MISSISSIPPI LEGISLATURE REGULAR SESSION 2022

By: [To Be Determined] To: [To Be Determined]

[HOUSE][SENATE] BILL NO. [•]

AN ACT TO BE KNOWN AS THE “MISSISSIPPI TITLE INSURANCE ACT”; TO DEFINE CERTAIN TERMS; SUMMARY TO BE FURTHER DETERMINED; AND FOR RELATED PURPOSES.

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

**SECTION 1**. Section 83-16-1, Mississippi Code of 1972, is established as follows:

83-16-1. **Short** **title, Applicability, and Purpose**.

(1) This act shall be known and may be cited as the “Mississippi Title Insurance Act”.

(2) The purpose of this act is to set forth certain definitions applicable to title insurance in this state and to provide for the effective regulation and supervision of the business of title insurance transacted in this state.

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

(4) No amendment to Title 83 that is enacted after the effective date of this act that is inconsistent with the provisions of this act shall be applicable to the business of title insurance unless the amendment specifically states that it is to be applicable to the business of title insurance.

**SECTION 2**. Section 83-16-2, Mississippi Code of 1972, is established as follows:

**83-16-2. Definitions**. As used in this act:

(a) “Abstractor” means a person who is engaged in the practice of searching public records for the purpose of creating title search reports.

(b) “Affiliate” or “Affiliated” means any entity that owns or controls, is owned or controlled by, or is under common ownership or control with the other entity.

(c) “Approved attorney” means an attorney authorized to practice law in this state, except a title agent or employee of a title insurer, whose certification as to the status of the title to real property a title insurer may accept as the basis for issuance of a title policy or on whose behalf a title insurer is willing to issue a closing protection letter.

(d) “Closing” means the performance of services in connection with the transfer of title or creation of a lien on the title to real property or personal property, including, but not limited to, the witnessing of the signing of transaction documents, the collection of rates and fees required for the transaction, or the disbursement of funds.

(e) “Closing agent” means a person that facilitates a closing.

(f) “Closing protection letter” means a contract issued by a title insurer that, subject to requirements and conditions stated therein, indemnifies a seller, a buyer, a borrower or a lender up to the amount of closing funds received by the closing agent named in the closing protection letter solely for loss pursuant to Miss. Code Ann. § 83-16-5.

(g) “Commissioner” means the commissioner of the Mississippi Insurance Department or the commissioner’s representatives.

(h) “Escrow” means written instruments, money or other items deposited by one party with a depository closing agent pursuant to written instructions for delivery to another party upon the performance of a specified condition or the happening of a certain event.

(i) “Escrow account” means the demand deposit account maintained by a title insurer or title agency at a qualified financial institution into which the title insurer or title agency deposits and disburses funds collected for a closing.

(j) “Foreign title insurer” means any title insurer incorporated or organized under the laws of any other state of the United States, the District of Columbia, or any other jurisdiction of the United States.

(k) “Nonresidential real property” means any real property that is not residential real property.

(l) “Person” means an individual or any association, cooperative, corporation, limited liability company, partnership, trust or other legal entity.

(m) “Premium” means the amount charged for the issuance of a title policy, in exchange for the assumption of liability by the title insurer. For the purposes of this act, “premium” includes the portion of such charges paid to a title agency under an agreement between the title agency and the title insurer. For purposes of calculating premium tax, “premium” means the gross premium upon which the amount retained by the title agency and title insurer is based as specified by the title agency contract required by Section 83-16-15.

(n) “Qualified financial institution” means an institution that is:

(i) organized or (in the case of a United States branch or agency office of a foreign banking organization) licensed under the laws of the United States or any state and has been granted authority to operate with fiduciary powers;

(ii) regulated, supervised and examined by federal or state authorities having regulatory authority over banks and trust companies;

(iii) insured by the appropriate federal entity; and

(iv) qualified under any additional rules established by the commissioner.

(o) “Residential real property” means any real property that is:

(i) improved with one single-family residential unit or one multifamily structure containing one to four residential units, including a condominium, townhouse, or house in a subdivision; or

(ii) unimproved and the maximum permitted development is one to four residential units under any restrictive covenant, zoning regulation, or comprehensive plan applicable to that real property.

(p) “Title abstract” or “abstract of title” means a written synopsis, compilation or summary in orderly arrangement of all recorded conveyances, instruments or documents that impart constructive notice with respect to the chain of title to real property, issued by an individual licensed to practice law in this state or a title or abstract company in compliance with Section 73-3-55 under a certificate certifying to the matters contained in such synopsis, compilation or summary. An abstract of title is not a title search report, title commitment, or title policy.

(p) “Title agency” means a person that is licensed under Section 83-16-9 and who is authorized in writing by a title insurer to perform the following: (i) solicit title insurance business; (ii) collect premiums; (iii) determine insurability; and (iv) issue title commitments and title policies of the title insurer.

(q) “Title agent” means an individual appointed in writing by a title insurer to issue and countersign commitments or policies of title insurance on its behalf.

(r)(i) “Title business” or “business of title insurance” means:

1. Issuing as an insurer or offering to issue as an insurer a title policy or closing protection letter;

2. Transacting or proposing to transact by a title insurer, title agent or title agency any of the following activities when conducted or performed in contemplation of or in conjunction with the issuance of a title commitment or title policy:

A. soliciting or negotiating the issuance of a title commitment or title policy;

B. insuring or guaranteeing the status of title to real or personal property as set forth in Section 83-16-2(t);

C. executing and issuing title commitments and title policies;

D. effecting contracts of reinsurance;

E. determining insurability of title; or

F. collecting, disbursing, or receiving title insurance premiums as a title insurer or as a title agent or title agency.

3. Doing or proposing to do any business substantially equivalent to the matters described in this subsection in a manner designed to evade this act.

(ii) “Title business” and “business of title insurance” does not include the preparation of an attorney’s title opinion.

(s) “Title commitment” or “commitment” means an offer to insure furnished in connection with an application for title insurance stating the requirements, terms, and conditions upon which a title insurer is willing to insure an interest in or lien on title to property. Title commitments are not title abstracts or title search reports and the rights, duties and responsibilities relating to the preparation and issuance of title abstracts and title search reports do not apply to the issuance of a title commitment.

(t) “Title insurance” means:

(i) Insurance or guaranty of ownership of real property or others having an interest in real property or contractual interest derived therefrom or the holders of liens or encumbrances therein against loss or damage suffered by reason of:

1. liens or encumbrances on, or defects in the title to said property; or

2. the invalidity, unenforceability or lack of priority of any liens or encumbrances thereon; and

(ii) Insurance of owners and secured parties of the attachment, perfection, and priority of security interests in personal property under the Uniform Commercial Code.

(u) “Title insurer” or “insurer” means a company organized under the laws of this state for the purpose of transacting the business of title insurance and any foreign title insurer licensed in this state to transact the business of title insurance.

(v) “Title opinion” means a written expression of the status of title by an attorney licensed to practice law in this state, including, but not limited to, the validity or invalidity thereof, based upon an examination of documents of public record, a title abstract, or a title search report thereof, affecting title to a specified parcel of real property to ascertain the history and present condition of title to such real property as to its ownership and status with respect to liens, encumbrances, clouds, and defects.

(w) “Title policy” or “policy” means a contract, including any coverage, enhancements to coverage, or endorsements, insuring or indemnifying owners of, or other persons lawfully interested in real or personal property against loss or damage arising from any of the covered risks enumerated in the title policy that exist on, before, or subsequent to the policy date and not excluded or specifically excepted from coverage.

(x) “Title search” means a search of the records described in Section 83-16-21 through such period of time as is acceptable to the title insurer.

(y) “Title search report” means a written synopsis, compilation or summary of recorded documents affecting the title to real property which does not purport to be a certification of title or title opinion, and that contains the limitations of Section 83-16-22and discloses those documents or information appearing in the official records of the chancery clerk in the county, or in the judicial district in counties having more than one such district, in which the real property is situated, and any other evidence described in Section 83-16-21. A title search report is not a title abstract or title commitment and may be issued by any person, including, but not limited to, an abstractor, an attorney, a Mississippi-licensed title insurer, title agent, or title agency.

**SECTION 3**. Section 83-16-3, Mississippi Code of 1972, is established as follows:

**83-16-3. Title Insurers – Authorized Activities**.

(1) Subject to the exceptions and restrictions contained in this act, a title insurer may:

(a) engage in the business of title insurance;

(b) perform or hold escrows;

(c) perform settlements or closings subject to the requirements of Section 73-3-55;

(d) reinsure title policies; and

(e) perform or cause to be performed ancillary activities whether or not in contemplation of or in conjunction with the issuance of a title commitment or title policy including:

(i) issuing a title abstract;

(ii) issuing a title search report; and

(iii) underwriting title to and furnishing related information about real or personal property.

(2) Only a title insurer may issue closing protection letters or issue as an insurer a title policy.

**SECTION 4**. Section 83-16-4, Mississippi Code of 1972, is established as follows:

**83-16-4. Title Insurers – Limitation on Powers**.

(1) No title insurer that transacts any class, type, or kind of insurance other than title insurance is eligible for the issuance or renewal of a license to transact title business in this state.

(2) The business of title insurance may not be transacted, underwritten, or issued by any insurer transacting or licensed to transact any other class, type, or kind of business.

**SECTION 5**. Section 83-16-5, Mississippi Code of 1972, is established as follows:

**83-16-5. Title Insurers – Closing Protection Letters**.

(1) A title insurer may issue a closing protection letter to a seller, a buyer, a borrower or a lender upon request if the title insurer issues a title commitment or title policy.

(2) Under the terms and conditions of the closing protection letter as issued by the title insurer, a closing protection letter may indemnify a seller, a buyer, a borrower or a lender against a loss of closing funds because of the following acts by a closing agent:

(a) theft or misappropriation of closing funds in connection with a closing in which a title policy will be issued by or on behalf of the title insurer issuing the closing protection letter, but only to the extent that the theft relates to the status of the title to that interest in real property or to the validity, enforceability or priority of the lien of the mortgage or deed of trust on that interest in real property; or

(b) failure to comply with written instructions from a seller, a buyer, a borrower or a lender when agreed to by the closing agent, but only to the extent that the failure to follow the instructions relates to the status of the title to the interest in real property or to the validity, enforceability or priority of the lien of a mortgage or deed of trust on the interest in real property.

(3) No title insurer may issue a general or blanket closing protection letter that purports to protect a seller, a buyer, a borrower or a lender generally rather than with respect to a particular closing.

(4) Except as provided in this section, a title insurer may not provide any other coverage that purports to indemnify against improper acts or omissions of a person with regard to escrow, settlement, or closing services.

(5) A title insurer shall charge a fee of not less than fifty dollars for a closing protection letter. The title insurer earns the fee upon consummation of the closing. The closing protection letter fee is payable in its entirety to the title insurer and is not subject to taxation or division with any other person.

(6) A title insurer may adopt its own forms related to the issuance of closing protection letters and is not required to file such forms or the amount of the fee charged for closing protection letters with the commissioner.

**SECTION 6**. Section 83-16-6, Mississippi Code of 1972, is established as follows:

**83-16-6. Title Insurers – Minimum Capital and Surplus Requirements**. Before being licensed to conduct title business in this state, a title insurer must establish and maintain a minimum paid-in capital of not less than Five Hundred Thousand Dollars ($500,000.00) and, in addition, paid-in initial surplus of at least One Hundred Seventy-five Thousand Dollars ($175,000.00).

**SECTION 7**. Section 83-16-7, Mississippi Code of 1972, is established as follows:

**83-16-7. Title Insurers – Single Risk Limit**. The net retained liability of a title insurer for a single risk on property located in this State, whether assumed directly or as reinsurance, may not exceed the total surplus to policyholders plus statutory premium reserves as shown in the most recent annual statement of the insurer on file with the commissioner. For purposes of this act, “net retained liability” shall mean the total liability retained by a title insurer for a single risk, after taking into account the deduction for ceded liability, if any.

**SECTION 8**. Section 83-16-8, Mississippi Code of 1972, is established as follows:

**83-16-8. Title Insurers – Reserve for Losses**. Each title insurer licensed to conduct title business in this state shall establish and maintain:

(1) If the title insurer is a foreign title insurer, the amount of statutory or unearned premium reserve required by the laws of the domiciliary state of the title insurer; or

(2) If the title insurer is a domestic title insurer of this state, the following:

(a) a reserve for losses, claims and allocated loss adjustment expenses arising under title policies and all unpaid losses, claims and allocated loss adjustment expenses for which the title insurer may be liable, in an amount which shall be not less than five hundred thousand dollars ($500,000.00); and

(b) an additional reserve for unearned premiums and reinsurance assumed during the period hereinafter provided, which shall constitute unearned portions of the original premiums and shall be charged as a reserve liability of the title insurer. The assets constituting the unearned premium reserve shall be withdrawn from the use by the title insurer for its general purposes, shall be impressed with a trust for the benefit of the title insurer’s policyholders, and shall be available for reinsurance of title policies in the event of the insolvency of the title insurer. The income from such unearned premium reserve shall be included in the general income of the title insurer and may be used for any lawful purposes. The unearned premium reserve of every domestic title insurer shall be cumulative and shall consist of:

(i) The amount of all additions required to be made to such reserve by this section; and less

(ii) The withdrawals from such reserve as required by this section.

On the last day of each month, each domestic title insurer shall add to its unearned premium reserve, with respect to each title policy or contract or reinsurance agreement issued by it, a sum equal to ten percent (10%) of all premiums received during such month. The amounts set aside as additions to such unearned premium reserve shall be deducted in determining the net income of the domestic title insurer. Upon the expiration of one hundred eighty (180) months after the month of the issuance of each title policy, contract or reinsurance agreement that portion of the assets of the unearned premium reserve attributable to title policy, contract or reinsurance agreement shall be released and withdrawn from said reserve, shall no longer constitute part of said reserve, shall be included in the income of the domestic title insurer, and may then be used by the title insurer for any lawful corporate purposes.

**SECTION 9**. Section 83-16-9, Mississippi Code of 1972, is established as follows:

**83-16-9. Title Agents – Licensure and Appointment Requirements**.

(1) Except as provided in subsection (4) below, no individual shall act as a title agent in this state unless licensed pursuant to this act and properly appointed by a title insurer.

(2) Except as provided in subsection (6), all title commitments and policies covering an insurable interest in title to real or personal property located in this state must be signed by a title agent that is:

(a) properly appointed by a title insurer;

(b) employed by a title agency or title insurer; and

(c) licensed in this state under this act or, in the case of attorneys, licensed to practice law by The Mississippi Bar.

(3) Except as provided in subsection (6), the name and license number issued by the commissioner or, in the case of attorneys, the license number issued by The Mississippi Bar must be printed or legibly written underneath his or her signature on each title commitment and title policy.

(4) Attorneys licensed by The Mississippi Bar to practice law in this state, and any entity law firm through which the attorney chooses to do business, are exempt from the licensure requirements of this act. If an attorney licensed to practice law in this state chooses to do business through an entity separate and apart from an entity law firm, then that entity will be subject to the title agency licensing requirements and at least one individual appointed as a title agent licensed by the commissioner and employed by the title agency must be designated as responsible for the entity’s compliance with all applicable laws, rules and regulations. Such individuals shall be designated to act as the signatory on each title commitment or policy issued by the entity agent.

(5) Each title agent acting on behalf of a title insurer, including attorneys otherwise exempt from the licensure requirements of this act, must be appointed by the title insurer. A title insurer that appoints a title agent in this state shall file with the commissioner the appointment and pay the appointment fee prescribed by the commissioner. The appointing title insurer’s appointment of a title agent shall be an indication to the commissioner that the title insurer has reviewed the background and fitness of the title agent to be a title agent. Each appointment shall remain in effect for one year from the date of appointment, unless the title agent’s license is revoked or otherwise terminated or written notice of earlier termination of the appointment is filed with the commissioner by the title agent, title agency or title insurer.

(6) A corporate officer or employee of a title insurer licensed to transact title business in this state may issue title commitments and title policies on behalf of the title insurer with or without a countersignature. The officer or employee is exempt from the provisions of this section relating to licensing requirements and appointment requirements while acting as an officer or employee. Nothing herein contained shall be construed to require the licensure or appointment of an officer or employee of a title insurer licensed to transact title business in this state, for the purpose of issuing a policy of title insurance in this state.

**SECTION 10**. Section 83-16-10, Mississippi Code of 1972, is established as follows:

**83-16-10. Title Agents – Qualifications; License Issuance and Renewal; Name or Address Change**.

 (1) An individual applying for a license as a title agent shall apply to the commissioner on the form prescribed by the commissioner and declare under penalty of suspension, revocation, or refusal of the license that the statements made in the application are true, correct, and complete to the best of the individual’s knowledge and belief. Before approving the application, the commissioner shall find that the individual:

(a) is at least 21 years of age;

(b) is a bona fide resident and citizen of this state or is a full-time employee of a duly licensed title agency;

(c) has not committed any act that is a ground for probation, suspension, revocation, or refusal of license as set forth in Section 83-16-11; and

(d) has paid the application and licensure fees prescribed by the commissioner.

(2) A person applying for a license as a title agency shall apply to the commissioner on the forms prescribed by the commissioner and declare under penalty of suspension, revocation, or refusal of the license that the statements made in the application are true, correct, and complete to the best of the person’s knowledge and belief. Before approving the application, the commissioner shall find that the person:

(a) is either a (i) a bona fide resident and citizen of this state, or (ii) a domestic entity properly formed and existing under Title 79 (Corporations, Associations, and Partnerships) or a foreign entity duly qualified to do business in this state;

(b) has designated a title agent licensed by this state as responsible for the title agency’s compliance with this act and with the insurance laws, rules, and regulations of this state;

(c) has provided the name of each majority owner, partner, officer, and director of the title agency;

(d) has not committed an act that is a ground for probation, suspension, revocation, or refusal of license as set forth in Section 83-16-11; and

(e) has paid the application and licensure fees prescribed by the commissioner.

(3) The commissioner may require any documents reasonably necessary to verify the information contained in the application.

(4) The commissioner may contract with non-governmental entities, including the National Association of Insurance Commissioners, to perform any ministerial functions, including the collection of fees and data, related to licensing that the commissioner may deem appropriate. The commissioner may require that license applications, license renewal applications, notices of appointments and appointment terminations, and supporting documentation be filed and all required fees and charges be paid electronically through systems operated or maintained by the non-governmental entities.

(5) A title agency license shall remain in effect until expired, suspended or revoked by the commissioner. A title agent license must be initially renewed in accordance with a schedule prescribed by the commissioner and shall thereafter be subject to renewal on a biennial basis. A renewal shall be effected by submitting a renewal application, by paying the fee for renewal prescribed by the commissioner, and by meeting the requirements for renewal before the due date for renewal. A license expires if not renewed by the due date for renewal.

(6) A title agent who is unable to comply with license renewal procedures and requirements due to military service, long-term medical disability, or some other extenuating circumstance may request a waiver of any fine or other sanction imposed for failure to comply with renewal procedures.

(7) Each title agency license and title agent license shall contain the name, address, the date of issuance, and the date of expiration, if applicable, and any other information the commissioner deems necessary.

(8) Each title agent and title agency shall inform the commissioner of a change in legal name or address within 30 days of the change in a manner prescribed by the commissioner. Failure to timely inform the commissioner of a change in legal name or address shall result in a penalty of fifty dollars ($50). If the penalty is not paid within 30 days after notice of the penalty assessment, the license shall be suspended until the penalty is paid.

**SECTION 11**. Section 83-16-11, Mississippi Code of 1972, is established as follows:

**83-16-11. Title Agents – Grounds for discretionary refusal, suspension, or revocation of license or appointment**.

(1) The commissioner may, in its discretion, deny, suspend, revoke, place on probation or refuse to issue or renew the license or appointment of any title agent or title agency, and it may suspend or revoke the eligibility to hold a license or appointment of any such title agent or title agency, for any one or more of the following causes:

(a) providing incorrect, misleading, incomplete, or materially untrue information in the license application.

(b) violating any insurance laws, rules, subpoena, or order of the commissioner.

(c) obtaining or attempting to obtain a license through misrepresentation or fraud.

(d) improperly withholding, misappropriating, or converting any monies or properties received in the course of acting as a title agent or in otherwise doing insurance business in this state or elsewhere.

(e) intentionally misrepresenting the terms of an actual title insurance contract.

(f) having been convicted of a felony.

(g) having admitted or been found to have engaged in a pattern of any insurance unfair trade practice or fraud.

(h) using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility, in the course of acting as a title agent, title agency or otherwise in the conduct of business in this state or elsewhere.

(i) having a title agent license or its equivalent, or an insurance producer license or its equivalent, suspended, revoked, or refused in any other state, province, district, or territory.

(j) forging another’s name to any document related to a title insurance transaction.

(k) failure or refusal upon demand to pay over to any title insurer that the appointee represents or has represented any money coming into the hands of such appointee and belonging to the title insurer.

(2) In the event that the commissioner denies an application for licensure or renewal of an existing license, the commissioner shall notify the applicant or licensee in writing, advising of the reason for the denial. The applicant or licensee may make written demand upon the commissioner within 30 days for a hearing before the commissioner to determine the reasonableness of the denial.

(3) In the event that the commissioner suspends or revokes the eligibility to hold a license or appointment of, or otherwise places a title agent or title agency on probation, the commissioner shall give notice of such action to the licensee and each title insurer that has appointed the licensee.

(4) In the absence of a greater fine specifically provided elsewhere in this act, and in addition to or in lieu of an applicable probation, suspension, revocation, or refusal, a person, in the sole discretion of the commissioner after a hearing, may additionally be subject to a civil fine in an amount not to exceed ten thousand dollars ($10,000) per violation.

(5) The commissioner shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by this act against any person who is under investigation for or charged with a violation of this act even if the person’s license or registration has been surrendered or has expired by operation of law.

**SECTION 12**. Section 83-16-12, Mississippi Code of 1972, is established as follows:

**83-16-12. Title Agents – Errors and Omissions Requirement**.

(1) Every title agent or title agency licensed in this state must maintain an errors and omissions policy with an insurer authorized to do business in this state, which includes coverage for their acts or omissions as a title agent or title agency and for the title agent’s or title agency’s delegation of preparation of a title search report to an abstractor, for the benefit of the title insurer in amounts, under terms and conditions, and form acceptable to the title insurer, after considering the reasonableness of the cost and availability thereof, but in any event, in an amount and with a deductible satisfactory to the title insurer as provided in a written agreement between the title agency and the title insurer.

(2) Except in the case of abstractors employed by a title or abstract company authorized to certify title under section 73-3-55, it is the title agent’s or agency’s responsibility to ensure that all abstractors involved in the preparation of a title search report are covered under the title agent’s or title agency’s errors and omissions insurance policy or that any abstractor not so covered maintains an errors and omissions policy with minimum coverage of not less than five hundred thousand dollars with a deductible of no more than ten thousand dollars.

(3) The title agency must furnish the title insurer with proof that it complies with this section.

**SECTION 13**. Section 83-16-13, Mississippi Code of 1972, is established as follows:

**83-16-13. Title Agents – Escrow; trust fund**.

(1) All funds received by a title agent acting as a closing agent shall be trust funds received in a fiduciary capacity by the closing agent and shall be the property of the person or persons entitled thereto.

(2) All funds received by a closing agent to be held in trust shall be immediately placed in a qualified financial institution, where the funds shall be kept until disbursement thereof is properly authorized.

(3) Funds required to be maintained in escrow accounts pursuant to this section shall not be subject to any debts of the closing agent or title agency with whom the closing agent is affiliated and shall be used only in accordance with the terms of the individual, escrow, settlement or closing instructions under which the funds were accepted.

(4) Closing agents shall maintain separate records of all receipts and disbursements of escrow, settlement, or closing funds.

(5) In the event that the commissioner promulgates rules necessary to implement the requirements of this section, the commissioner shall consider reasonable standards necessary for the protection of funds held in trust, including, but not limited to, standards for accounting of funds, standards for receipt and disbursement of funds, and protection for the person or persons to whom the funds are to be disbursed.

(6) A title agent, or any officer, director, or employee thereof, or any person associated therewith as an independent contractor for bookkeeping or similar purposes, who converts or misappropriates funds received or held in escrow or in trust by such title agent, or any person who knowingly receives or conspires to receive such funds, commits:

(a) if the funds converted or misappropriated are $1,000 or less, a petit larceny, punishable as provided in Section 97-17-43; or

(b) if the funds converted or misappropriated are more than $1,000, a grand larceny, punishable as provided in Section 97-17-41.

(7) An attorney shall deposit and maintain all funds received in connection with transactions in which the attorney is serving as a closing agent into a trust account that is maintained exclusively for funds received in connection with such transactions and permit the account to be audited by any title insurer with whom the attorney is authorized in writing to act as its agent, unless maintaining funds in such an account for a particular client would violate applicable rules of The Mississippi Bar.

**SECTION 14**. Section 83-16-14, Mississippi Code of 1972, is established as follows:

**83-16-14. Title Agents – Policies, Premium, and Fee Remittance**.

(1) Unless a later date is authorized under a written agreement between the title agent or title agency and the title insurer, the title agent must account for and remit all premiums, closing protection letter fees, and policies due under the contract to the title insurer by the earlier of thirty (30) calendar days after the last of the following occurrences: (a) the end of the calendar month in which the closing or settlement occurred; (b) receipt of the premiums from a third party; or (c) completion of all conditions required to be met prior to the issuance of the policy.

(2) The premium for any title policy must be paid in full at the closing.

(3) No title insurer or title agent may issue a title commitment wherein the issuance of a title policy of insurance is not contemplated.

**SECTION 15**. Section 83-16-15, Mississippi Code of 1972, is established as follows:

**83-16-15. Title Agents – Agency Contracts**.

A person acting in the capacity of a title agency must not place business with a title insurer, and a title insurer may not accept business from a title agency unless a written contract exists between the title insurer and title agency.

**SECTION 16**. Section 83-16-16, Mississippi Code of 1972, is established as follows:

**83-16-16. Commissioner – Rules and Regulations**.

The commissioner may issue rules, regulations and orders necessary to carry out the provisions of this act.

**SECTION 17**. Section 83-16-17, Mississippi Code of 1972, is established as follows:

**83-16-17. Commissioner – Penalties and Liabilities**.

(1) If the commissioner determines that a title insurer, title agency, title agent, or any other person has violated this act or any rule or order promulgated under this act, after notice and opportunity to be heard, the commissioner may order:

(a)(i) Payment of a monetary penalty not to exceed five hundred dollars ($500) for each act or violation and not to exceed an aggregate penalty of five thousand dollars ($5,000) in any six-month period unless the title insurer, title agency, title agent, or other person knew or reasonably should have known that the title insurer, title agency, title agent, or other person was in violation of this act.

(ii) If the title insurer, title agency, title agent, or other person knew or reasonably should have known that the title insurer, title agency, title agent, or other person was in violation of this act, the penalty may not exceed five thousand dollars ($5,000) for each act or violation and not exceed an aggregate penalty of fifty thousand dollars ($50,000) in any six-month period; or

(b) Suspension or revocation of the title insurer’s, title agency’s, title agent’s, or other person’s license if the title insurer, title agency, title agent, or other person knew or reasonably should have known that the title insurer, title agency, title agent, or other person was in violation of this act.

(2) If an order of rehabilitation or liquidation of the title insurer or of conservation of assets of the title insurer has been entered and the receiver appointed under the order determines that the title agency or title agent or any other person has not complied with this act or any rule or order promulgated under this act and the title insurer suffered any resulting loss or damage, the receiver may maintain a civil action for recovery of damages or other appropriate sanctions for the benefit of the title insurer and its policyholders and creditors.

(3) No title insurer shall pay, directly or indirectly, any portion of a fine imposed on any title agent of the title insurer.

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

(5) This section does not affect the right of the commissioner to impose any other penalties provided under § 83-17-51 et seq.

**SECTION 18**. Section 83-16-18, Mississippi Code of 1972, is established as follows:

**83-16-18. Notice of Availability of Owner’s Title Insurance**.

(1) In connection with any closing involving the purchase or sale of residential real property in this state, an owner’s policy must be issued unless the title insurer or its agent obtains, at or before the closing, a statement in writing from the buyer acknowledging that the buyer has received a notice that an owner’s title policy is available to the buyer in accordance with the underwriting guidelines of the title insurer and that the buyer does not desire to purchase owner’s title insurance.

(2) The written notice of availability of owner’s title insurance shall contain all of the following:

(a) the address or legal description of the property;

(b) a disclosure that owner’s title policy may be available in accordance with the underwriting guidelines of the title insurer and the premium for the owner’s policy;

(c) a space to indicate the desire of the buyer to either acquire or decline owner’s title insurance;

(d) the date the notice is executed by the buyer; and

(e) the signature of the buyer or buyers.

(3) The notification provided by this section shall not be required in any closing involving the following:

(a) a judicial or nonjudicial foreclosure;

(b) a sale pursuant to a decree of any court;

(c) a tax sale;

(d) any closing in which the buyer has elected to obtain owner’s title insurance or wherein the seller has elected or is required by contract to provide owner’s title insurance to the buyer;

(e) any closing that conveys a security interest in property of an existing owner; and

(f) any closing involving nonresidential real property.

**SECTION 19**. Section 83-16-19, Mississippi Code of 1972, is established as follows:

**83-16-19. Premium Rates and Filings**.

(1) Each title insurer shall adopt its own schedule of premium rates for title insurance by publishing the schedule of premium rates it will use in this state in its rate manual, on its website, in an online rate calculator, or any other publicly available source at least ninety days prior to use, subject to the following:

 (a) Basic Rates:

(i) The minimum premium for all owner’s policies is $150. In all cases an owner’s title policy must be issued for (A) the amount of the current sales price of the insurable interest in the real or personal property, or (B) if no sale is being made, an amount equal to the full fair market value of the insurable interest in the real or personal property at the time of the issuance of the policy that is based upon available information but in no event less than the mortgage debt attributable to the real or personal property. If future improvements are contemplated, the amount may include the cost of the improvements contemplated to be erected thereon. Insurance of lesser estates shall be written for the amount of the full fair market value of the estate at the time the policy is issued.

 (ii) The minimum premium for all loan policies is $150. A loan policy shall be issued for not less than the full principal debt of the loan insured and at insured’s request may include up to twenty five percent (25%) in excess of the principal debt to cover interest and foreclosure costs. Where the real or personal property covered represents only part of the security for the loan, the policy shall be written for the amount of the unencumbered value of the real or personal property or the amount of the loan, whichever is the lesser.

 (b) Reissue Rates. When an owner is selling property, and the title was previously insured by an owner’s title policy, then a title insurer may provide a reissue credit for any new owner’s title policies. The reissue credit is not applicable to loan policies.

 (c) Refinance Rates. When a borrower and a lender make a loan on property for any purpose other than construction or the financing of the acquisition of the property in a concurrent purchase transaction, the title to which was insured by a title insurer in connection with a prior loan, then the title insurer may provide a refinance rate for any new loan policies. The refinance rate is not applicable to owner’s title policies.

 (d) Simultaneous Issue Rates. When an owner’s and a loan title policy or policies covering identical property are to be issued simultaneously the title insurance premiums applicable for the owner’s title policy must be the basic owner’s rate, but the title insurer may provide a simultaneous issue rate for any loan title policy issued simultaneously with the owner’s title policy.

 (2) A title insurer is not required to file its schedule of premium rates with the commissioner.

(3) Premium rates shall not be excessive, inadequate or unfairly discriminatory.

(4) Except as provided in subsection (5), no title insurer, title agency, or title agent may charge any premium rate except in accordance with the title insurer’s published schedule of premium rates.

(5) No premium rate may provide for the negotiation or bidding of the rate to be charged for a title policy. The rebate of premiums to an insured are expressly prohibited.

(6) No title insurance premium shall be paid either directly or indirectly to any person not licensed as a title agent, title agency or title insurer pursuant to this act or, in the case of attorneys, licensed to practice law by The Mississippi Bar, and properly appointed by a title insurer.

(7) The premium rate established by a title insurer under this section shall be substantially the same for all affiliated title insurers.

(8) Title insurers may adopt their own forms related to the issuance of title policies and are not required to file any such forms with the commissioner.

**SECTION 20**. Section 83-16-20, Mississippi Code of 1972, is established as follows:

**83-16-20. Record Retention Requirements**. The title insurer and the title agency must maintain sufficient records of their affairs, including evidence of underwriting title, determination of insurability, and records of their escrow operations and escrow accounts for a period of time no less than seven (7) years. Such records may be maintained in either physical or electronic format.

**SECTION 21**. Section 83-16-21, Mississippi Code of 1972, is established as follows:

**83-16-21. Search Requirements**.

(1) A title commitment or title policy may not be issued unless a title insurer, its title agent, title agency, or approved attorney, has caused to be made a reasonable search and examination of the title and has caused to be made a determination of insurability of title in accordance with the title insurer’s underwriting practices.

(2) Evidence upon which a reasonable search and examination of title is based may include:

(a) any previously issued title policy upon which the title insurer is willing to rely;

(b) any current or previously issued title search reports upon which the title insurer is willing to rely;

(c) any private or public database or title plant containing real or personal property ownership information upon which the title insurer is willing to rely;

(d) the official records of:

(i) the chancery clerk in the county, or in the judicial district in counties having more than one such district, in which the real or personal property is located;

(ii) the circuit clerk in the county in which the real or personal property is located;

(iii) the county tax assessor and collector pertaining to ad valorem real or personal property taxes and special assessments imposed by a governmental authority;

(iv) the Secretary of State, or any other governmental filing office pertaining to real or personal property; or

(e) any combination thereof.

**SECTION 22**. Section 83-16-22, Mississippi Code of 1972, is established as follows:

**83-16-22. Title Commitments; Title Search Reports; Contractual Liability for**.

(1) Title commitments are not title abstracts or title search reports, nor are any of the rights, duties or responsibilities applicable to the preparation and issuance of a title abstract or title search report applicable to the issuance of a title commitment. Title commitments shall not be construed as, nor constitute, a representation as to the condition of title to real or personal property but shall constitute a statement of the terms and conditions upon which the title insurer is willing to issue its title policy, if such offer is accepted. The procedures used by a title insurer to determine the insurability of title to real or personal property, including any search and examination of title, are proprietary to the title insurer, shall be deemed performed solely for the benefit of the title insurer, and shall create no extracontractual liability to any person, including a proposed insured.

(2) The contractual liability of the issuer of a title commitment is limited to the proposed insured or insureds identified by name in the title commitment. Only contractual remedies are available for an error or omission in a title commitment.

(3) (a) A title search report may not directly or indirectly set forth or imply any opinion, warranty, guarantee, insurance, or other similar assurance and does not constitute title insurance as defined in Section 83-16-2(19). A title agent may not issue a title search report as an agent of a title insurer and liability for a title search report is limited to the person issuing the title search report.

(b) The contractual liability of the issuer of a title search report is limited to the person or persons expressly identified by name in the title search report as the recipient or recipients of the title search report. Only contractual remedies are available for an error or omission that arises from a title search report. A title search report must contain the following language:

“This title search report is not title insurance, nor is it a title abstract or title opinion. Pursuant to Section 83-16-22, Mississippi Statutes, the liability of the issuer of this title search report for errors or omissions in this title search report is limited to the person(s) expressly identified by name in the title search report as the recipient(s) of the title search report, to the time period and indices actually searched as stated in the title search report, and is further limited to the maximum liability amount stated in the title search report if such an amount is stated.”

(4) In conducting a search for the issuance of a title policy, the title agency and title agent are acting only as agents of the title insurer and owe no duty to the insured.

(5) A cause of action for negligence does not exist by an insured under a title policy against the title agency or title agent issuing the title policy or against a title insurer for lack of reasonable care in searching and disclosing the state of title to the property. The exclusive remedy of the insured for defects in title to the property that are not identified by the title search is to file a claim against the title policy subject to the terms and conditions of the title policy.

(7) This section is not applicable to a title opinion.

**SECTION 23**. Section 83-16-23, Mississippi Code of 1972, is established as follows:

**83-16-23. Continuing Education Requirements**.

(1) Every title agent and any abstractor that issues a title search report to a title agent, title agency, or title insurer must complete at least twelve hours of real property, land title, or title insurance related continuing education courses each calendar year. If a title agent has been appointed for less than one full calendar or an abstractor has been in business for less than one full calendar year, then the number of hours necessary to satisfy this subsection shall be prorated at one continuing education hour per month.

(2) Only continuing education courses and providers approved by a title insurer or a land title association will satisfy the continuing education requirements of this section.

(3) If a continuing education course requires successful completion of a written examination, no continuing education credit shall be given unless the written examination is successfully completed.

(4) If a title agent or abstractor teaches a continuing education course, then such title agent or abstractor shall qualify for not more than four times the number of hours of continuing education credit as would be granted to a person taking and satisfactorily completing the course.

(5) Before a title insurer may re-appoint an individual as a title agent, the title insurer must confirm that the title agent has satisfied the continuing education requirements of this section for the prior calendar year.

(6) Except in the case of abstractors employed by a title or abstract company authorized to certify title under section 73-3-55, before a title agent or title insurer may rely on a title search report issued by an abstractor, the title agent must confirm that the abstractor satisfied the continuing education requirements of this section for the prior calendar year by reviewing evidence of completion issued by an eligible course provider or confirmation of compliance issued by a title insurer or land title association.

(7) A title agent and title insurer may rely on a title search report issued directly by a title or abstract company authorized to certify to title under Section 73-3-55. Before issuing a title search report to a title agent or title insurer, such title or abstract companies shall confirm that each abstractor utilized to issue title search reports have satisfied the continuing education requirements of this section for the prior calendar year by reviewing evidence of completion issued by an eligible course provider or confirmation of compliance issued by a title insurer or land title association. Issuance of a title search report by such a title or abstract company shall be conclusive proof of the satisfaction of the requirements of this section.

(8) The requirements of this section shall not become effective until January 1, 2023, such that 2023 shall be the first year during which continuing education courses must be completed.

**SECTION 24**. Section 83-16-24, Mississippi Code of 1972, is established as follows:

**83-16-24. Title Insurance available to Public Bodies**. The State of Mississippi, its agencies, special districts, counties, municipalities, commissions, and other public bodies authorized by law to acquire real property, or an interest in real property, hereafter acquiring real property or an interest in real property are hereby authorized, in their discretion, to secure the protection of a title policy from title insurers or title agents qualified to do business in this state. The action of any such public body which heretofore has secured the protection of a title policy is hereby ratified, approved, and confirmed. The authority hereby conferred to such public bodies by this section is limited to real property or an interest in real property hereafter acquired by such public bodies in the furtherance of any balance agriculture with industry (BAWI) plan, port, housing, industrial program, or other development, use, or program authorized by law.

**SECTION 25**. Section 83-16-25, Mississippi Code of 1972, is established as follows:

**83-16-25. Severability**. If any provision of this act, or the application of the provision to any person or circumstance is found to be invalid, the remainder of the act, and the application of the provision to persons or circumstances other than those to which it is found invalid, shall not be affected.

**SECTION 26**. Section 83-16-26, Mississippi Code of 1972, is established as follows:

**83-16-26. Effective Date**. This act shall take effect and be in force from and after [July 1, 2022].

**SECTION 27**. Sections 83-15-1, 83-15-3, 83-15-5, 83-15-7, 83-15-9, and 83-15-11, Mississippi Code of 1972, are repealed as of the effective date of the act.

**SECTION 28**. Section 73-3-55, Mississippi Code of 1972, is hereby amended as follows:

**73-3-55. Unlawful to practice law without license; certain abstract companies may certify titles**.

(a) It shall be unlawful for any person to engage in the practice of law in this state who has not been licensed according to law. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished in accordance with the provisions of Section 97-23-43. Any person who shall for fee or reward or promise, directly or indirectly, write or dictate any paper or instrument of writing, to be filed in any cause or proceeding pending, or to be instituted in any court in this state, or give any counsel or advice therein, or who shall write or dictate any bill of sale, deed of conveyance, deed of trust, mortgage, contract, or last will and testament, or shall make or certify to any abstract of title to real estate other than his own or in which he may own an interest, shall be held to be engaged in the practice of law. This section shall not, however, prevent title or abstract of title guaranty companies incorporated under the laws of this state from making abstract or certifying titles to real estate where it acts through some person as agent, authorized under the laws of the State of Mississippi to practice law; nor shall this section prevent any abstract company chartered under the laws of the State of Mississippi with a paid-up capital of Fifty Thousand Dollars ($ 50,000.00) or more from making or certifying to abstracts of title to real estate through the president, secretary or other principal officer of such company.

(b) An action against an individual licensed to practice law in this state or a title or abstract company authorized under subsection (a) for marking or certifying to any abstract of title must be commenced within two years after the act or omission or failure giving rise to the claim, and not afterwards;  provided, that if the cause of action is not discovered and could not reasonably have been discovered within such period, then the action may be commenced within six months from the date of such discovery or the date of discovery of facts which would reasonably lead to such discovery, whichever is earlier;  provided, further, that in no event may the action be commenced more than four years after such act or omission or failure;  except, that an act or omission or failure giving rise to a claim which occurred before [July 1, 2022], shall not in any event be barred until the expiration of one year from such date.