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**SENATE BILL 5629**

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**State of Washington 65th Legislature 2017 Regular Session**

**By** Senators Angel and Hobbs

AN ACT Relating to creating and establishing the rights and duties for title insurance rating and advisory organizations; amending RCW 48.29.010, 48.29.147, and 48.29.017; adding new sections to chapter 48.29 RCW; and prescribing penalties.

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

NEW SECTION. **Sec.**  A new section is added to chapter 48.29 RCW to read as follows:

It is the legislature's intent to establish a system by which title insurers may adopt a rating organization's form and rate filings pursuant to this chapter in order to benefit consumers and entities purchasing, selling, or financing real property. It is further the legislature's intent that the system so established under state oversight comply with state and federal law so that title insurers and rating organizations acting in accordance with this chapter may lawfully cooperate in the preparation of title insurance forms and manuals, and the recommendation of rates, subject to approval by the commissioner.

**Sec.**  RCW 48.29.010 and 2008 c 110 s 1 are each amended to read as follows:

(1) This chapter relates only to title insurers for real property.

(2) This code does not apply to persons engaged in the business of preparing and issuing abstracts of title to property and certifying to their correctness so long as the persons do not guarantee or insure the titles.

(3) For purposes of this chapter, unless the context clearly requires otherwise:

(a) "Title policy" means any written instrument, contract, or guarantee by means of which title insurance liability is assumed.

(b) "Abstract of title" means a written representation, provided under contract, whether written or oral, intended to be relied upon by the person who has contracted for the receipt of this representation, listing all recorded conveyances, instruments, or documents that, under the laws of the state of Washington, impart constructive notice with respect to the chain of title to the real property described. An abstract of title is not a title policy as defined in this subsection.

(c) "Preliminary report," "commitment," or "binder" means reports furnished in connection with an application for title insurance and are offers to issue a title policy subject to the stated exceptions in the reports, the conditions and stipulations of the report and the issued policy, and other matters as may be incorporated by reference. The reports are not abstracts of title, nor are any of the rights, duties, or responsibilities applicable to the preparation and issuance of an abstract of title applicable to the issuance of any report. The report is not a representation as to the condition of the title to real property, but is a statement of terms and conditions upon which the issuer is willing to issue its title policy, if the offer is accepted.

(d) "Financial interest" means any interest, legal or beneficial, that entitles the holder directly or indirectly to any of the net profits or net worth of the entity in which the interest is held.

(e) "Producers of title insurance business" means real estate agents and brokers, lawyers, mortgagees, mortgage loan brokers, financial institutions, escrow agents, persons who lend money for the purchase of real estate or interests therein, building contractors, real estate developers and subdividers, and any other person who is or may be in a position to influence the selection of a title insurer or title insurance agent whether or not the consent or approval of any other person is sought or obtained with respect to the selection of the title insurer or title insurance agent.

(f) "Associates of producers" means any person who has one or more of the following relationships with a producer of title insurance business:

(i) A spouse, parent, or child of a producer;

(ii) A corporation or business entity that controls, is controlled by, or is under common control with a producer;

(iii) An employer, employee, independent contractor, officer, director, partner, franchiser, or franchisee of a producer; or

(iv) Anyone who has an agreement, arrangement, or understanding with a producer, the purpose or substantial effect of which is to enable the person in a position to influence the selection of a title insurer or title insurance agent to benefit financially from the selection of the title insurer or title insurance agent.

(g)(i) "Rating organization" means an entity, the object or purpose of which is the adoption or making of title insurance forms, including forms of policy, application, rider, and endorsement, and title insurance rates, manuals of rules and rates, rating plans, rate schedules, minimum rates, class rates, and rating rules.

(ii) The term "rating organization" does not include two or more insurers operating under the authority granted in section 11 of this act.

(h)(i) "Advisory organization" means a group, association, or other organization of insurers that assists insurers or rating organizations in rate making by the collection and furnishing of loss or expense statistics, or by the submission of recommendations, but that does not make filings under this chapter.

(ii) The term "advisory organization" does not include subscribers' committees provided for in section 9 of this act or the statistical reporting agent provided for in RCW 48.29.017.

(i) "Subscriber" means an insurer that employs the services of a rating organization for the purpose of making form or rate filings, whether or not the title insurer is a member of such rating organization.

(j) "Member" means an insurer that participates in or is entitled to participate in the management of a rating organization or an advisory organization.

NEW SECTION. **Sec.**  A new section is added to chapter 48.29 RCW to read as follows:

If so authorized by an insurer that is a member or subscriber of a rating organization, the commissioner shall accept, in lieu of filings by the insurer, form and rate filings on its behalf made by a rating organization then licensed as provided in this chapter. Rate filings accepted by the commissioner become effective only as provided in RCW 48.29.147. Form filings accepted by the commissioner become effective only as provided in chapter 48.18 RCW.

NEW SECTION. **Sec.**  A new section is added to chapter 48.29 RCW to read as follows:

A rating organization may not do business in this state or make filings with the commissioner unless then licensed by the commissioner as a rating organization.

NEW SECTION. **Sec.**  A new section is added to chapter 48.29 RCW to read as follows:

Any person, whether domiciled within or outside this state, except as provided in this section, may make application to the commissioner for a license as a rating organization for title insurance. The application must include:

(1) A copy of the applicant's constitution, articles of agreement or association, certificate of incorporation, or trust agreement, and of its bylaws, rules, and regulations governing the conduct of its business;

(2) A list of its members and a list of its subscribers;

(3) The name and address of a resident of this state upon whom notices or orders of the commissioner or process affecting such rating organization may be served; and

(4) A statement of its qualifications as a rating organization.

NEW SECTION. **Sec.**  A new section is added to chapter 48.29 RCW to read as follows:

(1) If the commissioner finds that the applicant for a license as a rating organization is competent, trustworthy, and otherwise qualified to act, and that its constitution, articles of agreement or association, certificate of incorporation, or trust agreement, and its bylaws, rules, and regulations governing the conduct of its business conform to the requirements of law, the commissioner shall, upon payment of a license fee of twenty-five dollars, issue a license authorizing the applicant to act as a rating organization for title insurance.

(2) The commissioner shall grant or deny in whole or in part every such application within sixty days of the date of its filing.

(3) A license issued pursuant to this section remains in effect for three years unless sooner suspended or revoked by the commissioner.

NEW SECTION. **Sec.**  A new section is added to chapter 48.29 RCW to read as follows:

(1) The commissioner may, after a hearing, suspend or revoke the license issued to a rating organization for any of the following causes:

(a) The commissioner finds that the licensee no longer meets the qualifications for the license.

(b) The rating organization fails to comply with an order of the commissioner within the time limited by the order, or any extension thereof which the commissioner may grant.

(2) The commissioner shall not so suspend or revoke a license for failure to comply with an order until the time prescribed by this code for an appeal from such order to the superior court has expired or if such appeal has been taken, until such order has been affirmed.

(3) The commissioner may determine when a suspension or revocation of license is effective. A suspension of license remains in effect for the period fixed by the commissioner, unless the commissioner modifies or rescinds the suspension, or until the order, failure to comply with which constituted grounds for the suspension, is modified, rescinded, or reversed.

NEW SECTION. **Sec.**  A new section is added to chapter 48.29 RCW to read as follows:

Every rating organization shall notify the commissioner promptly of every change in:

(1) Its constitution, its articles of agreement or association, its certificate of incorporation, or trust agreement, and its bylaws, rules, and regulations governing the conduct of its business;

(2) Its list of members and subscribers; and

(3) The name and address of the resident of this state designated by it upon whom notices or orders of the commissioner or process affecting such rating organization may be served.

NEW SECTION. **Sec.**  A new section is added to chapter 48.29 RCW to read as follows:

(1) Subject to rules and regulations approved by the commissioner as reasonable, each rating organization shall permit any title insurance company, not a member, to subscribe to its rating services.

(2) Notice of proposed changes to the rules and regulations must be given to each subscriber.

(3) A title insurer shall not concurrently be a subscriber to the services of more than one rating organization.

(4) The subscribers of any rating organization may, from time to time, individually or through committees representing various subscribers, consult with the rating organization with respect to matters within this chapter that affect such subscribers.

NEW SECTION. **Sec.**  A new section is added to chapter 48.29 RCW to read as follows:

(1) The reasonableness of any rule or regulation in its application to subscribers, or the refusal of any rating organization to admit an insurer as a subscriber, shall, at the request of any subscriber or any such insurer, be reviewed by the commissioner at a hearing held upon notice to the rating organization and to the subscriber or insurer.

(2) If the commissioner finds that a rule or regulation is unreasonable in its application to subscribers, the commissioner shall order that the rule or regulation is not applicable to subscribers that are not members of the rating organization.

(3) If a rating organization fails to grant or reject an insurer's application for subscribership within thirty days after it was made, the insurer may request a review by the commissioner as if the application had been rejected. If the commissioner finds that the insurer has been refused admittance to the rating organization as a subscriber without justification, the commissioner shall order the rating organization to admit the insurer as a subscriber. If the commissioner finds that the action of the rating organization was justified, the commissioner shall make an order affirming its action.

NEW SECTION. **Sec.**  A new section is added to chapter 48.29 RCW to read as follows:

(1) Cooperation among rating organizations or among rating organizations and insurers in rate making or in other matters within the scope of this chapter is hereby authorized and the filings resulting from such cooperation are subject to all the provisions of this title that are applicable to filings generally.

(2) The commissioner shall review such cooperative activities and practices and if, after a hearing, the commissioner finds that any such activity or practice is inconsistent with the provisions of this code, the commissioner may issue a written order specifying in what respect such activity or practice is so inconsistent, and requiring the discontinuance of such activity or practice.

NEW SECTION. **Sec.**  A new section is added to chapter 48.29 RCW to read as follows:

Any rating organization may subscribe for or purchase actuarial, technical, or other services, and such services must be available to all subscribers without discrimination.

NEW SECTION. **Sec.**  A new section is added to chapter 48.29 RCW to read as follows:

(1) Each rating organization shall keep an accurate and complete record of all work performed by it, and of all its receipts and disbursements. Such rating organization and its records shall be examined by the commissioner at such times and in such manner as is provided in chapter 48.03 RCW.

(2) The commissioner may adopt rules to enable the commissioner to recover the costs of the commissioner's examination of a rating organization from the rating organization or the rating organization's members and subscribers.

NEW SECTION. **Sec.**  A new section is added to chapter 48.29 RCW to read as follows:

Every member or subscriber to a rating organization shall adhere to the filings made on its behalf by such rating organization. Deviations from the rating organization's filings are permitted only when filed with the commissioner in accordance with this title. A copy of the deviation filing must be sent simultaneously to such rating organization.

NEW SECTION. **Sec.**  A new section is added to chapter 48.29 RCW to read as follows:

(1) Any member of or subscriber to a rating organization may appeal to the commissioner from the rating organization's action or decision in approving or rejecting any proposed change in or addition to the rating organization's filings. The commissioner shall, after a hearing on the appeal:

(a) Issue an order approving the rating organization's action or decision or directing it to give further consideration to such proposal; or

(b) If the appeal is from the rating organization's action or decision in rejecting a proposed addition to its filings, the commissioner may, upon finding that the action or decision was unreasonable, issue an order directing the rating organization to make an addition to its filings, on behalf of its subscribers, in a manner consistent with the commissioner's findings, within a reasonable time after the issuance of such order.

(2) If such appeal is based upon the rating organization's failure to make a filing on behalf of such subscriber which is based on a system of expense provisions that differs from the system of expense provisions included in a filing made by the rating organization, the commissioner shall, if the appeal is granted, order the rating organization to make the requested filing for use by the appellant.

(3) In deciding the appeal the commissioner shall apply the standards set forth in RCW 48.29.143 and 48.29.147 for rate filings, and the standards set forth in RCW 48.18.100 and 48.18.110 for form filings.

NEW SECTION. **Sec.**  A new section is added to chapter 48.29 RCW to read as follows:

(1) Every rating organization operating in this state shall furnish its services without discrimination as between its members and subscribers.

(2) This chapter is not intended to and does not govern or affect the membership relation as such between a rating organization and insurers that are its members.

NEW SECTION. **Sec.**  A new section is added to chapter 48.29 RCW to read as follows:

This chapter does not require any insurer to be a member of or subscriber to, or in any other respect affiliated with, any rating organization.

NEW SECTION. **Sec.**  A new section is added to chapter 48.29 RCW to read as follows:

Every rating organization may exchange aggregate information and experience data with insurers, rating organizations in this state, and the statistical reporting agent designated in accordance with RCW 48.29.017, and may consult with insurers and rating organizations in this state with respect to form and rate making and the application of rating systems, except to the extent that an agreement between a rating organization and its member or subscriber prohibits the rating organization from disclosing any information or experience data of such member or subscriber to other insurers, members, subscribers, rating organizations, or the statistical reporting agent.

NEW SECTION. **Sec.**  A new section is added to chapter 48.29 RCW to read as follows:

Every advisory organization before serving as such to any rating organization or insurer doing business in this state must provide the following to the commissioner:

(1) A copy of its constitution, its articles of agreement or association, or its certificate of incorporation and of its bylaws, rules, and regulations governing its activities;

(2) A list of its members;

(3) The name and address of a resident of this state upon whom notices or orders of the commissioner or process issued at his or her direction may be served; and

(4) An agreement that the commissioner may examine such advisory organization in accordance with the provisions of RCW 48.03.010.

NEW SECTION. **Sec.**  A new section is added to chapter 48.29 RCW to read as follows:

If, after a hearing, the commissioner finds that the furnishing of information or assistance by an advisory organization involves any act or practice that is inconsistent with the provisions of this code, the commissioner may issue a written order specifying in what respect such act or practice is so inconsistent, and requiring the discontinuance of such act or practice.

**Sec.**  RCW 48.29.147 and 2008 c 110 s 5 are each amended to read as follows:

(1)(a) Every title insurer shall, before using, file with the commissioner every form, manual of title insurance rules and rates, rating plan, rate schedule, minimum rate, class rate, and rating rule, and every modification of any of the filings under this subsection which it proposes.

(b) A rating organization's filing on behalf of its members or subscribers satisfies a title insurer's duty in (a) of this subsection if the title insurer is a member or subscriber of the rating organization.

(2) Every filing shall be accompanied by sufficient information to permit the commissioner to determine whether the filing meets the requirements of RCW 48.29.143 and this section for rate filings, and RCW 48.18.100 and 48.18.110 for form filings.

(3) Data used to justify title insurance rates may not include escrow income or expenses. The title insurance company or rating organization shall include a detailed explanation showing how expenses are allocated between the title operations and escrow operations of the insurer or title insurance agent.

(4) Every such filing shall state its proposed effective date.

(5) The commissioner shall review a filing as soon as reasonably possible after it is received, to determine whether it meets the requirements of RCW 48.29.143.

(6) The filing's proposed effective date shall be no earlier than thirty days after the date on which the filing is received by the commissioner. By giving notice to the insurer or rating organization within this thirty days, the commissioner may extend this waiting period for an additional period not to exceed an additional fifteen days. The commissioner may, upon application and for cause shown, waive part or all of the waiting period with respect to a filing the commissioner has not disapproved. If the commissioner does not disapprove the filing during the waiting period, the filing takes effect on its proposed effective date, except as to filings made by a rating organization on behalf of its members or subscribers pursuant to this section.

(7) If within the waiting period or any extension thereof as provided in subsection (6) of this section, the commissioner finds that a filing does not meet the requirements of RCW 48.29.143 or the requirements of subsections (2) through (4) of this section, the commissioner shall disapprove the filing and shall give notice to the insurer or rating organization that the filing has been disapproved. This notice ((~~shall~~)) must specify the respect in which the commissioner finds the filing fails to meet the requirements and ((~~shall~~)) must state that the filing does not become effective as proposed.

(8)(a) Except as to filings made by a rating organization on behalf of its members or subscribers pursuant to this section, if a filing is not disapproved by the commissioner within the waiting period or any extension thereof, the filing becomes effective as proposed.

(b) The commissioner shall not approve a filing made by a rating organization on behalf of its members or subscribers pursuant to this section unless the commissioner reviews the substance of the filing and issues a written decision approving the filing and summarizing how the filing comports with this chapter. The written decision must include a summary of any public hearings, market investigations, studies, or other information collected during the review.

(c) Filings made by a rating organization on behalf of its members or subscribers pursuant to this section may not become effective, notwithstanding expiration of a waiting period, unless the commissioner approves the filings in accordance with (b) of this subsection.

(9) ((~~A filing made under this section is exempt from RCW 48.02.120(3). However, the filing and all supporting information accompanying it is open to public inspection only after the filing becomes effective~~)) In order to protect title insurance companies' trade secrets and confidential information and to prevent unfair competition, the only information that may be open to public inspection related to a title insurance rate filing is aggregated information from a title insurance rating organization that cannot be used to identify an individual title insurance company.

(10) A title insurer or title insurance agent shall not make or issue a title insurance contract or policy, or use or collect any premium on or after a date set by the commissioner by rule, which date shall not be any earlier than January 1, 2010, except in accordance with rates and rules filed with the commissioner as required by this section or as provided under section 3 of this act.

(11) If at any time subsequent to the applicable review period provided for in subsection (6) of this section, the commissioner has reason to believe that a title insurer's or rating organization's rates do not meet the requirements of RCW 48.29.143 or are otherwise contrary to law, or if 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 if any insurer or rating organization upon notice of the commissioner's disapproval of a filing made under this section requests a hearing, the commissioner shall hold a hearing within thirty days and shall, in advance of it, give written notice of the hearing to all parties in interest. The commissioner may, by issuing an order, confirm, modify, change, or rescind any previous action, if it is warranted by the facts shown at the hearing. The order shall not affect any contract or policy made or issued prior to a reasonable period of time, to be specified in the order, after the order is issued.

(12) In any hearing regarding rates filed under this chapter the burden ((~~shall be upon~~)) is on the title insurer or rating organization to prove by a preponderance of the evidence that the rates comply with RCW 48.29.143.

**Sec.**  RCW 48.29.017 and 2013 c 65 s 1 are each amended to read as follows:

(1) The commissioner must designate one statistical reporting agent to assist him or her in gathering information on title insurance policy issuance, business income, and expenses and making compilations thereof. The costs and expenses of the statistical reporting agent must be borne by all the authorized title insurance companies and title insurance agents licensed to conduct the business of title insurance in this state. The commissioner may adopt rules setting forth how the costs and expenses of the statistical reporting agent are to be paid and apportioned among the authorized title insurers and licensed title insurance agents.

(2) Upon designation of a statistical reporting agent by the commissioner under subsection (1) of this section all authorized title insurance companies and licensed title insurance agents must annually, by May 31st, file a report with the statistical reporting agent of their policy issuance, 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, which must be consistent with the manner and form adopted by the national association of insurance commissioners.

(3) The statistical reporting agent must review the information filed with it for completeness, accuracy, and quality within one hundred twenty days of its receipt. 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.

(4) Within thirty days after completing its review of the information for quality and accuracy, the statistical reporting agent must file the information for each title insurance company and title insurance agent, individually and in the aggregate, with the commissioner with a copy of the aggregate data from such statistical reporting agent provided to each title insurer and title insurance agent.

(5) The commissioner may adopt rules to implement and administer this section.

(6) The statistical reporting agent may exchange aggregate information and experience data with title insurance companies and rating organizations in this state in accordance with section 18 of this act.

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