
ENGROSSED SENATE BILL 5629

State of Washington

65th Legislature

2017 Regular Session

By Senators Angel and Hobbs

Read first time 02/01/17. Referred to Committee on Financial Institutions & Insurance.

1 AN ACT Relating to creating and establishing the rights and
2 duties for title insurance rating and advisory organizations;
3 amending RCW 48.29.010, 48.29.147, 48.29.017, and 48.29.005; adding
4 new sections to chapter 48.29 RCW; and prescribing penalties.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 48.29
7 RCW to read as follows:

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

18 **Sec. 2.** RCW 48.29.010 and 2008 c 110 s 1 are each amended to
19 read as follows:

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

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

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

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

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

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

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

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

1 any other person is sought or obtained with respect to the selection
2 of the title insurer or title insurance agent.

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

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

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

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

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

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

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

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

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

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

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

1 NEW SECTION. **Sec. 3.** A new section is added to chapter 48.29
2 RCW to read as follows:

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

10 NEW SECTION. **Sec. 4.** A new section is added to chapter 48.29
11 RCW to read as follows:

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

15 NEW SECTION. **Sec. 5.** A new section is added to chapter 48.29
16 RCW to read as follows:

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

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

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

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

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

30 NEW SECTION. **Sec. 6.** A new section is added to chapter 48.29
31 RCW to read as follows:

32 (1) If the commissioner finds that the applicant for a license as
33 a rating organization is competent, trustworthy, and otherwise
34 qualified to act, and that its constitution, articles of agreement or
35 association, certificate of incorporation, or trust agreement, and
36 its bylaws, rules, and regulations governing the conduct of its
37 business conform to the requirements of law, the commissioner shall,

1 upon payment of a license fee of the amount established by the
2 commissioner pursuant to RCW 48.29.005, issue a license authorizing
3 the applicant to act as a rating organization for title insurance.

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

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

9 NEW SECTION. **Sec. 7.** A new section is added to chapter 48.29
10 RCW to read as follows:

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

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

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

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

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

29 NEW SECTION. **Sec. 8.** A new section is added to chapter 48.29
30 RCW to read as follows:

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

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

36 (2) Its list of members and subscribers; and

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

4 NEW SECTION. **Sec. 9.** A new section is added to chapter 48.29
5 RCW to read as follows:

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

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

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

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

17 NEW SECTION. **Sec. 10.** A new section is added to chapter 48.29
18 RCW to read as follows:

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

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

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

1 NEW SECTION. **Sec. 11.** A new section is added to chapter 48.29
2 RCW to read as follows:

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

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

14 NEW SECTION. **Sec. 12.** A new section is added to chapter 48.29
15 RCW to read as follows:

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

19 NEW SECTION. **Sec. 13.** A new section is added to chapter 48.29
20 RCW to read as follows:

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

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

30 NEW SECTION. **Sec. 14.** A new section is added to chapter 48.29
31 RCW to read as follows:

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

1 NEW SECTION. **Sec. 15.** A new section is added to chapter 48.29
2 RCW to read as follows:

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

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

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

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

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

29 NEW SECTION. **Sec. 16.** A new section is added to chapter 48.29
30 RCW to read as follows:

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

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

37 NEW SECTION. **Sec. 17.** A new section is added to chapter 48.29
38 RCW to read as follows:

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

4 NEW SECTION. **Sec. 18.** A new section is added to chapter 48.29
5 RCW to read as follows:

6 Every rating organization may exchange aggregate information and
7 experience data with insurers, rating organizations in this state,
8 and the statistical reporting agent designated in accordance with RCW
9 48.29.017, and may consult with insurers and rating organizations in
10 this state with respect to form and rate making and the application
11 of rating systems, except to the extent that an agreement between a
12 rating organization and its member or subscriber prohibits the rating
13 organization from disclosing any information or experience data of
14 such member or subscriber to other insurers, members, subscribers,
15 rating organizations, or the statistical reporting agent.

16 NEW SECTION. **Sec. 19.** A new section is added to chapter 48.29
17 RCW to read as follows:

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

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

24 (2) A list of its members;

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

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

30 NEW SECTION. **Sec. 20.** A new section is added to chapter 48.29
31 RCW to read as follows:

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

1 **Sec. 21.** RCW 48.29.147 and 2008 c 110 s 5 are each amended to
2 read as follows:

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

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

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

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

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

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

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

37 (7) If within the waiting period or any extension thereof as
38 provided in subsection (6) of this section, the commissioner finds
39 that a filing does not meet the requirements of RCW 48.29.143 or the
40 requirements of subsections (2) through (4) of this section, the

1 commissioner shall disapprove the filing and shall give notice to the
2 insurer or rating organization that the filing has been disapproved.
3 This notice (~~shall~~) must specify the respect in which the
4 commissioner finds the filing fails to meet the requirements and
5 (~~shall~~) must state that the filing does not become effective as
6 proposed.

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

12 (b) Before the commissioner approves a filing by a rating
13 organization, the commissioner shall review all materials contained
14 in the filing, including, as applicable, materials submitted by the
15 rating organization, materials provided by the statistical reporting
16 agent pursuant to RCW 48.29.017, as well as materials concerning any
17 public hearings, market investigations, studies, or other information
18 collected during the review, and determine that the filing complies
19 with the requirements of this chapter.

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

25 (9) A filing made under this section is exempt from RCW
26 48.02.120(3). However, the filing and all supporting information
27 accompanying it is open to public inspection only after the filing
28 becomes effective.

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

35 (11) If at any time subsequent to the applicable review period
36 provided for in subsection (6) of this section, the commissioner has
37 reason to believe that a title insurer's or rating organization's
38 rates do not meet the requirements of RCW 48.29.143 or are otherwise
39 contrary to law, or if any person having an interest in the rates
40 makes a written complaint to the commissioner setting forth specific

1 and reasonable grounds for the complaint and requests a hearing, or
2 if any insurer or rating organization upon notice of the
3 commissioner's disapproval of a filing made under this section
4 requests a hearing, the commissioner shall hold a hearing within
5 thirty days and shall, in advance of it, give written notice of the
6 hearing to all parties in interest. The commissioner may, by issuing
7 an order, confirm, modify, change, or rescind any previous action, if
8 it is warranted by the facts shown at the hearing. The order shall
9 not affect any contract or policy made or issued prior to a
10 reasonable period of time, to be specified in the order, after the
11 order is issued.

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

16 **Sec. 22.** RCW 48.29.017 and 2013 c 65 s 1 are each amended to
17 read as follows:

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

28 (2) Upon designation of a statistical reporting agent by the
29 commissioner under subsection (1) of this section all authorized
30 title insurance companies and licensed title insurance agents must
31 annually, by May 31st, file a report with the statistical reporting
32 agent of their policy issuance, business income, expenses, and loss
33 experience in this state. The report must be filed with the
34 statistical reporting agent in a manner and form prescribed by the
35 commissioner by rule, which must be consistent with the manner and
36 form adopted by the national association of insurance commissioners.

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

1 title insurance agents must cooperate with the statistical reporting
2 agent to verify the completeness, accuracy, and quality of the data
3 that they submitted.

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

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

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

17 **Sec. 23.** RCW 48.29.005 and 2008 c 110 s 9 are each amended to
18 read as follows:

19 The commissioner may adopt rules to implement and administer this
20 chapter, including but not limited to:

21 (1) Establishing the information to be included in the report
22 required under RCW 48.29.015;

23 (2) Establishing the information required for the filing of rates
24 for title insurance under RCW 48.29.147;

25 (3) Establishing standards which title insurance rate filings
26 must satisfy under RCW 48.29.147;

27 (4) Establishing a date, which date shall not be earlier than
28 January 1, 2010, by which all title insurers selling policies in this
29 state must file their rates with the commissioner under RCW 48.29.143
30 and 48.29.147 rather than under RCW 48.29.140 and refile any rates
31 that were in effect prior to the date established by the
32 commissioner; ~~((and))~~

33 (5) Defining what things of value a title insurance insurer or
34 title insurance agent is permitted to give to any person in a
35 position to refer or influence the referral of title insurance
36 business under RCW 48.29.210(2). In adopting rules under this
37 subsection, the commissioner shall work with representatives of the
38 title insurance and real estate industries and consumer groups in
39 developing the rules;

- 1 (6) Establishing the fee for a license as a rating organization
2 under section 5 of this act;
- 3 (7) Establishing license requirements that an applicant for a
4 license as a rating organization and a licensee must comply with; and
- 5 (8) Requiring a rating organization to periodically update the
6 title insurance rates, manuals of rules and rates, rating plans, rate
7 schedules, minimum rates, class rates, or rating rules, filed by the
8 rating organization on behalf of its members or subscribers.

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