

HOUSE BILL NO. 223

INTRODUCED BY G. CUSTER, L. JONES

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS PERTAINING TO TITLE INSURANCE REGULATION BY THE INSURANCE COMMISSIONER; ADDING TITLE PLANTS AND TITLE GUARANTEES TO UNDERWRITING STANDARDS; AND AMENDING SECTIONS 15-31-114, 33-25-105, AND 33-25-214, MCA."

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

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

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

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

(b) (i) all losses actually sustained and charged off within the year and not compensated by insurance or otherwise, including a reasonable allowance for the wear and tear and obsolescence of property used in the trade or business. The allowance is determined according to the provisions of section 167 of the Internal Revenue Code in effect with respect to the taxable year. All elections for depreciation must be the same as the elections made for federal income tax purposes. A deduction is not allowed for any amount paid out for any buildings, permanent improvements, or betterments made to increase the value of any property or estate, and a deduction may not be made for any amount of expense of restoring property or making good the exhaustion of property for which an allowance is or has been made. A depreciation or amortization deduction is not allowed on a title plant as defined in 33-25-105(15).

(ii) There is allowed as a deduction for the taxable period a net operating loss deduction determined

1 according to the provisions of 15-31-119.

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

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

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

13 (A) taxes imposed by this part;

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

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

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

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

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

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

24 (ii) The public service commission may not allow in the rate base of a regulated corporation the inclusion  
25 of contributions made under this subsection.

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

28 (h) per capita livestock fees imposed pursuant to 15-24-921, 15-24-922, 81-6-104, 81-6-204, 81-6-209,  
29 81-7-118, or 81-7-201.

30 (2) In lieu of the deduction allowed under subsection (1)(g), the taxpayer may deduct the fair market

1 value, not to exceed 30% of the taxpayer's net income, of a computer or other sophisticated technological  
 2 equipment or apparatus intended for use with the computer donated to an elementary, secondary, or accredited  
 3 postsecondary school located in Montana if:

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

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

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

10 (3) In the case of a regulated investment company or a fund of a regulated investment company, as  
 11 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  
 12 section may be amended or renumbered, there is allowed a deduction for dividends paid, as defined in section  
 13 561 of the Internal Revenue Code of 1986, 26 U.S.C. 561, as that section may be amended or renumbered,  
 14 except that the deduction for dividends is not allowed with respect to dividends attributable to any income that  
 15 is not subject to tax under this chapter when earned by the regulated investment company. For the purposes of  
 16 computing the deduction for dividends paid, the provisions of sections 852(b)(7) and 855 of the Internal Revenue  
 17 Code of 1986, 26 U.S.C. 852(b)(7) and 855, as those sections may be amended or renumbered, apply. A  
 18 regulated investment company is not allowed a deduction for dividends received as defined in sections 243  
 19 through 245 of the Internal Revenue Code of 1986, 26 U.S.C. 243 through 245, as those sections may be  
 20 amended or renumbered."

21

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

23 **"33-25-105. Definitions.** As used in this chapter, the following definitions apply:

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

28 (2) (a) "Applicant" means a person, whether or not a prospective insured, who applies to a title insurer  
 29 or title insurance producer for a title insurance policy; ~~but~~

30 (b) The term does not include a title insurance producer.

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

4 (4) "Associate" means a:

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

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

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

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

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

13 (5) "Controlled business" means that portion of the business of title insurance in this state of a title  
14 insurer or title insurance producer that is referred to it by a producer or associate having a financial interest in the  
15 title insurer or title insurance producer.

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

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

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

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

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

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

28 (9) "Rate" means fees for:

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

30 (b) abstracting, searching, and examining title to real property when prepared or issued in contemplation

1 of or in conjunction with the issuance of a title insurance policy; and

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

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

7 (11) "Title guarantee" means a contract by which, subject to its stated terms and conditions, a title insurer  
8 guarantees to the insured the correctness of title, documents, or other matters with respect to the stated property  
9 on forms approved by the commissioner.

10 ~~(11)~~(12) "Title insurance business" means:

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

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

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

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

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

17 (iv) executing title insurance policies, title guarantees, reports, commitments, binders, and endorsements;

18 (v) effecting contracts of reinsurance; or

19 (vi) abstracting, searching, or examining titles;

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

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

24 ~~(12)~~(13) "Title insurance policy" means a contract by which, subject to its stated terms and conditions,  
25 a title insurer insures or indemnifies the insured against loss or damage sustained by reason of:

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

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

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

29 ~~(13)~~(14) (a) "Title insurance producer" means a person who holds a valid title insurance producer's  
30 license and is authorized in writing by a title insurer to:

- 1 (i) solicit title insurance business;
- 2 (ii) collect rates;
- 3 (iii) determine insurability in accordance with underwriting rules and standards of the insurer; or
- 4 (iv) issue policies and title guarantees of the title insurer.
- 5 (b) Title insurance producer does not include an approved attorney.

6 ~~(14)~~(15) "Title insurer" means an insurer formed and authorized under the laws of this state to transact

7 the business of title insurance in this state or a foreign or alien insurer so authorized.

8 ~~(15)~~(16) "Title plant" means a set of privately maintained records in which entries have been made of

9 documents imparting constructive notice, under the law, of matters affecting title to real property, an interest

10 ~~therein~~ in real property, or an encumbrance ~~thereon~~ on real property, that have been filed or recorded in the

11 jurisdiction for which the title plant is maintained and from which the ownership of real property within the

12 jurisdiction can be ascertained and liens, encumbrances, defects, and clouds on title to the real property can be

13 determined."

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15 **Section 3.** Section 33-25-214, MCA, is amended to read:

16 **"33-25-214. Underwriting standards -- record retention.** (1) A title insurer may not issue a title

17 insurance policy or title guarantee unless it, its title insurance producer, or an approved attorney has conducted

18 a reasonable search and examination of the title using a title plant IN CONCERT WITH THE COUNTY RECORDS and

19 made a determination of insurability of title in accordance with sound underwriting practices. The title insurer or

20 title insurance producer shall preserve and retain in its files evidence of the examination of title and determination

21 of insurability. The title insurer or title insurance producer may keep original evidence or may establish in the

22 regular course of business a system of recording, copying, or reproducing evidence by any process that

23 accurately and legibly reproduces, or forms a durable medium for reproducing, the contents of the original.

24 (2) Subsection (1) does not apply to:

- 25 (a) a title insurer assuming liability through a contract of reinsurance; or
- 26 (b) a title insurer acting as coinsurer if one of the other coinsuring title insurers has complied with
- 27 subsection (1).

28 (3) Except as allowed by rules adopted by the commissioner, a title insurer or title insurance producer

29 may not knowingly issue any title insurance product or commitment to insure unless all outstanding enforceable

30 recorded liens or other interests against the property title to be insured are shown.

