

1 SENATE BILL NO. 119

2 INTRODUCED BY J. ESP

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING TITLE INSURANCE LAWS; INCLUDING
5 TITLE GUARANTEES IN INSURANCE REGULATORY LAWS; REVISING LAWS RELATED TO RECORD
6 RETENTION; PROVIDING DEFINITIONS; AMENDING SECTIONS 15-31-114, 33-25-105, 33-25-212, 33-25-
7 214, 33-25-301, AND 33-25-401, MCA; AND PROVIDING AN APPLICABILITY DATE."

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10
11 **Section 1.** Section 15-31-114, MCA, is amended to read:

12 **"15-31-114. Deductions allowed in computing income.** (1) In computing the net income, the
13 following deductions are allowed from the gross income received by the corporation within the year from all
14 sources:

15 (a) all the ordinary and necessary expenses paid or incurred during the taxable year in the
16 maintenance and operation of its business and properties, including reasonable allowance for salaries for
17 personal services actually rendered, subject to the limitation contained in this section, and rentals or other
18 payments required to be made as a condition to the continued use or possession of property to which the
19 corporation has not taken or is not taking title or in which it has no equity. A deduction is not allowed for salaries
20 paid upon which the recipient has not paid Montana state income tax. However, when domestic corporations
21 are taxed on income derived from outside the state, salaries of officers paid in connection with securing the
22 income are deductible.

23 (b) (i) all losses actually sustained and charged off within the year and not compensated by
24 insurance or otherwise, including a reasonable allowance for the wear and tear and obsolescence of property
25 used in the trade or business. The allowance is determined according to the provisions of section 167 of the
26 Internal Revenue Code in effect with respect to the taxable year. All elections for depreciation must be the
27 same as the elections made for federal income tax purposes. A deduction is not allowed for any amount paid
28 out for any buildings, permanent improvements, or betterments made to increase the value of any property or

1 estate, and a deduction may not be made for any amount of expense of restoring property or making good the
2 exhaustion of property for which an allowance is or has been made. A depreciation or amortization deduction is
3 not allowed on a title plant as defined in 33-25-105(45).

4 (ii) There is allowed as a deduction for the taxable period a net operating loss deduction determined
5 according to the provisions of 15-31-119.

6 (c) in the case of mines, other natural deposits, oil and gas wells, and timber, a reasonable allowance
7 for depletion and for depreciation of improvements. The reasonable allowance must be determined according to
8 the provisions of the Internal Revenue Code in effect for the taxable year. All elections made under the Internal
9 Revenue Code with respect to capitalizing or expensing exploration and development costs and intangible
10 drilling expenses for corporate income tax purposes must be the same as the elections made for federal
11 income tax purposes.

12 (d) the amount of interest paid within the year on its indebtedness incurred in the operation of the
13 business from which its income is derived. Interest may not be allowed as a deduction if paid on an
14 indebtedness created for the purchase, maintenance, or improvement of property or for the conduct of business
15 unless the income from the property or business would be taxable under this part.

16 (e) (i) taxes paid within the year, except the following:

17 (A) taxes imposed by this part;

18 (B) taxes assessed against local benefits of a kind tending to increase the value of the property
19 assessed;

20 (C) taxes on or according to or measured by net income or profits imposed by authority of the
21 government of the United States;

22 (D) taxes imposed by any other state or country upon or measured by net income or profits.

23 (ii) Taxes deductible under this part must be construed to include taxes imposed by any county, school
24 district, or municipality of this state.

25 (f) that portion of an energy-related investment allowed as a deduction under 15-32-103;

26 (g) (i) except as provided in subsection (1)(g)(ii) or (1)(g)(iii), charitable contributions and gifts that
27 qualify for deduction under section 170 of the Internal Revenue Code, 26 U.S.C. 170, as amended.

28 (ii) The public service commission may not allow in the rate base of a regulated corporation the

1 inclusion of contributions made under this subsection.

2 (iii) A deduction is not allowed for a charitable contribution using a charitable gift annuity unless the
3 annuity is a qualified charitable gift annuity as defined in 33-20-701.

4 (h) per capita livestock fees imposed pursuant to 15-24-921, 15-24-922, 81-6-104, 81-6-204, 81-6-
5 209, 81-7-118, or 81-7-201.

6 (2) In lieu of the deduction allowed under subsection (1)(g), the taxpayer may deduct the fair market
7 value, not to exceed 30% of the taxpayer's net income, of a computer or other sophisticated technological
8 equipment or apparatus intended for use with the computer donated to an elementary, secondary, or accredited
9 postsecondary school located in Montana if:

10 (a) the contribution is made no later than 5 years after the manufacture of the donated property is
11 substantially completed;

12 (b) the property is not transferred by the donee in exchange for money, other property, or services;
13 and

14 (c) the taxpayer receives a written statement from the donee in which the donee agrees to accept the
15 property and representing that the use and disposition of the property will be in accordance with the provisions
16 of subsection (2)(b).

17 (3) In the case of a regulated investment company or a fund of a regulated investment company, as
18 defined in section 851(a) or 851(g) of the Internal Revenue Code of 1986, 26 U.S.C. 851(a) or 851(g), as that
19 section may be amended or renumbered, there is allowed a deduction for dividends paid, as defined in section
20 561 of the Internal Revenue Code of 1986, 26 U.S.C. 561, as that section may be amended or renumbered,
21 except that the deduction for dividends is not allowed with respect to dividends attributable to any income that is
22 not subject to tax under this chapter when earned by the regulated investment company. For the purposes of
23 computing the deduction for dividends paid, the provisions of sections 852(b)(7) and 855 of the Internal
24 Revenue Code of 1986, 26 U.S.C. 852(b)(7) and 855, as those sections may be amended or renumbered,
25 apply. A regulated investment company is not allowed a deduction for dividends received as defined in sections
26 243 through 245 of the Internal Revenue Code of 1986, 26 U.S.C. 243 through 245, as those sections may be
27 amended or renumbered."

28

1 **Section 2.** Section 33-25-105, MCA, is amended to read:

2 **"33-25-105. Definitions.** As used in this chapter, the following definitions apply:

3 (1) "Abstract" means a written representation, provided pursuant to a contract and expected to be
4 relied upon by the person who has contracted for the receipt of that representation, listing all recorded
5 conveyances, instruments, or documents which, under the laws of this state, impart constructive notice
6 regarding the chain of title to real property described in the abstract. Abstract includes "abstract of title".

7 (2) "Applicant" means a person, whether or not a prospective insured, who applies to a title insurer or
8 title insurance producer for a title insurance policy or title guarantee, but does not include a title insurance
9 producer.

10 (3) "Approved attorney" means an attorney authorized to practice law in this state, except an agent or
11 employee of a title insurer, whose certification as to the status of the title to real property a title insurer is willing
12 to accept as the basis for issuance of a title insurance policy or title guarantee.

13 (4) "Associate" means a:

14 (a) corporation, partnership, or other business entity organized for profit, of which a producer of title
15 business is a director, officer, partner, employee, or owner of 5% or more of its equity or capital;

16 (b) franchisor or franchisee of a producer of title business;

17 (c) spouse, parent, or child of a producer of title business;

18 (d) corporation, partnership, or other business entity that controls, is controlled by, or is under
19 common control with a producer of title business; or

20 (e) person with whom a producer of title business or an associate has an agreement, arrangement,
21 understanding, or course of conduct having the purpose or substantial effect of evading the provisions of this
22 title.

23 (5) "Chain of title" means the chronological order of every conveyance affecting any estate or interest
24 in the real property to be insured.

25 (6) "Controlled business" means that portion of the business of title insurance in this state of a title
26 insurer or title insurance producer that is referred to it by a producer or associate having a financial interest in
27 the title insurer or title insurance producer.

28 (7) "Conveyance" means, for the purposes of this chapter:

1 (a) every instrument or judgment in writing by which any estate or interest in real property is created,
 2 aliened, mortgaged, or encumbered or by which a title to real property may be affected which is recorded or
 3 filed with the appropriate county clerk, except wills, in accordance with Title 70, chapter 21, part 2; and

4 (b) every judgment or warrant for distraint affecting title to real property filed and docketed with the
 5 appropriate county clerk of court.

6 ~~(6)~~(8) "Financial interest" means a legal or beneficial interest that entitles the holder, directly or
 7 indirectly, to 1% or more of the net profits or net worth of the entity in which the interest is held.

8 ~~(7)~~(9) "Preliminary report" means an offer to issue a title insurance policy subject to any exceptions
 9 stated in the report or other matters that may be incorporated by reference therein. Preliminary report includes
 10 a commitment for title insurance or binder.

11 ~~(8)~~(10) "Producer of title business" or "producer" means a person, corporation, partnership, or other
 12 business entity, including an officer, director, or owner of 5% or more of the equity or capital thereof, engaged in
 13 this state in the trade, business, occupation, or profession of:

14 (a) buying or selling interests in real property;

15 (b) making loans secured by interests in real property; or

16 (c) acting as broker, insurance producer, or representative of a person described in subsection (8)(a)
 17 or (8)(b).

18 ~~(9)~~(11) "Rate" means fees for:

19 (a) issuing a title insurance policy or title guarantee, including any service charge or fee for the
 20 issuance;

21 (b) ~~abstracting, searching,~~ searching and examining title to real property when prepared or issued in
 22 contemplation of or in conjunction with the issuance of a title insurance policy or title guarantee; and

23 (c) preparing or issuing preliminary reports, commitments, binders, or similar products prepared or
 24 issued in contemplation of or in conjunction with the issuance of a title insurance policy.

25 ~~(10)~~(12) "Refer" means to direct, cause to be directed, or exercise an influence over the direction of
 26 title insurance business, whether or not the consent or approval of another person is sought or obtained with
 27 respect to the referral.

28 (13) "Search and examination" means:

1 (a) a search conducted from a title plant or from the publicly maintained records in the office of the
 2 appropriate county clerk and county clerk of court in which entries have been made of documents imparting
 3 constructive notice, under the law, of matters affecting title to real property, from which the ownership of real
 4 property within the jurisdiction can be ascertained and interests, liens, encumbrances, defects, and clouds on
 5 title to the real property can be determined; and

6 (b) an examination of the chain of title in contemplation of or in conjunction with the issuance of a title
 7 insurance policy or title guarantee.

8 ~~(14)~~(14) "Title guarantee" means a contract by which, subject to its stated terms and conditions, a title
 9 insurer guarantees the assured against loss sustained by reason of the incorrectness of assurances set forth in
 10 the title guarantee with respect to the stated property. This term includes a trustee's sale guarantee, litigation
 11 guarantee, lot book guarantee, subdivision guarantee, recorded documents guarantee, or other form of
 12 guarantee filed with and approved by the commissioner. ~~"Title insurance business" means:~~

13 ~~(a) issuing or offering to issue a title insurance policy as an insurer;~~

14 ~~(b) transacting or proposing to transact any of the following as a title insurer or title insurance~~
 15 ~~producer, in contemplation of or in conjunction with the issuance of a title insurance policy:~~

16 ~~(i) soliciting or negotiating the issuance of a title insurance policy;~~

17 ~~(ii) guaranteeing, warranting, or otherwise insuring the correctness of title searches;~~

18 ~~(iii) handling escrows, settlements, or closings;~~

19 ~~(iv) executing title insurance policies, reports, commitments, binders, and endorsements;~~

20 ~~(v) effecting contracts of reinsurance; or~~

21 ~~(vi) abstracting, searching, or examining titles;~~

22 ~~(c) transacting, as a title insurer or insurance producer, matters subsequent to the issuance of a title~~
 23 ~~insurance policy and arising out of the policy; or~~

24 ~~(d) doing or proposing to do business that, in substance, is equivalent to any of the activities~~
 25 ~~described in subsections (11)(a) through (11)(c) in a manner designed to evade the provisions of this title.~~

26 (15) "Title insurance business" means:

27 (a) issuing or offering to issue a title insurance policy or title guarantee as an insurer;

28 (b) transacting or proposing to transact any of the following as a title insurer or title insurance

1 producer, in contemplation of or in conjunction with the issuance of a title insurance policy or title guarantee:

2 (i) soliciting or negotiating the issuance of a title insurance policy or title guarantee;

3 (ii) guaranteeing, warranting, or otherwise insuring the correctness of title searches;

4 (iii) handling escrows, settlements, or closings;

5 (iv) executing title insurance policies, title guarantees, reports, commitments, binders, and

6 endorsements;

7 (v) effecting contracts of reinsurance; or

8 (vi) searching or examining titles;

9 (c) transacting, as a title insurer or insurance producer, matters subsequent to the issuance of a title

10 insurance policy or title guarantee and arising out of the policy or guarantee; or

11 (d) doing or proposing to do business that, in substance, is equivalent to any of the activities

12 described in subsections (11)(a) through (11)(c) in a manner designed to evade the provisions of this title.

13 ~~(12)~~(16) "Title insurance policy" means a contract by which, subject to its stated terms and conditions,
14 a title insurer insures or indemnifies the insured against loss or damage sustained by reason of:

15 (a) defects in or liens or encumbrances on the title to the stated property;

16 (b) unmarketability of the title to the stated property; or

17 (c) invalidity or unenforceability of liens or encumbrances on the stated property.

18 ~~(13)~~(17) (a) "Title insurance producer" means a person who holds a valid title insurance producer's
19 license and is authorized in writing by a title insurer to:

20 (i) solicit title insurance business;

21 (ii) collect rates;

22 (iii) determine insurability in accordance with underwriting rules and standards of the insurer; or

23 (iv) issue policies and guarantees of the title insurer.

24 (b) Title insurance producer does not include an approved attorney.

25 ~~(14)~~(18) "Title insurer" means an insurer formed and authorized under the laws of this state to transact
26 the business of title insurance in this state or a foreign or alien insurer so authorized.

27 ~~(15)~~(19) "Title plant" means a set of privately maintained records in which entries have been made of
28 documents imparting constructive notice, under the law, of matters affecting title to real property, an interest

1 ~~therein in it~~, or an encumbrance ~~thereon on it~~, that have been filed or recorded in the jurisdiction for which the
 2 title plant is maintained and from which the ownership of real property within the jurisdiction can be ascertained
 3 and liens, encumbrances, defects, and clouds on title to the real property can be determined."
 4

5 **Section 3.** Section 33-25-212, MCA, is amended to read:

6 **"33-25-212. Rates filed with commissioner.** (1) A title insurer shall file with the commissioner a
 7 complete schedule of rates to be charged by it for title insurance and title guarantee as to property located in
 8 this state. The rates must be all-inclusive of the total charge for insurance as specified in the policy and must be
 9 accompanied by supporting data.

10 (2) A rate may not be excessive, inadequate, or unreasonably discriminatory.

11 (3) A title insurer may not quote or charge any rate for title insurance or title guarantee other than the
 12 applicable rate previously filed by it with the commissioner."
 13

14 **Section 4.** Section 33-25-214, MCA, is amended to read:

15 **"33-25-214. Underwriting standards -- record retention.** (1) A title insurer may not issue a title
 16 insurance policy unless it, its title insurance producer, or an approved attorney has conducted a ~~reasonable~~
 17 search and examination of the chain of title and made a determination of insurability of title in accordance with
 18 sound underwriting practices.

19 (a) The title insurer or title insurance producer shall preserve and retain in its files evidence of:

20 (i) the examination of ~~the chain of title from the patent issued for the real property or from the effective~~
 21 date of a prior preliminary report or title insurance policy issued by the title insurance producer, either directly or
 22 by a predecessor of a business acquired by the title insurance producer, or obtained by the title insurance
 23 producer through a consensual business relationship with another title insurance producer that issued, either
 24 directly or through a predecessor of a business acquired by the title insurance producer, the prior preliminary
 25 report or title insurance policy;~~and and~~

26 (ii) the determination of insurability.~~The~~

27 (b) With respect to subsections (1)(a)(i) and (1)(a)(ii), the title insurer or title insurance producer may
 28 keep original evidence or may establish in the regular course of business a system of recording, copying, or

1 reproducing evidence by any process that accurately and legibly reproduces, or forms a durable medium for
2 reproducing, the contents of the original.

3 (2) (a) A title insurer may not issue a title guarantee unless it, its title insurance producer, or an
4 approved attorney has conducted a search and examination of the chain of title required for the form of title
5 guarantee being issued and made a determination of assurance as to the title, documents, or other matters with
6 respect to the stated property in accordance with sound underwriting practices. The title insurer or title
7 insurance producer shall preserve and retain in its files evidence of:

8 (i) the examination of the chain of title from the patent issued for the real property or from the effective
9 date of a prior title guarantee, title insurance policy, or preliminary report issued by the title insurance producer,
10 either directly or by a predecessor of a business acquired by the title insurance producer, or obtained by the
11 title insurance producer through a consensual business relationship with another title insurance producer that
12 issued, either directly or through a predecessor of a business acquired by the title insurance producer, the prior
13 title guarantee, title insurance policy, or preliminary report; and

14 (ii) the determination of assurance as to the title, documents, or other matters addressed in the title
15 guarantee with respect to the stated property.

16 (b) If the form of title guarantee being issued requires only a limited search and examination of the
17 chain of title or of documents in the chain of title, then subsection (2)(a) applies only to the evidence of the
18 limited search of such chain of title or documents required with respect to that title guarantee.

19 (c) With respect to subsections (2)(a)(i), (2)(a)(ii), and (2)(b), the title insurer or title insurance
20 producer may keep original evidence or may establish in the regular course of business a system of recording,
21 copying, or reproducing evidence by any process that accurately and legibly reproduces, or forms a durable
22 medium for reproducing, the contents of the original.

23 ~~(2)(3)~~ Subsection (1) does. Subsections (1) and (2) do not apply to:

24 (a) a title insurer assuming liability through a contract of reinsurance; or

25 (b) a title insurer acting as coinsurer if one of the other coinsuring title insurers has complied with
26 ~~subsection (1)~~ subsections (1) and (2).

27 ~~(3)(4)~~ Except as allowed by rules adopted by the commissioner, a title insurer or title insurance
28 producer may not knowingly issue any title insurance product or commitment to insure policy or preliminary

1 report unless all outstanding enforceable recorded liens or other interests against the property title to be insured
2 are shown.

3 ~~(4)~~(5) An insurer issuing a policy in violation of this section is estopped, as a matter of law, to deny
4 the validity of the policy as to any claim or demand of the insured arising under the policy."

5

6 **Section 5.** Section 33-25-301, MCA, is amended to read:

7 **"33-25-301. Refusal, suspension, or revocation of title insurance producer's license.** (1) In
8 addition to the causes provided in 33-17-1001, the commissioner may refuse to license ~~an~~ a title insurance
9 producer applicant or renew the license of a person as a title insurance producer or may suspend or revoke a
10 title insurance producer's license or may fine a title insurance producer or license applicant, after notice and
11 opportunity for a hearing, if the commissioner finds that the license applicant or licensee has:

12 (a) made a material misstatement in an application for a title insurance producer license;

13 (b) commingled funds belonging to applicants, escrow participants, or others;

14 (c) intentionally misrepresented the terms of a title insurance policy or title guarantee to an applicant
15 ~~or policyholder~~ holder of a policy or guarantee or has misrepresented material facts to, concealed material facts
16 from, or made false statements to a party to an escrow, settlement, or closing transaction;

17 (d) in conducting affairs as a title insurance producer, used coercive practices or demonstrated
18 financial irresponsibility;

19 (e) aided, abetted, or assisted another person in violating the provisions of this title or a rule adopted
20 by the commissioner.

21 (2) The commissioner may impose any other appropriate penalty provided for in this title.

22 (3) The commissioner may refuse, suspend, or revoke the license of a person licensed as a title
23 insurance producer for the actions described in subsection (1) committed by any individual designated in the
24 license."

25

26 **Section 6.** Section 33-25-401, MCA, is amended to read:

27 **"33-25-401. Prohibited practices -- referrals -- splitting charges -- exemptions.** (1) Except as
28 provided in subsection (2), a person may not:

1 (a) give or accept a fee, rebate, or thing of value pursuant to an agreement or understanding that title
2 insurance business will be referred to a title insurance producer; or

3 (b) give or accept a portion, split, or percentage of a charge made or received for title insurance
4 business in connection with a transaction involving real property in this state, other than for services actually
5 performed.

6 (2) (a) A person may pay a return on an investment, based on a percentage of an ownership interest
7 in a title insurance agency producer, if:

8 (i) at or prior to the time of a referral, a disclosure of the existence of the arrangement is made to the
9 person being referred and, in connection with the referral, the person is provided a written estimate of the
10 charge or range of charges generally made by the title insurance producer to which the person is referred; and

11 (ii) the person is not required to use a particular insurance producer.

12 (b) The following arrangements are not a violation of subsection (2)(a)(ii):

13 (i) an arrangement that requires a buyer, borrower, or seller to pay for the services of an attorney,
14 credit reporting agency, or real estate appraiser chosen by a lender to represent the lender's interest in a real
15 estate transaction; or

16 (ii) an arrangement by which an attorney or law firm represents a client in a real estate transaction and
17 issues or arranges for the issuance of a policy of title insurance in the transaction directly as insurance
18 producer or through a separate corporate title insurance agency producer that may be established by that
19 attorney or law firm and operated as an adjunct to the attorney's or firm's law practice.

20 (c) Failure to disclose a controlled business relationship is not a violation of subsection (2)(a)(i) if the
21 failure was not intentional and resulted from a bona fide error, proven by a preponderance of the evidence.

22 (3) This section does not prohibit:

23 (a) the payment of a fee to an attorney for services actually rendered or by a title insurance producer
24 for services actually performed in the issuance of a title insurance policy or title guarantee; or

25 (b) payment of a bona fide salary, compensation, or other payment for goods or facilities actually
26 furnished or for services actually performed."

27

28 **NEW SECTION. Section 7. Applicability.** [This act] applies to title policies and title guarantees

1 formed on or after [the effective date of this act].

2 - END -