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House BILL NO. 475

INTRODUCED BY Forbes Barnett Milling Ahner Miles
Fuchs Jim Nelson Marshall Wiseman Stovall

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING AN INTEREST ON TRUST ACCOUNTS PROGRAM FOR NOMINAL OR SHORT-TERM DEPOSITS OF CUSTOMER FUNDS BY TITLE INSURERS OR TITLE INSURANCE PRODUCERS; PROVIDING THAT THE PROGRAM BE ADMINISTERED BY THE MONTANA LAND TITLE ASSOCIATION FOUNDATION; AND AMENDING SECTION 33-25-201, MCA."

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

Section 1. Section 33-25-201, MCA, is amended to read:

"33-25-201. Escrow, closing, or settlement services -- title indemnification -- maintenance of accounts -- maintenance of nominal or short-term accounts -- rules. (1) A title insurer or title insurance producer may provide escrow, settlement, or closing services, or any combination thereof of those services, and may operate as an escrow, settlement, or closing agent, subject to the provisions of subsections (2) and (3) through (8).

(2) A title insurer or title insurance producer shall:

(a) deposit funds accepted in connection with an escrow, settlement, closing, or title indemnification in a separate fiduciary trust account in a bank or other financial institution insured by an agency of the federal government and segregate the funds by escrow, settlement, closing, or title indemnification in its records. The funds are the property of the person entitled thereto to the funds under the terms of the escrow, settlement, closing, or title indemnification and are not subject to debts of the title insurer or title insurance producer. A title insurer or title insurance producer may use such the funds only in accordance with the terms of the individual escrow, settlement, closing, or title indemnification under which the funds are accepted.

(b) except as provided in subsections (3) through (6), pay any interest received on funds deposited with it in connection with an escrow, settlement, closing, or title indemnification, to the depositing person or as otherwise provided by the terms thereof of the escrow, settlement, closing, or title indemnification;

(c) maintain separate records of all receipts and disbursements of escrow, settlement, closing, or title indemnification funds; and

1 (d) comply with rules adopted by the commissioner pertaining to escrow, settlement, closing, or
2 title indemnification transactions.

3 (3) In the absence of written instructions to the contrary, a title insurer or title insurance producer
4 may maintain a pooled, interest-bearing, depository account for deposit of trust funds that are nominal in
5 amount or expected to be held for a short period of time. The account must comply with the following
6 provisions:

7 (a) The account may include only trust funds that are nominal in amount or that are expected to
8 be held for a short period of time.

9 (b) Interest from the account may not be made available to the title insurer or title insurance
10 producer.

11 (c) The determination of whether trust funds are nominal in amount or to be held for a short period
12 of time is to be determined by each title insurer or title insurance producer.

13 (d) Notification to parties whose funds are nominal in amount or to be held for a short period of
14 time is not required.

15 (4) An interest-bearing account established pursuant to subsection (3) may be established with any
16 financial institution that is authorized by federal or state law to do business in the state in which the title
17 insurer's or title insurance producer's office is situated and that is a member of the federal deposit
18 insurance corporation. Funds deposited in the accounts must be subject to withdrawal upon request and
19 without delay.

20 (5) A title insurer or title insurance producer depositing funds in an account created pursuant to
21 subsections (3) and (4) shall direct the depository institution to:

22 (a) at least quarterly, remit interest and dividends, less any service charges or fees, on the average
23 monthly balance on the account or as otherwise computed in accordance with the institution's standard
24 accounting practice for other depositors to the Montana land title association foundation; and

25 (b) transmit with each remittance to the foundation a statement showing the name of the title
26 insurer or title insurance producer for whom the remittance is sent and the rate of interest applied.

27 (6) The Montana land title association foundation shall maintain records of each remittance and
28 statement received from depository institutions for a period of at least 3 years and shall, upon request,
29 promptly make available to a title insurer or title insurance producer the records and statements pertaining
30 to the title insurer's or title insurance producer's account.

APPROVED BY COMMITTEE
ON BUSINESS AND LABOR

HOUSE BILL NO. 475

INTRODUCED BY FORBES, BARNETT, BOHLINGER, AHNER, MILLS, FUCHS, T. NELSON, MARSHALL,
WISEMAN, STOVALL, SLITER

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and may operate as an escrow, settlement, or closing agent, subject to the provisions of subsections (2)
~~and (3)~~ through (8) (9).

(2) A title insurer or title insurance producer shall:

(a) deposit funds accepted in connection with an escrow, settlement, closing, or title
indemnification in a separate fiduciary trust account in a bank or other financial institution insured by an
agency of the federal government and segregate the funds by escrow, settlement, closing, or title
indemnification in its records. The funds are the property of the person entitled ~~hereto~~ to the funds under
the terms of the escrow, settlement, closing, or title indemnification and are not subject to debts of the title
insurer or title insurance producer. A title insurer or title insurance producer may use ~~such~~ the funds only
in accordance with the terms of the individual escrow, settlement, closing, or title indemnification under
which the funds are accepted.

(b) except as provided in subsections (3) through (6) (7), pay any interest received on funds
deposited with it in connection with an escrow, settlement, closing, or title indemnification, to the
depositing person or as otherwise provided by the terms ~~thereof~~ of the escrow, settlement, closing, or title
indemnification;

1 (c) maintain separate records of all receipts and disbursements of escrow, settlement, closing, or
2 title indemnification funds; and

3 (d) comply with rules adopted by the commissioner pertaining to escrow, settlement, closing, or
4 title indemnification transactions.

5 (3) In the absence of written instructions to the contrary, a title insurer or title insurance producer
6 may maintain a pooled, interest-bearing, depository account for deposit of trust funds that are nominal in
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11 (b) Interest from the account may not be made available to the title insurer or title insurance
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14 of time is to be determined by each title insurer or title insurance producer.

15 (d) Notification to parties whose funds are nominal in amount or to be held for a short period of
16 time is not required.

17 (4) An interest-bearing account established pursuant to subsection (3) may be established with any
18 financial institution that is authorized by federal or state law to do business in the state in which the title
19 insurer's or title insurance producer's office is situated and that is a member of the federal deposit
20 insurance corporation. Funds deposited in the accounts must be subject to withdrawal upon request and
21 without delay.

22 (5)(A) THE MONTANA LAND TITLE ASSOCIATION SHALL ESTABLISH THE MONTANA LAND TITLE
23 FOUNDATION FOR THE ADMINISTRATION OF THE FUNDS GENERATED BY THE INTEREST ON TRUST
24 ACCOUNTS PROGRAM FOR THE FOLLOWING PURPOSES:

25 (I) TO SUPPORT MONTANA NONPROFIT CHARITABLE ORGANIZATIONS;

26 (II) TO PROVIDE CONTINUING EDUCATION PROGRAMS FOR LICENSED TITLE INSURANCE
27 AGENTS; AND

28 (III) TO PROMOTE KNOWLEDGE AND AWARENESS OF THE REAL ESTATE AND TITLE INSURANCE
29 INDUSTRIES.

30 (B) THE FOUNDATION SHALL ESTABLISH BYLAWS FOR THE ADMINISTRATION OF THE

1 FOUNDATION IN ACCORDANCE WITH SUBSECTIONS (5)(A)(I) THROUGH (5)(A)(III).

2 (6)(6) A title insurer or title insurance producer depositing funds in an account created pursuant
 3 to subsections (3) and (4) shall direct the depository institution to:

4 (a) at least quarterly, remit interest and dividends, less any service charges or fees, on the average
 5 monthly balance on the account or as otherwise computed in accordance with the institution's standard
 6 accounting practice for other depositors to the Montana land title association foundation; and

7 (b) transmit with each remittance to the foundation a statement showing the name of the title
 8 insurer or title insurance producer for whom the remittance is sent and the rate of interest applied.

9 (6)(7) The Montana land title association foundation shall maintain records of each remittance and
 10 statement received from depository institutions for a period of at least 3 years and shall, upon request,
 11 promptly make available to a title insurer or title insurance producer the records and statements pertaining
 12 to the title insurer's or title insurance producer's account.

13 (7)(8) All interest transmitted to the Montana land title association foundation must, after
 14 deductions for necessary and reasonable administrative expenses of the foundation for operating the
 15 interest on trust accounts program, be distributed by the foundation for the following purposes SET FORTH
 16 IN SUBSECTIONS (5)(A)(I) THROUGH (5)(A)(III) in whatever proportion the foundation determines is
 17 appropriate.

18 (a) promoting knowledge and awareness of the real estate and title insurance industries;

19 (b) providing continuing education programs for licensed title insurance agents;

20 (c) providing support to Montana nonprofit charitable organizations; and

21 (d) providing for the reasonable costs of administration of the interest on trust accounts program.

22 (8)(9) A title insurance producer ~~must~~ shall keep books of account, records, and vouchers
 23 pertaining to any escrow, closing, settlement, or title indemnification business transacted, in such a manner
 24 that ~~allows~~ the commissioner or ~~his~~ the commissioner's authorized representative ~~may~~ to readily ascertain,
 25 under the authority of 33-1-402, whether the title insurance producer has complied with all applicable
 26 provisions of this title."

27 -END-

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21 agency of the federal government and segregate the funds by escrow, settlement, closing, or title
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2 title indemnification funds; and

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26 provisions of this title."

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-END-