

Senator Daniel Hemmert proposes the following substitute bill:

TITLE INSURANCE AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Daniel Hemmert

House Sponsor: Mike Schultz

LONG TITLE

General Description:

This bill amends provisions related to affiliated business in title insurance.

Highlighted Provisions:

This bill:

- ▶ removes an unused definition;
- ▶ defines "producer";
- ▶ amends regulatory and reporting requirements to apply only to new or newly affiliated title entities;
- ▶ amends a provision related to adjudicative proceedings; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

31A-23a-1001, as enacted by Laws of Utah 2019, Chapter 475

31A-23a-1002, as enacted by Laws of Utah 2019, Chapter 475



26 [31A-23a-1003](#), as enacted by Laws of Utah 2019, Chapter 475

27 [31A-23a-1004](#), as enacted by Laws of Utah 2019, Chapter 475

28 [31A-23a-1006](#), as enacted by Laws of Utah 2019, Chapter 475

29 [31A-23a-1007](#), as enacted by Laws of Utah 2019, Chapter 475

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

32 Section 1. Section [31A-23a-1001](#) is amended to read:

33 **[31A-23a-1001](#). Definitions.**

34 As used in this part:

35 (1) "Affiliated business" means the gross transaction revenue of a new or newly
36 affiliated title entity's title insurance business in the state that is the result of an affiliated
37 business arrangement.

38 (2) "Affiliated business arrangement" means the same as that term is defined in 12
39 U.S.C. Sec. 2602, except the services that are the subject of the arrangement do not need to
40 involve a federally related mortgage loan.

41 (3) "Applicable percentage" means:

42 (a) on February 1, 2020, through January 31, 2021, 0.5%;

43 (b) on February 1, 2021, through January 31, 2022, 1%;

44 (c) on February 1, 2022, through January 31, 2023, 1.5%;

45 (d) on February 1, 2023, through January 31, 2024, 2%;

46 (e) on February 1, 2024, through January 31, 2025, 2.5%;

47 (f) on February 1, 2025, through January 31, 2026, 3%;

48 (g) on February 1, 2026, through January 31, 2027, 3.5%;

49 (h) on February 1, 2027, through January 31, 2028, 4%; and

50 (i) on February 1, 2028, through January 31, 2029, 4.5%.

51 (4) "Associate" means the same as that term is defined in 12 U.S.C. Sec. 2602.

52 (5) "Division" means the Division of Real Estate created in Section [61-2-201](#).

53 (6) "Essential function" means:

54 (a) examining and evaluating, based on relevant law and title insurance underwriting
55 principles and guidelines, title evidence to determine the insurability of a title and which items
56 to include or exclude in a title commitment or title insurance policy to be issued;

- 57 (b) preparing and issuing a title commitment or other document that:
- 58 (i) discloses the status of the title as the title is proposed to be insured;
- 59 (ii) identifies the conditions that must be met before a title insurance policy will be
- 60 issued; and
- 61 (iii) obligates the insurer to issue a title insurance policy if the conditions described in
- 62 Subsection (6)(b)(ii) are met;
- 63 (c) clearing underwriting objections and taking the necessary steps to satisfy any
- 64 conditions to the issuance of a title insurance policy;
- 65 (d) preparing the issuance of a title insurance policy; or
- 66 (e) handling the closing or settlement of a real estate transaction when:
- 67 (i) it is customary for a title entity to handle the closing or settlement; and
- 68 (ii) the title entity's compensation for handling the closing or settlement is customarily
- 69 part of the payment or retention from the insurer.
- 70 (7) "New or newly affiliated title entity" means a title entity that:
- 71 (a) is licensed as a title entity for the first time on or after May 14, 2019; or
- 72 (b) (i) is licensed as a title entity before May 14, 2019; and
- 73 (ii) enters into an affiliated business arrangement for the first time on or after May 14,
- 74 2019.
- 75 ~~[(8) "Ownership affiliated business arrangement" means an affiliated business~~
- 76 ~~arrangement based on a person or a person's affiliate having a direct or beneficial ownership~~
- 77 ~~interest of more than 1% in a title entity.]~~
- 78 (8) "Producer" means the same as the term "person who is in a position to refer
- 79 settlement service business" is defined in 12 C.F.R. Sec. 1024.15(c).
- 80 (9) "RESPA" means the federal Real Estate Settlement Procedures Act, 12 U.S.C. Sec.
- 81 2601 et seq. and any rules made thereunder.
- 82 (10) "Section 8 of RESPA" means 12 U.S.C. Sec. 2607 and any rules promulgated
- 83 thereunder.
- 84 (11) "Sufficient capital and net worth" means:
- 85 ~~[(a) for a new or newly affiliated title entity:]~~
- 86 ~~[(i)]~~ (a) \$100,000 for the first five years after becoming a new or newly affiliated title
- 87 entity; or

88 [(i)] (b) after the first five years after becoming a new or newly affiliated title entity,
89 the greater of:

90 [(A)] (i) \$50,000; or

91 [(B)] (ii) on February 1 of each year, an amount equal to 5% of the new or newly
92 affiliated title entity's average annual gross revenue over the preceding two calendar years, up
93 to \$150,000[; or].

94 ~~[(b) for a title entity licensed before May 14, 2019, who is not a new or newly affiliated~~
95 ~~title entity:]~~

96 ~~[(i) for the time period beginning on February 1, 2020, and ending on January 31,~~
97 ~~2029, the lesser of:]~~

98 ~~[(A) an amount equal to the applicable percentage of the title entity's average annual~~
99 ~~gross revenue over the two calendar years immediately preceding the February 1 on which the~~
100 ~~applicable percentage first applies; or]~~

101 ~~[(B) \$150,000; and]~~

102 ~~[(ii) beginning on February 1, 2029, the greater of:]~~

103 ~~[(A) \$50,000; or]~~

104 ~~[(B) an amount equal to 5% of the title entity's average annual gross revenue over the~~
105 ~~preceding two calendar years, up to \$150,000.]~~

106 (12) "Title entity" means:

107 (a) a title licensee as defined in Section 31A-2-402; or

108 (b) a title insurer as defined in Section 31A-23a-415.

109 (13) (a) "Title evidence" means a written or electronic document that identifies and
110 describes or compiles the documents, records, judgments, liens, and other information from the
111 public records relevant to the history and current condition of a title to be insured.

112 (b) "Title evidence" does not include a pro forma commitment.

113 Section 2. Section 31A-23a-1002 is amended to read:

114 **31A-23a-1002. Regulation of affiliated business -- Applicable law.**

115 (1) Except as provided in this part, for purposes of state law, Section 8 of RESPA
116 governs an affiliated business arrangement involving a new or newly affiliated title entity.

117 (2) The division shall enforce the provisions of this part, including Section 8 of
118 RESPA.

119 (3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
120 division may make rules necessary to implement the provisions of this part.

121 Section 3. Section **31A-23a-1003** is amended to read:

122 **31A-23a-1003. Affiliated business arrangements.**

123 (1) An affiliated business arrangement between a person and a new or newly affiliated
124 title entity violates Section 8 of RESPA for purposes of state law if:

125 (a) the new or newly affiliated title entity does not have sufficient capital and net worth
126 in a reserve account in the new or newly affiliated title entity's name; or

127 (b) more than 70% of the new or newly affiliated title entity's annual title insurance
128 business is affiliated business on or after the later of:

129 (i) two years after [a] the new or newly affiliated title entity begins an affiliated
130 business arrangement; or

131 (ii) June 1, 2021.

132 (2) In addition to Subsection (1), the division may find that an affiliated business
133 arrangement between a person and a new or newly affiliated title entity violates Section 8 of
134 RESPA after evaluating and weighing the following factors in light of the specific facts before
135 the division:

136 (a) whether the new or newly affiliated title entity:

137 (i) is staffed with [its] the new or newly affiliated title entity's own employees to
138 conduct title insurance business;

139 (ii) manages [its] the new or newly affiliated title entity's own business affairs;

140 (iii) has a physical office for business that is separate from any producer's or associate's
141 office and pays market rent;

142 (iv) provides the essential functions of title insurance business for a fee, including
143 incurring the risks and receiving the rewards of any comparable title entity; and

144 (v) performs the essential functions of title insurance business itself;

145 (b) if the new or newly affiliated title entity contracts with another person to perform a
146 portion of the new or newly affiliated title entity's title insurance business, whether the
147 contract:

148 (i) is with an independent third party; and

149 (ii) provides payment for the services that bears a reasonable relationship to the value

150 of the services or goods received; and

151 (c) whether the person from whom the new or newly affiliated title entity receives
152 referrals under the affiliated business arrangement also sends title insurance business to other
153 title entities.

154 Section 4. Section **31A-23a-1004** is amended to read:

155 **31A-23a-1004. Annual affiliated business report.**

156 Before March 1 each year, each new or newly affiliated title entity shall submit a report
157 to the division that:

158 (1) contains the following for the preceding calendar year:

159 (a) the name and address of any producer or associate that owns a financial interest in
160 the new or newly affiliated title entity;

161 (b) for each producer and associate identified under Subsection (1)(a), the percentage
162 of the new or newly affiliated title entity's affiliated business that is the result of an affiliated
163 business arrangement with the producer or associate;

164 (c) a description of any affiliated business arrangement the new or newly affiliated title
165 entity has with a person other than ~~[an]~~ a producer or associate identified under Subsection
166 (1)(a);

167 (d) the percentage of the new or newly affiliated title entity's annual title insurance
168 business that is affiliated business;

169 (e) proof of sufficient capital and net worth; and

170 (f) any other information required by the division by rule; and

171 (2) is certified by an officer of the new or newly affiliated title entity that the
172 information contained in the report is true to the best of the officer's knowledge, information,
173 and belief.

174 Section 5. Section **31A-23a-1006** is amended to read:

175 **31A-23a-1006. Disciplinary action.**

176 (1) Subject to the requirements of Section **31A-23a-1007**, the division may impose a
177 sanction described in Subsection (2) against a person if the person is:

178 (a) a new or newly affiliated title entity or a person previously licensed as a new or
179 newly affiliated title entity for an act the person committed while licensed; and

180 (b) violates a provision of this part, including Section 8 of RESPA.

- 181 (2) The division may, against a person described in Subsection (1):
- 182 (a) impose an educational requirement;
- 183 (b) impose a civil penalty in an amount not to exceed \$5,000 for each violation;
- 184 (c) do any of the following to a new or newly affiliated title entity:
- 185 (i) suspend;
- 186 (ii) revoke; or
- 187 (iii) place on probation;
- 188 (d) issue a cease and desist order; [~~and~~] or
- 189 (e) impose any combination of sanctions described in this Subsection (2).
- 190 (3) (a) If the presiding officer in a disciplinary action under this part issues an order
- 191 that orders a fine as part of a disciplinary action against a person, including a stipulation and
- 192 order, the presiding officer shall state in the order the deadline, that is no more than one year
- 193 after the day on which the presiding officer issues the order, by which the person shall comply
- 194 with the fine.
- 195 (b) If a person fails to comply with a stated deadline:
- 196 (i) the person's license is automatically suspended:
- 197 (A) beginning the day specified in the order as the deadline for compliance; and
- 198 (B) ending the day on which the person complies in full with the order; and
- 199 (ii) if the person fails to pay a fine required by an order, the division may begin a
- 200 collection process:
- 201 (A) established by the division by rule made in accordance with Title 63G, Chapter 3,
- 202 Utah Administrative Rulemaking Act; and
- 203 (B) subject to Title 63A, Chapter 3, Part 5, Office of State Debt Collection.
- 204 (4) The division may delegate to an administrative law judge the authority to conduct a
- 205 hearing under this part.
- 206 Section 6. Section **31A-23a-1007** is amended to read:
- 207 **31A-23a-1007. Adjudicative proceedings -- Review -- Coordination with**
- 208 **department.**
- 209 (1) (a) Before an action described in Section **31A-23a-1006** may be taken, the division
- 210 shall:
- 211 (i) give notice to the person against whom the action is brought; and

212 (ii) commence an adjudicative proceeding.

213 (b) If after the adjudicative proceeding is commenced under Subsection (1)(a) the
214 presiding officer determines that a new or newly affiliated title entity has violated a provision
215 of this part, including Section 8 of RESPA, the division may take an action described in
216 Section 31A-23a-1006 by written order.

217 (2) In accordance with Title 63G, Chapter 4, Administrative Procedures Act, a person
218 against whom action is taken under this part may seek review of the action by the executive
219 director of the Department of Commerce.

220 (3) If a person prevails in a judicial appeal and the court finds that the state action was
221 undertaken without substantial justification, the court may award reasonable litigation expenses
222 to that individual or entity as provided under Title 78B, Chapter 8, Part 5, Small Business
223 Equal Access to Justice Act.

224 (4) (a) An order issued under this section takes effect 30 days after the service of the
225 order unless otherwise provided in the order.

226 (b) If a person appeals an order issued under this section, the division may stay
227 enforcement of the order in accordance with Section 63G-4-405.

228 (5) (a) Except as provided in Subsection (5)(b), the division shall commence a
229 disciplinary action under this chapter no later than the earlier of the following:

- 230 (i) four years after the day on which the violation is reported to the division; or
- 231 (ii) 10 years after the day on which the violation occurred.

232 (b) The division may commence a disciplinary action under this part after the time
233 period described in Subsection (5)(a) expires if:

234 (i) (A) the disciplinary action is in response to a civil or criminal judgment or
235 settlement; and

236 (B) the division initiates the disciplinary action no later than one year after the day on
237 which the judgment is issued or the settlement is final; or

238 (ii) the division and the person subject to a disciplinary action enter into a written
239 stipulation to extend the time period described in Subsection (5)(a).

240 (6) (a) Within two business days after the day on which a presiding officer issues an
241 order under this part that suspends or revokes a new or newly affiliated title entity's license, the
242 division shall deliver written notice to the department that states the action the presiding officer

243 ordered against the new or newly affiliated title entity's license.

244 (b) Upon receipt of the notice described in Subsection (6)(a), the department shall
245 implement the action ordered against the new or newly affiliated title entity's license.

246 [~~(7) Upon receipt of a notice described in Subsection (6), the department shall take the~~
247 ~~action described in the notice upon the title entity's license.~~]