

SENATE BILL NO. 289

INTRODUCED BY F. MOORE

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A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT DEFECTS IN OR LIENS OR ENCUMBRANCES ON A TITLE INCLUDE DELINQUENT MUNICIPAL UTILITY FEES FOR THE PURPOSES OF A TITLE INSURANCE POLICY; AND AMENDING SECTION 33-25-105, MCA."

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

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

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

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

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

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

(4) "Associate" means a:

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

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

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

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

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

(5) "Controlled business" means that portion of the business of title insurance in this state of a title

1 insurer or title insurance producer that is referred to it by a producer or associate having a financial interest in the
2 title insurer or title insurance producer.

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

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

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

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

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

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

15 (9) "Rate" means fees for:

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

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

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

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

24 (11) "Title insurance business" means:

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

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

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

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

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

- 1 (iv) executing title insurance policies, reports, commitments, binders, and endorsements;
- 2 (v) effecting contracts of reinsurance; or
- 3 (vi) abstracting, searching, or examining titles;
- 4 (c) transacting, as a title insurer or insurance producer, matters subsequent to the issuance of a title
- 5 insurance policy and arising out of the policy; or
- 6 (d) doing or proposing to do business that, in substance, is equivalent to any of the activities described
- 7 in subsections (11)(a) through (11)(c) in a manner designed to evade the provisions of this title.
- 8 (12) "Title insurance policy" means a contract by which, subject to its stated terms and conditions, a title
- 9 insurer insures or indemnifies the insured against loss or damage sustained by reason of:
- 10 (a) defects in or liens or encumbrances on the title to the stated property, including delinquent fees owed
- 11 to a municipality for utility services provided to the property;
- 12 (b) unmarketability of the title to the stated property; or
- 13 (c) invalidity or unenforceability of liens or encumbrances on the stated property.
- 14 (13) (a) "Title insurance producer" means a person who holds a valid title insurance producer's license
- 15 and is authorized in writing by a title insurer to:
- 16 (i) solicit title insurance business;
- 17 (ii) collect rates;
- 18 (iii) determine insurability in accordance with underwriting rules and standards of the insurer; or
- 19 (iv) issue policies of the title insurer.
- 20 (b) Title insurance producer does not include an approved attorney.
- 21 (14) "Title insurer" means an insurer formed and authorized under the laws of this state to transact the
- 22 business of title insurance in this state or a foreign or alien insurer so authorized.
- 23 (15) "Title plant" means a set of privately maintained records in which entries have been made of
- 24 documents imparting constructive notice, under the law, of matters affecting title to real property, an interest
- 25 therein, or an encumbrance thereon, that have been filed or recorded in the jurisdiction for which the title plant
- 26 is maintained and from which the ownership of real property within the jurisdiction can be ascertained and liens,
- 27 encumbrances, defects, and clouds on title to the real property can be determined."

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