

HOUSE BILL REPORT

EHB 1450

As Passed Legislature

Title: An act relating to creating and establishing the rights and duties for title insurance rating and advisory organizations.

Brief Description: Creating and establishing the rights and duties for title insurance rating and advisory organizations.

Sponsors: Representatives Nealey, Kirby and Vick.

Brief History:

Committee Activity:

Business & Financial Services: 1/31/17, 2/15/17 [DP].

Floor Activity:

Passed House: 3/6/17, 98-0.

Passed Senate: 4/5/17, 48-0.

Passed Legislature.

Brief Summary of Engrossed Bill

- Authorizes and establishes a framework for title insurers to become members of and subscribe to the services of title insurance rating organizations for the purpose of making title insurance form and rate filings with the Office of the Insurance Commissioner (OIC).
- Gives the OIC authority and direction to examine title insurance rating organizations and to issue a written decision directing a title insurance rating organization to take specific action, when appropriate.
- Authorizes the sharing of aggregate information and experience data between title insurance rating organizations, title insurers, and the OIC's designated statistical reporting agent, subject to restrictions.

HOUSE COMMITTEE ON BUSINESS & FINANCIAL SERVICES

Majority Report: Do pass. Signed by 10 members: Representatives Kirby, Chair; Reeves, Vice Chair; Vick, Ranking Minority Member; J. Walsh, Assistant Ranking Minority Member; Barkis, Bergquist, Blake, Jenkin, McCabe and Santos.

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: Without recommendation. Signed by 1 member: Representative Stanford.

Staff: Peter Clodfelter (786-7127).

Background:

Title insurance offers protection against the risk that title to the specified property may be encumbered. Before issuing a policy, title insurers conduct a title search in order to determine possible encumbrances. The Office of the Insurance Commissioner (OIC) issues certificates of authority to qualified title insurers and regulates the title insurance industry.

Title Insurance Form and Rate Filings.

Title insurers must file title insurance forms and rates with the OIC. Title insurance forms may not be ambiguous or misleading, among other requirements. Premium rates for the insuring or guaranteeing of titles may not be excessive, inadequate, or unfairly discriminatory. Insurers' rate filings must include sufficient information to allow the OIC to determine whether the filed rates meet the standard.

A title insurance rate filing must state a proposed effective date, which must be no earlier than 30 days after the date on which the filing is received by the OIC. By giving notice to the title insurer, the OIC may extend the waiting period for up to an additional 15 days. If the OIC does not disapprove the filing during the waiting period, the filing takes effect on its proposed effective date. If, within the waiting period or any extension of the waiting period, the OIC finds that a filing does not meet the statutory standard, the OIC must disapprove the filing and must give notice of the disapproval to the insurer. A rate filing and all supporting information accompanying it is open to public inspection only after the filing becomes effective.

Insurance Rating Organizations and Advisory Organizations.

For certain types of insurance (except for specific types of insurance including title insurance, life insurance, and disability insurance), an insurer may subscribe to the services of a rating organization to fulfill the insurer's obligation to file insurance forms and rates with the OIC. A rating organization is an entity that consists of member insurers, and its purpose is the making or adoption of insurance forms or rates for its members and subscribers. A subscriber is an insurer that employs the services of a rating organization for the purpose of making filings, whether or not the insurer is a member of a rating organization. An insurer that is a member of a rating organization participates, or is entitled to participate, in the management of the rating organization. Rating organizations are required to furnish their services without discrimination between their members and subscribers. Insurers are not required to be a member of, or a subscriber to, a rating organization.

The OIC licenses qualified rating organizations. The application for a license as a rating organization must include: (1) a copy of the applicant's constitution, articles of agreement or association, or other organizing documents, and its bylaws and rules; (2) lists of its members and subscribers; (3) the name and address of a resident of Washington upon whom notices or orders of the OIC or process affecting the rating organization may be served; and (4) a statement of its qualifications as a rating organization. The license for a rating organization

costs \$25 and remains effective for three years. The OIC may, after a hearing and subject to judicial review, suspend or revoke a rating organization's license if the OIC finds that the rating organization no longer meets the qualifications, or the rating organization fails to comply with an order.

Advisory organizations are not required to be licensed, but must provide the OIC with the same information as an applicant for a license as a rating organization. An advisory organization is an entity that is a group of insurers that assists insurers that make their own filings, or rating organizations in rate making, by the collection and furnishing of loss or expense statistics, or by the submission of recommendations, but does not itself make filings.

An insurer may subscribe to the services of only one rating organization at a time. Each rating organization must keep a record of all its work, receipts, and disbursements. A rating organization and its records are subject to examination by the OIC. There is a process for an insurer to request that the OIC review the reasonableness of a rating organization's action or decision. The OIC may order that a rating organization reconsider a decision, order that an unreasonable rule not apply to subscribers that are not members, or affirm a rating organization's action or decision. There is a similar process for a member or subscriber to appeal from a rating organization's decision in approving or rejecting any proposed change in, or addition to, the rating organizations' filings.

Cooperation among rating organizations or among rating organizations and insurers in rate making and other matters is authorized. The OIC must review the cooperative activities and practices of rating organizations and insurers and has authority to hold a hearing and issue a written order specifying how any such activity or practice is inconsistent with law, and requiring the discontinuance of the activity or practice.

Title Insurance Statistical Reporting Agent.

The OIC must designate a statistical reporting agent to assist the OIC in gathering information on title insurance policy issuance, business income, expenses, and in making compilations. Annually, title insurers must submit a report to the statistical reporting agent of their policy issuance, business income, expenses, and loss experience in Washington. The statistical reporting agent reviews the information filed for completeness, accuracy, and quality within 120 days of receipt. Within 30 days after completing its review of the information for quality and accuracy, the statistical reporting agent must file the information for each title insurer and title insurance agent, individually and in the aggregate, with the OIC, with a copy of the aggregate data provided to each title insurer and title insurance agent.

Summary of Engrossed Bill:

Title Insurance Form and Rate Filings.

Title insurers are authorized to use the services of rating organizations and advisory organizations for the purposes of making or adopting title insurance forms and rates. The OIC is required to accept, instead of form and rate filings by a title insurer, form and rate filings on a title insurer's behalf made by a rating organization licensed by the OIC.

Title Insurance Rating Organizations and Advisory Organizations.

The rights and duties of title insurance rating organizations and advisory organizations are established. A person may apply to the OIC for a license as a rating organization for title insurance in the same manner as an applicant for a license as a rating organization for other types of insurance. The OIC may adopt rules establishing the fee for a license as a title insurance rating organization as well as licensing requirements. Generally, the OIC has the same power and authority licensing, examining, and reviewing decisions of title insurance rating organizations as the OIC has over rating organizations currently licensed for other types of insurance. The OIC is responsible for examining rating organizations and their records and may adopt rules to enable the OIC to recover the costs of such examinations from the rating organization or the rating organization's members and subscribers

Rate filings made by a title insurance rating organization on behalf of its members or subscribers become effective only if approved by the OIC. Before the OIC approves a filing by a rating organization, the OIC must: (1) review all materials contained in the filing, including, as applicable, materials submitted by the rating organization, materials provided by the statistical reporting agent, as well as materials concerning any public hearings, market investigations, studies, or other information collected during the review; and (2) determine that the filing complies with title insurance statutes. Deviations from the rating organization's filings are permitted only when filed with the OIC and a copy of a deviation filing must be sent simultaneously to the rating organization.

Rating organizations may exchange aggregated information and experience data with title insurers, rating organizations in Washington, and the statistical reporting agent designated by the OIC, and may consult with title insurers and rating organizations in Washington with respect to form and rate making and the application of rating systems. However, an agreement between a rating organization and its member or subscriber may prohibit the rating organization from disclosing any information or experience data of the member or subscriber title insurer.

Title Insurance Statistical Reporting Agent.

The statistical reporting agent designated by the OIC is authorized to exchange aggregate information and experience data with title insurers and rating organizations in Washington.

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) Authorizing rating organizations for the title insurance industry will help consumers, the OIC, and title insurers in the state. This model has worked well in at least eight other states, including Oregon, and it will work in Washington. Washington already allows rating organizations for other types of insurance. Stakeholders with experience in the title insurance industry in Oregon and Washington see Oregon's process as superior to and fairer than Washington's. The Supreme Court of the United States has approved of rating

organizations so long as there is active supervision of their activities by the state, which is included in this bill. If a title insurance rating organization is formed in Washington, it can simplify the OIC's form and rate review process because the information insurers submit to the OIC for review will be in a standard form. Rather than reviewing multiple rating manuals and rates, for example, the OIC could potentially review one rating manual and rate, or at least fewer than the OIC must review now. Title insurers would still compete at a service level, and there could be more than one rating organization, one for Eastern Washington and one for Western Washington. In states that authorize title insurance rating organizations, most title insurers participate in a rating organization, although title insurers can still file their own rates, or deviate from a rate filed by a rating organization. The law changed in the state in 2009 to require title insurers to actuarially justify their rates, and this has created confusion and frustration for the title insurance industry. Washington is the only state to require title insurers to actuarially justify their rates. This can cost tens of thousands of dollars, and is burdensome, especially on smaller title insurers. The rate approval process is inconsistent, and whether a title insurer's rates are approved may depend on which actuary at the OIC reviews the filed rates. Where one title insurer's proposed rates are quickly approved by the OIC, another title insurer's proposed rates that have no substantial difference are disapproved, and must be filed multiple times. Authorizing title insurance rating organizations will provide cost savings to both the title insurance industry and the OIC, and stakeholders believe it will solve many of the identified problems. Stakeholders welcome the opportunity to work with the OIC to refine the bill and reach an agreement on how to authorize title insurance rating organizations.

(Opposed) The OIC cannot support the bill as introduced, but is willing to engage with stakeholders to address issues with the rate filing process that stakeholders raise. It is unclear if there would be one rating organization or several rating organizations; the bill allows for the formation of multiple rating organizations. If there are multiple rating organizations, then the bill may not result in the efficiencies for the OIC that proponents suggest. There is concern that the proposal will increase the OIC's workload regarding the rate review process because individual title insurers may continue to file their own rates, which the OIC reviews, and the OIC would also be responsible for reviewing and approving rates filed on behalf of other insurers by rating organizations. The proposal could also hurt competition in the industry, and would not reward efficiencies between title insurers like the current process does. If title insurers are working together through a rating organization to establish rates, then it starts to look like price fixing. The proposal may not solve the problems that the proponents raise. It is unclear what benefits are provided by authorizing the sharing of information by insurers and rating organizations. The OIC has contacted insurance regulators in Oregon, as well as the National Association of Insurance Commissioners, inquiring about Oregon and other states' experience with rating organizations, and does not believe this approach is right for Washington.

Persons Testifying: (In support) Representative Nealey, prime sponsor; Allen Brickley and Cleve Abbe, Oregon Land Title; Megan Powell, First American Title Company; Noah Blanton, Stewart Title Guaranty; Don Partington and Carrie Tellefson, Fidelity National Title Group; Maureen Pfaff, Washington Land Title Association; and Jim Blair, North Meridian Title and Escrow.

(Opposed) Lonnie Johns-Brown, Office of the Insurance Commissioner.

Persons Signed In To Testify But Not Testifying: None.