

By: Senator(s) Kirby

To: Insurance

SENATE BILL NO. 2467

1 AN ACT TO CREATE THE MISSISSIPPI TITLE INSURANCE ACT; TO
2 AMEND SECTION 83-15-1, MISSISSIPPI CODE OF 1972, TO PROVIDE THE
3 SHORT TITLE AND PURPOSE OF THE CHAPTER; TO CREATE NEW SECTION
4 83-15-2, MISSISSIPPI CODE OF 1972, TO DEFINE TERMS USED IN THE
5 CHAPTER; TO AMEND SECTION 83-15-3, MISSISSIPPI CODE OF 1972, TO
6 RECODIFY THE PROVISIONS OF FORMER SECTION 83-15-1; TO CREATE NEW
7 SECTION 83-15-4, MISSISSIPPI CODE OF 1972, TO RECODIFY THE
8 PROVISIONS OF FORMER SECTION 83-15-3 AND TO REQUIRE STATE
9 RESIDENCY FOR PERSONS OR AGENTS ISSUING TITLE INSURANCE POLICIES;
10 TO CREATE NEW SECTION 83-15-13, MISSISSIPPI CODE OF 1972, TO
11 PROHIBIT THE REBATE OF PREMIUMS; TO CREATE NEW SECTION 83-15-15,
12 MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE TIME WITHIN WHICH AN
13 AGENT SHALL ISSUE A TITLE INSURANCE POLICY AFTER THE PREMIUM HAS
14 BEEN COLLECTED; TO CREATE NEW SECTION 83-15-17, MISSISSIPPI CODE
15 OF 1972, TO PROVIDE FOR THE TIME WITHIN WHICH AN AGENT SHALL
16 REPORT TO THE TITLE INSURER ALL POLICIES ISSUED BY THE AGENCY AND
17 SHALL REMIT PREMIUMS; TO CREATE NEW SECTION 83-15-19, MISSISSIPPI
18 CODE OF 1972, TO REQUIRE APPROVAL OF FORMS BY THE COMMISSIONER OF
19 INSURANCE; TO CREATE NEW SECTION 83-15-21, MISSISSIPPI CODE OF
20 1972, TO REQUIRE THE DETERMINATION OF INSURABILITY AND THE
21 PRESERVATION OF EVIDENCE OF TITLE SEARCH AND EXAMINATION; TO
22 CREATE NEW SECTION 83-15-23, MISSISSIPPI CODE OF 1972, TO PROVIDE
23 THAT A TITLE INSURANCE POLICY MAY NOT BE ISSUED WITHOUT REGARD TO
24 THE POSSIBLE EXISTENCE OF ADVERSE MATTERS OR DEFECTS OF TITLE; TO
25 CREATE NEW SECTION 83-15-25, MISSISSIPPI CODE OF 1972, TO PROHIBIT
26 ILLEGAL DEALINGS IN RISK PREMIUM; TO CREATE NEW SECTION 83-15-27,
27 MISSISSIPPI CODE OF 1972, TO REQUIRE THE COMMISSIONER OF INSURANCE
28 TO ADOPT PREMIUM RATES; TO CREATE NEW SECTION 83-15-29,
29 MISSISSIPPI CODE OF 1972, TO REQUIRE NOTICE OF AVAILABILITY OF
30 OWNER'S TITLE INSURANCE TO BE GIVEN TO THE PURCHASER/MORTGAGOR; TO
31 CREATE NEW SECTION 83-15-31, MISSISSIPPI CODE OF 1972, TO PROVIDE
32 CONDITIONS UNDER WHICH A TITLE INSURER AND AGENT MAY OPERATE AS AN
33 ESCROW, SETTLEMENT OR CLOSING AGENT; TO CREATE NEW SECTION
34 83-15-33, MISSISSIPPI CODE OF 1972, TO PROHIBIT THE TRANSACTION OF
35 TITLE INSURANCE IN ADDITION TO ANY OTHER KIND OF INSURANCE; TO
36 CREATE NEW SECTION 83-15-35, MISSISSIPPI CODE OF 1972, TO
37 AUTHORIZE THE COMMISSIONER TO ADOPT RULES AND REGULATIONS FOR THE
38 PURPOSE OF IMPLEMENTING THE PROVISIONS OF THIS ACT; TO CREATE NEW
39 SECTION 83-15-37, MISSISSIPPI CODE OF 1972, TO PROVIDE ERRORS AND
40 OMISSIONS POLICY REQUIREMENTS; TO CREATE NEW SECTION 83-15-39,
41 MISSISSIPPI CODE OF 1972, TO PROVIDE FOR VIOLATIONS OF THE CHAPTER
42 AND PENALTIES THEREFOR; TO CREATE NEW SECTION 83-15-41,
43 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE CHAPTER SHALL NOT BE
44 INTERPRETED AS REGULATING THE PRACTICE OF LAW IN THIS STATE; TO
45 CREATE NEW SECTION 83-15-43, MISSISSIPPI CODE OF 1972, TO PROVIDE
46 FOR SEVERABILITY; AND FOR RELATED PURPOSES.

47 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

48 **SECTION 1.** Section 83-15-1, Mississippi Code of 1972, is
49 amended as follows:



50 83-15-1. **Short title; purpose of act.**

51 (1) This act shall be known and cited as the Mississippi
52 Title Insurance Act.

53 (2) The purpose of this act is to set forth certain
54 definitions applicable to title insurance in this state and to
55 provide further for the supervision of the business of title
56 insurance transacted in this state.

57 (3) This act shall apply to all title insurers and title
58 insurance agents engaged in the business of title insurance in
59 this state.

60 (4) Except as otherwise expressly provided in this act,
61 except where the context otherwise requires, and except those
62 provisions which are inconsistent with this act, the provisions of
63 Title 83 of the Mississippi Code of 1972, the Mississippi
64 Insurance Code, which apply to title insurance and title insurance
65 companies shall continue to be applicable to the business of title
66 insurance and title insurance companies. No amendment to Title 83
67 that is enacted after the effective date of this act that is
68 inconsistent with the provisions of this act shall be applicable
69 to the business of title insurance unless the amendment
70 specifically states that it is to be applicable to the business of
71 title insurance.

72 **SECTION 2.** The following provision shall be codified as
73 Section 83-15-2, Mississippi Code of 1972:

74 **83-15-2. Definitions.**

75 For the purposes of this act, the following terms shall have
76 the following meanings:

77 (a) "Abstract of title" means a compilation or summary,
78 based upon a title search or title examination, of all recorded
79 instruments in the real property records in the county where the
80 property is located of whatever kind or nature that in any manner
81 affect title to a specified parcel of real property.



82 (b) "Bona fide employee of a title insurer" means an
83 individual who devotes substantially all of his or her time to
84 performing services on behalf of a title insurer and whose
85 compensation for these services is in the form of salary or its
86 equivalent paid by the title insurer.

87 (c) "Business of title insurance" means insuring,
88 guaranteeing, warranting or indemnifying owners of real property
89 or the holder of liens or encumbrances thereon or others
90 interested therein against loss or damage suffered by reason of
91 liens, encumbrances upon, defects in, or the unmarketability of
92 the title to the property; the invalidity or unenforceability of
93 any liens or encumbrances thereon; or doing any business in
94 substance equivalent to any of the foregoing.

95 (d) "Commissioner" means the Commissioner of Insurance
96 of the State of Mississippi.

97 (e) "Certificate of title, title certificate, opinion
98 of title or title opinion" means a written opinion expressing the
99 status of title based upon a title search or title examination, by
100 an abstract company licensed to do business in this state, a
101 licensed abstractor or an attorney at law, who is licensed to
102 practice law in this state, of instruments in the real property
103 records as defined herein, or an abstract thereof affecting title
104 to a specified parcel of real property to ascertain the history
105 and present condition of title to such real property as to its
106 ownership and status with respect to liens, encumbrances, clouds
107 and defects.

108 (f) "Escrow" means written instruments, money or other
109 items deposited by one party with a depository or escrow agent,
110 for delivery to another party upon the performance of a specified
111 condition or the happening of a certain event.

112 (g) "Person" means any natural person at least
113 twenty-one (21) years of age and who is domiciled in this state or
114 is a bona fide resident of and resides within this state or any



115 partnership, association, corporation or other legal entity which
116 has been properly formed under the laws of this state. The term
117 "person" does not include "title insurer," nor does it include the
118 officers and employees of a title insurer.

119 (h) "Primary title services" means determining
120 insurability in accordance with sound underwriting practices based
121 upon evaluation of a reasonable search and examination of the
122 title, determination and clearance of underwriting objections and
123 requirements to eliminate risk, for the purpose of issuing a title
124 insurance commitment setting forth the requirements to insure, and
125 preparation and issuance of the policy.

126 (i) "Premium and premium rates" means the charge, as
127 specified by rule of the Commissioner of Insurance, that is made
128 by a title insurer for a title insurance policy, including the
129 charge for performance of primary title services by a title
130 insurer or title insurance agent or agency, and incurring the
131 risks incident to such policy, under the several classifications
132 of title insurance contracts and forms, and upon which charge a
133 premium tax is paid. For the purposes of this chapter, "premium"
134 shall not include expenses for the performance of services such as
135 abstracting, searching and examining titles or obtaining a title
136 opinion; fees for document preparation; fees for handling escrows,
137 settlements or closings; fees incurred to cure defects in the
138 title; and fees incident to the issuance of a commitment to insure
139 title or a title insurance policy.

140 (j) "Qualified financial institution" means an
141 institution that is:

142 (i) Organized or, in the case of a U.S. branch or
143 agency office of a foreign banking organization, licensed under
144 the laws of the United States or any state and has been granted
145 authority to operate with fiduciary powers;

146 (ii) Regulated, supervised and examined by federal
147 or state authorities having regulatory authority over banks; and



148 (iii) Insured by the appropriate federal entity.

149 (k) "Real property records" means the recorded
150 instruments affecting title to real property contained within the
151 Office of the Chancery Clerk, Circuit Clerk and Taxing Authorities
152 in the county in which the real property is situated and which
153 includes, but is not limited to:

154 (i) The indexes to recorded deeds, deeds of trust,
155 construction liens, federal tax liens, judgments and lis pendens;
156 and

157 (ii) The books, fiche and databases containing
158 electronically stored documents in which recorded instruments
159 affecting title to real property are compiled.

160 (l) "Reissue premium" means the rate to be charged for
161 an owner's policy or a loan policy of title insurance which
162 insures the interest of a new owner or the interest of a lender in
163 a deed of trust or mortgage on real property when the current
164 owner has had the title to such property insured as owner within
165 the prior ten (10) years.

166 (m) "Security or security deposit" means funds or other
167 property received by the title insurance agent as collateral to
168 secure an indemnitor's obligation under an indemnity agreement
169 pursuant to which a title insurer is granted a perfected security
170 interest in the collateral in exchange for agreeing to provide
171 coverage in a title insurance policy for a specific title
172 exception to coverage.

173 (n) "Substitution loan rate premium" means the rate
174 charged for a loan policy of title insurance which insures the
175 interest of a lender in a deed of trust or mortgage on real
176 property which loan is being made to the same borrower by the same
177 lender, secured by the same property, the title to which was
178 insured by a title insurer licensed to be engaged in the business
179 of title insurance in this state in connection with the loan being
180 satisfied.



181 (o) "Title agent or agent" means any person, other than
182 a bona fide officer or employee of a title insurer, who is
183 authorized in writing by a title insurer to perform the following:

184 (i) Solicit title insurance business;

185 (ii) Collect premiums;

186 (iii) Determine insurability in accordance with
187 underwriting rules, standards and guidelines prescribed by the
188 title insurer;

189 (iv) Perform primary title services as defined
190 herein; and

191 (v) Issue title insurance commitments, policies or
192 endorsements of the title insurer.

193 (p) "Title insurance policy or policy" means a contract
194 insuring or indemnifying owners of, or other persons lawfully
195 interested in, real property or any interest in real property,
196 against loss or damage arising from any or all of the following
197 conditions existing on or before the policy date and not excepted
198 or excluded:

199 (i) Defects in or liens or encumbrances on the
200 insured title;

201 (ii) Unmarketability of the insured title;

202 (iii) Invalidity, lack of priority or
203 unenforceability of liens or encumbrances on the stated property;

204 (iv) Lack of legal right of access to the land; or

205 (v) Unenforceability of rights in title to the
206 land.

207 (q) "Title insurer" means any domestic company
208 organized and authorized to do business under the provisions of
209 Title 83, Chapter 15, for the purpose of conducting the business
210 of title insurance, or any insurer organized under the laws of
211 another state, the District of Columbia, or a foreign country and
212 holding a certificate of authority to transact business in this



213 state, for the purpose of conducting the business of title
214 insurance.

215 (r) "Title search or title examination" means a search
216 or examination, for an appropriate period of time, of the real
217 property records as defined herein which impart constructive
218 notice of matters relating to real property affecting a specified
219 parcel or parcels of real property for the purpose of determining
220 its insurability. The search of the real property records as
221 defined herein relating to matters of title performed in
222 connection with or incident to the issuance of a preliminary
223 report, commitment or binder shall be solely for the benefit of
224 the title insurance company requested to issue its policy or
225 policies of title insurance.

226 **SECTION 3.** Section 83-15-3, Mississippi Code of 1972, is
227 amended as follows:

228 83-15-3. **Formation of company.**

229 Companies may be formed in the same manner provided in this
230 chapter for the purposes of abstracting title to real estate,
231 furnishing information in relation thereto, and insuring owners
232 and others interested therein against loss by reason of
233 encumbrances and defective titles. Such companies shall be
234 subject to the provisions of this chapter as regards the manner of
235 their formation as follows, to wit: Any company, before it shall
236 issue any policy of insurance or guaranty, shall file with the
237 insurance commissioner a certified copy of the record of the
238 certificate of its organization in the Office of the Secretary of
239 State, and shall obtain from the Commissioner of Insurance his
240 certificate that it has complied with the laws applicable to it
241 and is authorized to do such business. Every company which issues
242 policies of title insurance or guaranty shall, on or before the
243 first day of March of each year, file in the Office of the
244 Insurance Commissioner a statement such as he may require, of its
245 condition and of its affairs for the year ending on the preceding



246 thirty-first of December, signed and sworn to by its president,
247 secretary, treasurer or one of its directors; and for neglect to
248 file such annual statement shall be liable to the same penalties
249 as are imposed upon insurance companies generally.

250 **SECTION 4.** The following provision shall be codified as
251 Section 83-15-4, Mississippi Code of 1972:

252 83-15-4. **Annual license; residency; authority.**

253 (1) The commissioner shall annually license such companies
254 as issue policies of title insurance or contracts of guaranty and
255 issue continuous agent certificates as prescribed in Sections
256 83-5-73 and 83-17-5, Mississippi Code of 1972, and shall have the
257 same power and authority to visit and examine such companies as he
258 has in the case of domestic insurance companies. But persons
259 licensed as fire insurance agents and persons who are practicing
260 attorneys at law may act as agent for any such company without
261 additional license.

262 (2) A title insurance policy insuring the interest of an
263 insured in real property in this state shall not be issued by any
264 person or agent unless the person or agent issuing a title
265 insurance policy is domiciled in or is otherwise a bona fide
266 resident of and resides within this state or is a partnership,
267 association, corporation or other legal entity properly organized
268 under the laws of this state. Nothing herein contained shall be
269 construed to prevent a title insurer licensed to do business in
270 this state, or a bona fide employee thereof, from issuing a policy
271 of title insurance in this state.

272 **SECTION 5.** The following provision shall be codified as
273 Section 83-15-13, Mississippi Code of 1972:

274 83-15-13. **Rebates prohibited.**

275 Premium and premium rates shall not be subject to rebate and
276 the rebate of premiums is expressly prohibited. This, however,
277 does not prohibit a title insurance company from paying or a title



278 insurance agent from receiving a commission for the performance of
279 "primary title services."

280 **SECTION 6.** The following provision shall be codified as
281 Section 83-15-15, Mississippi Code of 1972:

282 83-15-15. **Time within which to issue policy.**

283 Unless a later date is specifically authorized by the title
284 insurer for a particular transaction or unless the title insurance
285 commitment specifies a time for which it is effective or such
286 commitment is renewed or extended by the title insurer, the title
287 agent shall issue to the insured the policy or policies of title
288 insurance for which a premium has been collected within sixty (60)
289 days from the effective date of the policy or in the case of a
290 title insurance commitment having been issued, within sixty (60)
291 days after satisfaction of all requirements and conditions set out
292 in said commitment in accordance with the title insurer's
293 underwriting guidelines. For the purpose of this subsection, the
294 effective date of the policy is defined as the date and time the
295 instrument conveying the interest to be insured is recorded unless
296 the policy to be issued is insuring the interest of the proposed
297 insured by virtue of an instrument recorded in the real property
298 records prior to the time the request or order for title insurance
299 is placed.

300 **SECTION 7.** The following provision shall be codified as
301 Section 83-15-17, Mississippi Code of 1972:

302 83-15-17. **Time within which to report policy and remit
303 premiums.**

304 A title insurance agent shall report to the title insurer all
305 title insurance policies issued by the agency and remit to the
306 title insurer that portion of the title insurance premium to be
307 retained by the title insurer within sixty (60) days from the date
308 the policy is issued.

309 **SECTION 8.** The following provision shall be codified as
310 Section 83-15-19, Mississippi Code of 1972:



311 83-15-19. **Approval of forms.**

312 A title insurer may not issue or agree to issue any form of
313 title insurance commitment, title insurance policy, title
314 insurance endorsement, other contract of title insurance or
315 related form until it is filed with and approved by the
316 Commissioner of Insurance. The Commissioner of Insurance may not
317 disapprove a title guaranty or policy form on the ground that it
318 has on it a blank form for an attorney's opinion on the title.

319 Any title insurance form not disapproved by the Commissioner
320 of Insurance within sixty (60) days from the date of its filing
321 shall be considered approved and may be used from that date
322 forward.

323 **SECTION 9.** The following provision shall be codified as
324 Section 83-15-21, Mississippi Code of 1972:

325 83-15-21. **Determination of insurability required;**
326 **preservation of evidence of title search and examination.**

327 (1) A title insurer or a title insurance agent may not issue
328 a title insurance commitment, endorsement or title insurance
329 policy until the title insurer or title insurance agent has caused
330 to be conducted a reasonable search and examination of the title
331 and of such other information as may be necessary, and has cause
332 to be made a determination of insurability of title, including
333 endorsement coverages, in accordance with sound underwriting
334 practices.

335 (2) The title insurer or the title insurance agent shall
336 cause the evidence of the reasonable search and examination of
337 title to be preserved and retained in its files or in the files of
338 its title insurance agent or agencies for a period of not less
339 than seven (7) years after the title insurance commitment, title
340 insurance policy or guaranty of title was issued. The title
341 insurer or agent or agency must produce the evidence required to
342 be maintained by this subsection at its offices upon the demand of
343 the Commissioner of Insurance. Instead of retaining the original



344 evidence, the title insurer or the title insurance agent or agency
345 may, in the regular course of business, establish a system under
346 which all or part of the evidence is recorded, copied or
347 reproduced by any photographic, photostatic, microfilm, microcard,
348 miniature photographic, or other process which accurately
349 reproduces or forms a durable medium for reproducing the original.

350 (3) The title insurer or its agent or agency must maintain a
351 record of the actual risk premium and related title service
352 charges made for issuance of the policy and any endorsements in
353 its files for a period of not less than seven (7) years. The
354 title insurer, agent or agency must produce the record at its
355 office upon demand of the Commissioner of Insurance.

356 (4) This section does not apply to an insurer assuming no
357 primary liability in a contract of reinsurance or to an insurer
358 acting as a coinsurer if any other coinsuring insurer has complied
359 with this section.

360 **SECTION 10.** The following provision shall be codified as
361 Section 83-15-23, Mississippi Code of 1972:

362 83-15-23. **Casualty title insurance prohibited.**

363 A title insurance policy or guarantee of title may not be
364 issued without regard to the possible existence of adverse matters
365 or defects of title.

366 **SECTION 11.** The following provision shall be codified as
367 Section 83-15-25, Mississippi Code of 1972:

368 83-15-25. **Illegal dealings in risk premium.**

369 A person may not knowingly quote, charge, accept, collect or
370 receive a premium for title insurance other than the premium
371 adopted by the Commissioner of Insurance.

372 **SECTION 12.** The following provision shall be codified as
373 Section 83-15-27, Mississippi Code of 1972:

374 83-15-27. **Adoption of rates.**

375 (1) Subject to the rating provisions of this code, the
376 Commissioner of Insurance shall adopt a rule specifying the



377 original, reissue and substitution premium rate to be charged in
378 this state by title insurers for the respective types of title
379 insurance contracts and, for policies issued through agents and
380 agencies, the percentage of such premium required to be retained
381 by the title insurer.

382 (2) In adopting premium rates, the Commissioner of Insurance
383 shall give due consideration to the following:

384 (a) The title insurers loss experience and prospective
385 loss experience under closing protection letters and policy
386 liabilities.

387 (b) A reasonable margin for underwriting profit
388 sufficient to allow title insurers, agents, and agencies to earn a
389 rate of return on their capital that will attract and retain
390 adequate capital investment in the title insurance business and
391 maintain an efficient title insurance delivery system.

392 (c) Past expenses and prospective expenses for
393 administration and handling of risks.

394 (d) Liability for defalcation.

395 (e) Other relevant factors.

396 (3) Rates may be grouped by types of policies and may differ
397 as to risk assumed under each policy type.

398 (4) Rates may not be excessive, inadequate or unfairly
399 discriminatory.

400 (5) The premium rate applies to each One Thousand Dollars
401 (\$1,000.00) of insurance issued to an insured.

402 (6) The premium rates apply throughout this state.

403 (7) The Commissioner of Insurance shall in accordance with
404 the standards provided in subsection (2), review the premium as
405 needed, but not less frequently than once every three (3) years,
406 and shall, based upon the review required by this subsection,
407 revise the premium if the results of the review so warrant. Each
408 time the Commissioner of Insurance reviews the premium, the
409 Commissioner of Insurance may charge a fee, not exceeding One



410 Thousand Dollars (\$1,000.00) to each title insurance company
411 authorized to transact the business of title insurance in this
412 state, to offset the cost of the review.

413 (8) The Commissioner of Insurance may, by rule, require
414 licensees under this chapter to annually submit statistical
415 information, including loss and expense data, as the commissioner
416 determines to be necessary to analyze premium rates, retention
417 rates, and the condition of the title insurance industry.

418 **SECTION 13.** The following provision shall be codified as
419 Section 83-15-29, Mississippi Code of 1972:

420 83-15-29. **Notice to borrower/purchaser.**

421 (1) A title insurance agent or a title insurer issuing a
422 loan policy of title insurance in conjunction with a mortgage loan
423 made simultaneously with the purchase of all or part of the real
424 property securing the loan, where no owner's title insurance
425 policy has been requested, shall give written notice, on a form
426 approved by the commissioner, to the purchaser/mortgagor at or
427 before the closing of settlement and disbursement of funds. The
428 written notice of availability of owner's title insurance shall
429 contain all of the following:

430 (a) An explanation that a loan policy of title
431 insurance is to be issued protecting the lender/mortgagee, and
432 that the loan policy of title insurance does not provide title
433 insurance protection to the purchaser/mortgagor as the owner of
434 the property being purchased;

435 (b) An explanation of the matters a title policy
436 insures against and what possible exposures exist for the
437 purchaser/mortgagor that could be insured against through the
438 purchase of an owner's policy of title insurance;

439 (c) Space to indicate the desire of the purchaser to
440 either acquire or decline owner's title insurance;

441 (d) Date the notice is executed by the purchaser; and

442 (e) Signature of the purchaser or purchasers.



443 (2) A copy of this notice, signed by the
444 purchaser/mortgagor, shall be retained in the relevant file of the
445 title insurance agent for not less than five (5) years after the
446 effective date of the policy.

447 (3) In the event that the notice required in this section is
448 not obtained from the purchaser/mortgagor at or before the closing
449 of settlement and disbursement of any funds, the omission may be
450 cured by the title agent or title insurer at any time subsequent
451 to the closing of settlement but prior to actual or constructive
452 notice of a claim or possible claim against the title of the real
453 estate which was the subject of the settlement by sending a
454 certified letter, return receipt requested, to the last known
455 address of the purchaser, which includes the notification required
456 in this section.

457 **SECTION 14.** The following provision shall be codified as
458 Section 83-15-31, Mississippi Code of 1972:

459 83-15-31. **Conditions for providing escrow, closing or**
460 **settlement services, and maintaining escrow and security deposit**
461 **accounts.**

462 A title insurer and title insurance agent may operate as an
463 escrow, settlement or closing agent, provided that:

464 (a) All funds deposited with the title insurer or title
465 insurance agent in connection with an escrow, settlement, closing
466 or security deposit shall be submitted for collection to or
467 deposited in a separate fiduciary escrow account or accounts in a
468 qualified financial institution no later than the close of the
469 next business day, in accordance with the following requirements:

470 (i) The funds shall be the property of the person
471 or persons entitled to them under the provisions of the escrow,
472 settlement, closing or security deposit agreement and shall be
473 segregated for each depository by escrow, settlement, closing or
474 security deposit in the records of the title insurer or title



475 insurance agent in a manner that permits the funds to be
476 identified on an individual basis; and

477 (ii) The funds shall be applied only in accordance
478 with the terms of the individual instructions or agreements under
479 which the funds are accepted.

480 (b) Funds held in an escrow account shall be disbursed
481 only pursuant to a written instruction or agreement specifying how
482 and to whom such funds may be disbursed.

483 (c) Funds held in a security deposit account shall be
484 disbursed only pursuant to a written agreement specifying:

485 (i) What actions the indemnitor or others shall
486 take to satisfy the indemnitor's obligation under the agreement;

487 (ii) The duties of the title insurer or title
488 insurance agent with respect to disposition of the funds held,
489 including a requirement to maintain evidence of the disposition of
490 the title exception before any balance may be paid over to the
491 depositing party or the designee of the depositing party; and

492 (iii) Any other provisions which the parties or
493 the title insurer or title insurance agent may deem appropriate or
494 which the commissioner may require.

495 (d) Disbursements may be made out of an escrow,
496 settlement or closing account only if deposits in amounts at least
497 equal to the disbursement have first been made directly relating
498 to the transaction disbursed against and if the deposits are in
499 one of the following forms:

500 (i) Cash;

501 (ii) Wire transfers such that the funds are
502 unconditionally received by the title insurer or title insurance
503 agent or the insurer's or agent's depository;

504 (iii) Checks, drafts, negotiable orders of
505 withdrawal, money orders and any other item that has been finally
506 paid before any disbursements;



507 (iv) A depository check, including a certified
508 check, governed by the provisions of the Federal Expedited Funds
509 Availability Act, 12 USC Section 4001, et seq.;

510 (v) Credit transfers through the Automated
511 Clearing House, which have been deemed available by the depository
512 institution receiving the credits. The credits must conform to
513 the operating rules established by the National Automated Clearing
514 House Association; or

515 (vi) Any instrument for which the depository
516 institution gives immediate credit to the account in which the
517 instrument is deposited.

518 (e) Nothing contained in this section shall be deemed
519 to prohibit the recording of documents prior to the time funds are
520 available for disbursement with respect to a transaction, provided
521 all parties consent to such recording in writing.

522 **SECTION 15.** The following provision shall be codified as
523 Section 83-15-33, Mississippi Code of 1972:

524 83-15-33. **Transaction of title insurance and any other kind**
525 **of insurance prohibited.**

526 (1) An insurer may not transact title insurance and any
527 other kind of insurance in this state.

528 (2) Subsection (1) does not preclude a title insurer from
529 providing instruments to any prospective insured, in the form and
530 content approved by the Commissioner of Insurance, under which the
531 title insurer assumes liability for loss due to the fraud of,
532 dishonesty of, misappropriation of funds by, or failure to comply
533 with written closing instructions by its contract agents, agencies
534 or approved attorneys in connection with a real property
535 transaction for which the title insurer is to issue a title
536 insurance policy.

537 **SECTION 16.** The following provision shall be codified as
538 Section 83-15-35, Mississippi Code of 1972:

539 83-15-35. **Rules and regulations.**



540 The Commissioner of Insurance may adopt rules and regulations
541 for the purpose of implementing the provisions of this act in
542 accordance.

543 **SECTION 17.** The following provision shall be codified as
544 Section 83-15-37, Mississippi Code of 1972:

545 83-15-37. **Errors and omissions policy requirements.**

546 A title insurance policy may not be issued from a title
547 search or a title examination performed by any person, other than
548 a licensed attorney, a title insurance agent, or an employee of a
549 title insurer or of a title insurance agency unless that person
550 has in effect an error and omissions policy that has minimum
551 coverage limits of Two Hundred Fifty Thousand Dollars
552 (\$250,000.00) and a deductible that does not exceed Ten Thousand
553 Dollars (\$10,000.00).

554 **SECTION 18.** The following provision shall be codified as
555 Section 83-15-39, Mississippi Code of 1972:

556 83-15-39. **Violations and penalties.**

557 (1) Each individual transaction which is in violation of
558 this act or which does not otherwise conform to the requirements
559 of this act shall be considered a violation.

560 (2) This act shall be enforceable only by the commissioner
561 and does not create any private cause of action or other private
562 legal recourse.

563 (3) The commissioner may, in his or her discretion, revoke
564 the license or certificate of authority issued to a title agent,
565 revoke the license issued to a title insurer, or impose a fine in
566 an amount not to exceed Five Hundred Dollars (\$500.00) for each
567 violation of this act or of any rule or regulation promulgated
568 under this act. No title insurer shall pay, directly or
569 indirectly, any portion of a fine imposed on any agent of the
570 title insurer. In addition, the commissioner may impose a fine in
571 an amount not to exceed Five Thousand Dollars (\$5,000.00) per



572 violation upon a finding that an agent or an insurer willfully or
573 intentionally deviated from the filed rates for that insurer.

574 **SECTION 19.** The following provision shall be codified as
575 Section 83-15-41, Mississippi Code of 1972:

576 83-15-41. **Interpretation.**

577 This chapter shall not be interpreted or construed as
578 regulating or attempting to regulate the practice of law in this
579 state.

580 **SECTION 20.** The following provision shall be codified as
581 Section 83-15-43, Mississippi Code of 1972:

582 83-15-43. **Severability.**

583 The provisions of this chapter are severable. If any part of
584 this chapter is declared invalid or unconstitutional, that
585 declaration shall not affect the part of this chapter that
586 remains.

587 **SECTION 21.** This act shall take effect and be in force from
588 and after July 1, 2003.

