Therefore, an emergency is declared to exist and this act being immediately  
 27 necessary for the preservation of the public peace, health and safety shall  
 28 become effective on July 1, 1999.