

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: Curtis S. Bramble

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

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

81 (2) The liability of a title insurer under Subsection (1) and the liability of an individual
82 title insurance producer or agency title insurance producer for the receipt and disbursement of
83 money deposited with the individual title insurance producer or agency title insurance producer
84 is limited to the amount of money received and disbursed, not to exceed the amount of
85 proposed insurance set forth in the commitment or title insurance policy described in
86 Subsection (1)(a) plus 10% of the amount of the proposed insurance.

87 (3) The liability described in Subsection (1) does not modify, mitigate, impair, or affect

88 the contractual obligations between [~~the~~] an individual title insurance [~~producers~~] producer or
89 agency title insurance [~~producers~~] producer and the title insurer.

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