

HOUSE BILL REPORT

HB 1035

As Passed House:
March 7, 2013

Title: An act relating to title insurance rate filings.

Brief Description: Addressing title insurance rate filings.

Sponsors: Representatives Kirby, Ryu and Nealey.

Brief History:

Committee Activity:

Business & Financial Services: 1/16/13 [DP].

Floor Activity:

Passed House: 3/7/13, 93-4.

Brief Summary of Bill

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

HOUSE COMMITTEE ON BUSINESS & FINANCIAL SERVICES

Majority Report: Do pass. Signed by 15 members: Representatives Kirby, Chair; Ryu, Vice Chair; Parker, Ranking Minority Member; Vick, Assistant Ranking Minority Member; Blake, Chandler, Habib, Hawkins, Hudgins, Hurst, Kochmar, MacEwen, O'Ban, Santos and Stanford.

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.

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 (insurers) conduct a title search in order to determine possible encumbrances. Insurers are licensed and regulated by the Office of the Insurance Commissioner (OIC). A title insurance agent (insurance 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. Insurance 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.

New Rate Standards.

Every insurer must file title insurance rates with the Insurance Commissioner (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 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.

The 2008 legislation required the Commissioner to set a date by which insurers must file title insurance rates under the new rate standards. This date could not be prior to January 1, 2010. On July 20, 2010, the Commissioner adopted rules regarding rate filings and insurance agent report filings. On July 16, 2012, the Commissioner adopted rules to delay the rate and insurance agent report filings required in the 2010 rules. Under the 2012 rules, only title rates filed under the new rate standards may be used after January 1, 2014. Insurers must file rates by September 1, 2013, to ensure that the rates will be reviewed and can be effective by January 1, 2014.

Under the OIC rules, 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 insurance agents.

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

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

Within 120 days of receiving information, the reporting agent must review the information for completeness, accuracy, and quality. All title insurance companies and insurance agents must cooperate with the 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 reporting agent must file information regarding the title insurance company and the insurance agent with the Commissioner.

The Commissioner may adopt rules regarding the reporting agent.

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

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Some issues in the 2008 legislation lead to a bottleneck in the rulemaking. This is a new version of the 2012 bill that was agreed to by the industry and the regulator. It resolves some critical issues. The 2012 bill died waiting for a vote on the Senate floor. This bill is a small but important piece in implementing the 2008 law. It allows the industry to move forward. The 2010 rules brought up an issue that was not previously known. There is an issue regarding the confidentiality of the information. Requiring insurance agents to submit cost information to insurers for reporting to the OIC is problematic. Many title companies and insurance agents are competitors and the ability to see rate and cost information is a sensitive issue. This bill creates a third-party to receive the information and report it to the OIC. This solves the problem for the insurance agents and the insurers. The stakeholders worked on this issue in detail with the OIC. This bill is agreed to by all parties.

(Opposed) None.

Persons Testifying: Representative Kirby, Prime sponsor; Carrie Tellefson, Fidelity National Title Association; and Derek Matthews, Washington Land and Title Association.

Persons Signed In To Testify But Not Testifying: None