

## HB0163S02 compared with HB0163S01

~~deleted text~~ shows text that was in HB0163S01 but was deleted in HB0163S02.

inserted text shows text that was not in HB0163S01 but was inserted into HB0163S02.

**DISCLAIMER:** This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

**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

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### 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:*

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

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

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

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

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

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

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

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department 30 days before use.

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

(5) Subject to Section 31A-23a-407, a title insurer that is represented by an individual title insurance producer or an agency title insurance producer is liable for the acts or omissions of the individual title insurance producer or agency title insurance producer for closing or settlement only to the extent of the liability undertaken in the closing protection letter according to terms and provisions in the closing protection letter issued pursuant to this section. The liability to the title insurer, if any, of the individual title insurance producer or agency title insurance producer that issues the title insurance policy for acts or omissions of the individual title insurance producer or agency title insurance producer may not be limited or modified because the title insurer has provided closing protection to one or more parties to a real property transaction, escrow, settlement, or closing.

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

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

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

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

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

~~— (b) only if:~~

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~~—— (i) the individual title insurance producer or agency title insurance producer no longer exists; or~~

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

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

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

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

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

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

~~{ —— (5) A person may not commence an action against a title insurer under this section unless the person has exhausted the remedies described in Subsection (1)(b):~~

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