

**Representative R. Curt Webb** proposes the following substitute bill:

**TITLE INSURANCE AMENDMENTS**

2016 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: R. Curt Webb**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill modifies the Insurance Code to address title insurance.

**Highlighted Provisions:**

This bill:

- ▶ addresses closing or settlement protection;
- ▶ addresses the liability of title insurers and title insurance producers under certain circumstances; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**31A-4-117**, as enacted by Laws of Utah 2013, Chapter 319

**31A-23a-407**, as last amended by Laws of Utah 2013, Chapter 319

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*Be it enacted by the Legislature of the state of Utah:*



26 Section 1. Section 31A-4-117 is amended to read:

27 **31A-4-117. Closing or settlement protection.**

28 (1) A title insurer may issue closing or settlement protection in the form of a closing  
29 protection letter filed with the department to a person who is a party to a transaction in which a  
30 title insurance policy is issued.

31 (2) Closing or settlement protection may indemnify a person who is a party to a  
32 transaction referred to in Subsection (1) against loss that the title insurer approves for the  
33 closing or settlement protection, under the terms and conditions of the closing protection letter  
34 issued by the title insurer, because of one or more of the following acts of a title insurance  
35 policy issuing individual title insurance producer or agency title insurance producer or other  
36 settlement service provider:

37 (a) theft or misappropriation of settlement funds in connection with a transaction in  
38 which one or more title insurance policies are issued by or on behalf of the title insurer issuing  
39 the closing or settlement protection, but only to the extent that the theft or misappropriation  
40 relates to the status of the title to that interest in land or to the validity, enforceability, and  
41 priority of the lien of the mortgage on that interest in land; or

42 (b) failure to comply with the written closing instructions when agreed to by the  
43 settlement agent, title agent, or employee of the title insurer, but only to the extent that the  
44 failure to follow the written closing instructions relates to the status of the title to that interest  
45 in land or the validity, enforceability, and priority of the lien of the mortgage on that interest in  
46 land.

47 (3) A title insurer may not make the fee charged by a title insurer for each party  
48 receiving closing or settlement protection coverage subject to any agreement requiring a  
49 division of fees or premiums collected on behalf of the title insurer. The fee charged for a  
50 closing or settlement coverage protection letter will be filed by the title insurer with the  
51 department 30 days before use.

52 (4) A title insurer may not provide any other protection that purports to contractually  
53 indemnify against improper acts or omissions of a person who is a party to a transaction  
54 referred to in Subsection (1) with regard to settlement or closing services.

55 (5) Subject to Section 31A-23a-407, a title insurer that is represented by an individual  
56 title insurance producer or an agency title insurance producer is liable for the acts or omissions

57 of the individual title insurance producer or agency title insurance producer for closing or  
 58 settlement only to the extent of the liability undertaken in the closing protection letter  
 59 according to terms and provisions in the closing protection letter issued pursuant to this  
 60 section. The liability to the title insurer, if any, of the individual title insurance producer or  
 61 agency title insurance producer that issues the title insurance policy for acts or omissions of the  
 62 individual title insurance producer or agency title insurance producer may not be limited or  
 63 modified because the title insurer has provided closing protection to one or more parties to a  
 64 real property transaction, escrow, settlement, or closing.

65 Section 2. Section 31A-23a-407 is amended to read:

66 **31A-23a-407. Liability for acts of title insurance producers.**

67 ~~[Any title company, represented by one or more]~~

68 (1) Subject to the other provisions in this section, a title insurer that appoints an  
 69 individual title insurance ~~[producers appointed by an insurer]~~ producer or an agency title  
 70 insurance ~~[producers, is directly and primarily]~~ producer is liable to ~~[others dealing with the~~  
 71 individual title insurance producers or agency title insurance producers] a buyer, seller,  
 72 borrower, lender, or third party that deposits money with the individual title insurance producer  
 73 or agency title insurance producer for the receipt and disbursement of ~~[funds]~~ money deposited  
 74 ~~[in escrows]~~ with the individual title insurance ~~[producers appointed by an insurer]~~ producer or  
 75 agency title insurance ~~[producers in all those transactions where]~~ producer:

76 (a) for a transaction when a commitment ~~[or binder]~~ for ~~[or]~~ a policy ~~[or contract]~~ of  
 77 title insurance of that title insurer ~~[has been]~~ is ordered, ~~[or a preliminary report of the title~~  
 78 insurer has been] issued, or distributed~~[-This]~~ or a title insurance policy of that title insurer is  
 79 issued, except that once a title insurer is named in an issued commitment only that title insurer  
 80 is liable as a title insurer under this section; and

81 (b) only if:

82 (i) the individual title insurance producer or agency title insurance producer no longer  
 83 exists; or

84 (ii) the person, after obtaining a money judgment against the individual title insurance  
 85 producer or agency title insurance producer, cannot obtain satisfaction of the judgment within  
 86 six months of entry of the judgment from:

87 (A) the individual title insurance producer or agency title insurance producer; and

88           (B) when uncollectible from the individual title insurance producer or agency title  
89 insurance producer, the Title Insurance Recovery, Education, and Research Fund in accordance  
90 with Chapter 41, Title Insurance Recovery, Education, and Research Fund Act.

91           (2) The liability of a title insurer under Subsection (1) and the liability of an individual  
92 title insurance producer or agency title insurance producer for the receipt and disbursement of  
93 money deposited with the individual title insurance producer or agency title insurance producer  
94 is limited to the amount of money received and disbursed, not to exceed the amount of  
95 proposed insurance set forth in the commitment or title insurance policy described in  
96 Subsection (1)(a) plus 10% of the amount of the proposed insurance.

97           (3) The liability described in Subsection (1) does not modify, mitigate, impair, or affect  
98 the contractual obligations between [~~the~~] an individual title insurance [~~producers~~] producer or  
99 agency title insurance [~~producers~~] producer and the title insurer.

100           (4) The liability of a title insurer with respect to the condition of title to the real  
101 property that is the subject of a title insurance policy or a title insurance commitment for a title  
102 insurance policy is limited to the terms, conditions, and stipulations contained in the title  
103 insurance policy or title commitment.

104           (5) A person may not commence an action against a title insurer under this section  
105 unless the person has exhausted the remedies described in Subsection (1)(b).