

HOUSE BILL REPORT

SHB 2010

As Passed House:
February 10, 2012

Title: An act relating to title insurance rate filings.

Brief Description: Addressing title insurance rate filings.

Sponsors: House Committee on Business & Financial Services (originally sponsored by Representatives Kirby and Bailey).

Brief History:

Committee Activity:

Business & Financial Services: 3/15/11, 1/27/12, 1/31/12 [DPS].

Floor Activity:

Passed House: 2/10/12, 76-20.

Brief Summary of Substitute Bill

- Allows for the use of a statistical reporting agent for title insurance.
- Requires title insurer and title agents to file reports with the statistical reporting agent.
- Requires the statistical reporting agent to file information with the Insurance Commissioner (Commissioner).
- Requires the costs and expenses of a statistical reporting agent to be borne by title insurers and title agents.
- Creates an exemption from public inspection for information obtained by the Commissioner in connection with a statistical reporting agent for title insurance.

HOUSE COMMITTEE ON BUSINESS & FINANCIAL SERVICES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Kirby, Chair; Kelley, Vice Chair; Bailey, Ranking Minority Member; Buys, Assistant Ranking Minority Member; Blake, Hudgins, Hurst, Pedersen, Rivers and Ryu.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Minority Report: Do not pass. Signed by 2 members: Representatives Condotta and Kretz.

Staff: Jon Hedegard (786-7127).

Background:

Title insurance offers protection against the risk that the title to the specified property may be encumbered. Before issuing a policy, title insurers conduct a title search in order to determine possible encumbrances. Title insurers (insurers) are licensed and regulated by the Office of the Insurance Commissioner (OIC). A title insurance agent (agent) is defined as a licensed business entity that is appointed by an authorized title insurance company to sell, solicit, or negotiate insurance on behalf of the title insurance company. Agents are licensed and regulated by the OIC.

In 2008 an omnibus bill regarding real estate settlement services was passed that made numerous changes related to title insurance. The bill required the Insurance Commissioner (Commissioner) to set a date by which insurers must file title insurance rates under new standards. This date could not be prior to January 1, 2010. On July 20, 2010, the Commissioner adopted rules regarding title insurance rate filings.

New Rate Standards.

Every insurer must file title insurance rates with the Commissioner. Every filing must include sufficient information to permit the Commissioner to determine whether the rates are excessive, inadequate, or unfairly discriminatory. A rate is not excessive, inadequate, or unfairly discriminatory if it is an actuarially sound estimate of the expected value of all future costs associated with an individual risk transfer. The Commissioner may disapprove a filing. The Commissioner must notify the insurer if the filing has been disapproved and inform the insurer where the filing fails to meet the statutory requirements. The Commissioner must hold a hearing within 30 days if:

- after the review period, the Commissioner has reason to believe that a title insurer's rates do not meet the requirements of the law;
- any person having an interest in the rates makes a written complaint to the Commissioner setting forth specific and reasonable grounds for the complaint and requests a hearing; or
- any insurer requests a hearing after the Commissioner's disapproval of a filing.

In any hearing regarding title insurance rates, the burden is on the insurer to prove that the rates are not excessive, inadequate, or unfairly discriminatory. After a hearing, the Commissioner may issue an order that confirms, modifies, or rescinds any previous action.

Office of the Insurance Commissioner Rules.

Only title rates filed under the new rate standards may be used after January 1, 2012. Insurers must file rates by September 1, 2011, to ensure that the rates will be reviewed and can be effective by January 1, 2012.

All rates filed must include all costs related to the title insurance transaction. An insurer must provide specific information in support of the expense component of the rates. An

insurer's rate filing must include data that supports the expense component that applies to its agents.

If a title agency splits premiums between the insurer and an agent, the insurer must file premium rate schedules using supporting data and information that are consistent with that contractual premium split.

Each agent must report premium, policy count, and expense data annually to each insurer for which it produces business in the state by April 1 of each year. Each report must include:

- specific information related to premium and policy count data;
- specific expense data related to issuing title insurance policies and commitments for all of the agent's business, excluding all expenses related to escrow and other activities not directly related to title insurance;
- an explanation that describes how expenses are allocated between the operations of the title insurance agent; and
- the estimated average cost to issue a title insurance commitment.

If an insurer does not receive a report required under this section by April 1 of each year, the insurer must notify the Commissioner by April 15. This notice must include the name of the agent that did not send the report on time.

Public Disclosure of Rate Information.

The Insurance Code has provisions exempting certain information supporting rate filings from public inspection. Other provisions of the Insurance Code provide an exception of information for title insurance rate filings from the exemption from public inspection.

Summary of Substitute Bill:

The Commissioner must designate one statistical reporting agent to gather information on title insurance. All title insurance companies and title insurance agents must annually file a report with the statistical reporting agent of their policies, business income, expenses, and loss experience in this state. The report must be filed with the statistical reporting agent in a manner and form prescribed by the Commissioner by rule.

Within 120 days of receiving information, the statistical reporting agent must review the information for completeness, accuracy, and quality. All title insurance companies and title insurance agents must cooperate with the statistical reporting agent to verify the completeness, accuracy, and quality of the data that they submitted.

Within 30 days after completing its review of the information for quality and accuracy, the statistical reporting agent must file information regarding the title insurance company and the title insurance agent with the Commissioner.

The Commissioner may adopt rules regarding the statistical reporting agent.

The costs and expenses of the statistical reporting agent, including the cost of an examination by the Commissioner, must be borne by the title insurance companies and title insurance

agents in this state. The Commissioner may adopt rules regarding the costs and how those costs are apportioned.

Title insurance rate information filed with the Commissioner must be kept confidential and is not subject to public disclosure, unless the Commissioner finds, after notice and hearing with the affected parties, it is in the public interest to disclose the information. The Commissioner may share the information with the National Association of Insurance Commissioners, regulatory and law enforcement officials of other states and nations, the federal government, and international authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the information.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 6, relating to exemptions from public inspection, which takes effect July 1, 2012.

Staff Summary of Public Testimony:

(In support) The regulatory framework proposed by the OIC is too complex. The title industry is responsive to factors like population density. In more rural areas, title agents are more competitive. In more urban areas, title insurers are more competitive. The initial data call showed a great variation of experience and costs for the industry. The proper measure is payment to a title agent.

(In support with amendments) The 2008 legislation has led to some unintended consequences. The stakeholders have been meeting on this subject and it appears that they may have an agreement. That agreement may result in a different proposal than the proposed Substitute House Bill that is available for comment. Title insurance is an important component in residential mortgage transactions. The standard for rate review for title insurance is the exact same standard as for other insurance. This bill is necessary because of statutory language regarding future costs and the OIC's interpretation of the statute and the OIC's rules have led to this bill. There are issues with providing all of the required information. There are issues with making a title insurer use aggregate title industry experience instead of the insurer's own experience. The collection of agent data is a problem. Buyers of homes that have lower sales values or are in rural areas may pay more for title insurance. There is a basis for an agreement with the OIC. A compromise has been reached regarding statistical agents. The OIC will delay the implementation of the rules so other issues can be discussed in greater detail. Purchasers of title insurance in this state pay less than the national average. It is a competitive market. The OIC has worked with the industry and has reached an accord on several issues. These issues are highly technical and it is taking time to come to an agreement. These issues were not anticipated when the 2008 law was enacted. The issues came to light as the law was being implemented.

(Opposed) None.

Persons Testifying: (In support) Raymond Davis, Old Republic National Title Insurance Company; and Gary Kissling, Washington Land Title Commission.

(In support with amendments) Representative Kirby, prime sponsor; Don Partington and Carrie Tellefson, Fidelity National Title Group; and Drew Bouton, Office of the Insurance Commissioner.

Persons Signed In To Testify But Not Testifying: None.