

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 277

BY WAYS AND MEANS COMMITTEE

AN ACT

1 RELATING TO TITLE INSURANCE; AMENDING SECTION 41-2704, IDAHO CODE, TO ES-
2 TABLISH ADDITIONAL PROVISIONS CONCERNING THE BUSINESS OF TITLE INSUR-
3 ANCE AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 41-2705, IDAHO
4 CODE, TO ESTABLISH ADDITIONAL PROVISIONS CONCERNING THE BUSINESS OF TI-
5 TLE INSURANCE OPERATING UNDER THE CONTROL AND SUPERVISION OF THE DIREC-
6 TOR OF THE DEPARTMENT OF INSURANCE; AND AMENDING CHAPTER 27, TITLE 41,
7 IDAHO CODE, BY THE ADDITION OF A NEW SECTION 41-2714, IDAHO CODE, TO PRO-
8 VIDE THAT A TITLE INSURER MAY ISSUE CLOSING OR SETTLEMENT PROTECTION TO
9 CERTAIN PERSONS, TO PROVIDE A LIMITATION ON CLOSING OR SETTLEMENT PRO-
10 TECTION, TO PROVIDE A RATE AND TO ESTABLISH PROVISIONS FOR HOW THE SEC-
11 TION SHALL BE CONSTRUED.
12

13 Be It Enacted by the Legislature of the State of Idaho:

14 SECTION 1. That Section 41-2704, Idaho Code, be, and the same is hereby
15 amended to read as follows:

16 41-2704. APPLICATION OF ACT -- BUSINESS OF TITLE INSURANCE. The provi-
17 sions of chapter 27, title 41, Idaho Code, shall apply to all title insurance
18 companies, title insurance rating organizations, title insurance agents,
19 applicants for title insurance, policyholders and to all persons and busi-
20 ness entities engaged in the business of title insurance. The business of
21 title insurance shall include:

22 (1) ~~the~~ making, or proposing to make, as an insurer, guarantor or
23 surety, or proposing any contract or policy of title insurance, which shall
24 include all certificates, policies, binders, preliminary reports or other
25 underwriting contracts and indorsements;

26 (2) ~~the~~ transacting or proposing to transact any phase of title insurance
27 including solicitations, negotiations preliminary to and execution of a
28 contract of title insurance, and matters subsequent to the issuance of such
29 contract;

30 (3) ~~the~~ performance of any act included herein by a title insurer or a
31 title insurance agent including, but not limited to, handling of escrows,
32 settlements or closing incident to any contract or policy of title insur-
33 ance; ~~or~~

34 (4) The issuance of closing or settlement protection by a title insurer
35 pursuant to section 41-2714, Idaho Code; or

36 (5) the doing, or proposing to do, any business in substance equiva-
37 lent to any of the foregoing in the manner designated to evade the provisions
38 of this chapter.

39 SECTION 2. That Section 41-2705, Idaho Code, be, and the same is hereby
40 amended to read as follows:

1 41-2705. SUPERVISION -- POLICY FORMS -- PREMIUMS. (1) The business of
2 title insurance shall operate in Idaho under the control and supervision of
3 the director of the department of insurance as to the premium rates for basic
4 classifications of policy and underwriting contracts in relation thereto,
5 escrow fee, rates, closing or settlement protection, tract indexes and ab-
6 stract records, and insurability as provided in title 41, Idaho Code, and un-
7 der such uniform rules and regulations as may be from time to time prescribed
8 by the director of the department of insurance. No title insurer shall en-
9 gage in the title insurance business with respect to any interest in Idaho
10 property other than under the applicable laws of the state of Idaho and under
11 such rules and regulations as may be issued by the director of the department
12 of insurance. No policy of title insurance or guarantee of any character on
13 Idaho property shall be issued unless written by a title insurer complying
14 with all the provisions of the laws of the state of Idaho, holding a certifi-
15 cate of authority under chapter 3, title 41, Idaho Code, and under such rules
16 and regulations as may be issued by the director of the department of insur-
17 ance.

18 (2) The rates for the premiums for title insurance and closing or set-
19 tlement protection, the proportion of the rates for the premiums for title
20 insurance and closing or settlement protection which is retained by a ti-
21 tle insurance agent and the portion which is retained by a title insurer,
22 shall be determined within the provisions of sections 41-2706, 41-2707 and
23 41-2708, Idaho Code, and the general provisions of title 41, Idaho Code; pro-
24 vided, not later than the effective date hereof each title insurer shall file
25 its premium rates and basic policy classification in relation thereto, and
26 the said rate so filed shall continue until changed as herein provided.

27 (3) The escrow fees of title insurers and title insurance agents shall
28 be filed in accordance with rules promulgated by the director of the depart-
29 ment of insurance.

30 (4) A title insurer shall file each form of certificate, policy, pre-
31 liminary report, binder, closing or settlement protection, guaranty or
32 other underwriting contract of title insurance prior to the delivery or is-
33 suance thereof in Idaho. The filing of the form of policies and contracts of
34 title insurance and the approval of the same shall be in accordance with sec-
35 tions 41-1812 and 41-1813, Idaho Code, as well as in conformance with chapter
36 27, title 41, Idaho Code.

37 (5) The provisions of sections 41-2705 through 41-2708, Idaho Code,
38 shall not apply to a title insurer contracting as a reinsurer of a title in-
39 surance policy on Idaho property where no primary liability is assumed.

40 (6) The director of the department of insurance, for the purpose of car-
41 rying out this chapter shall have the right to require title insurers issuing
42 policies in Idaho and title insurance agents to submit such information as
43 needed as to expense of operations, loss experience, underwriting risks and
44 other material matters.

45 (7) Any person aggrieved by any order, act or regulation of the director
46 hereunder shall have the rights and remedies set forth in chapter 52, title
47 67, Idaho Code.

48 SECTION 3. That Chapter 27, Title 41, Idaho Code, be, and the same is
49 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
50 ignated as Section 41-2714, Idaho Code, and to read as follows:

1 41-2714. CLOSING OR SETTLEMENT PROTECTION. (1) A title insurer may is-
2 sue closing or settlement protection to a buyer, borrower or lender that is a
3 party to a transaction in which a title insurance policy will be issued. The
4 closing or settlement protection shall be on a form filed with the department
5 in accordance with section 41-2705, Idaho Code.

6 (2) The closing or settlement protection shall be limited to indemnify-
7 ing the buyer, borrower or lender insured against a loss due to either or both
8 of the following actions of a licensed and authorized title insurance agent
9 and is deemed for the purpose of this section to be within the business of ti-
10 tle insurance as set forth in section 41-2704, Idaho Code:

11 (a) Theft or misappropriation of closing or settlement funds in connec-
12 tion with a transaction in which a title insurance policy or title in-
13 surance policies will be issued by or on behalf of the title insurer is-
14 suing the closing or settlement protection.

15 (b) Failure to comply with the written closing instructions when agreed
16 to by the title agent or title insurer, but only to the extent that the
17 failure to follow the instructions relates to the status of the title to
18 that interest in land or the validity, enforceability and priority of
19 the lien of the mortgage on that interest in land.

20 (3) A rate must be charged and the rate charged by a title insurer for
21 each transaction that includes closing protection coverage shall not be sub-
22 ject to any agreement requiring a division of rates or premiums collected on
23 behalf of the title insurer. The issuance of a closing or settlement pro-
24 tection to a buyer, borrower or lender that is a party to a transaction in
25 which a title insurance policy will be issued shall be considered to be one
26 (1) transaction for which a single rate is charged and shall not result in a
27 separate charge to each party. The rate shall:

28 (a) Be filed with the department in accordance with sections 41-2706
29 and 41-2707, Idaho Code;

30 (b) Be the only rate charged for closing protection; and

31 (c) Not exceed twenty-five dollars (\$25.00).

32 (4) A title insurer may not provide any other protection that purports
33 to indemnify against improper acts or omissions of a person with regard to
34 closing or settlement services.

35 (5) Except as otherwise provided for closing or settlement protection,
36 a buyer, borrower, lender, or title insurer retains all their respective
37 rights and remedies in connection with losses suffered due to theft or mis-
38 appropriation of closing or settlement funds or the failure to comply with
39 written closing instructions. Nothing in this section shall be construed
40 to require a buyer, borrower or lender to obtain closing or settlement pro-
41 tection. A failure to obtain closing or settlement protection shall not be
42 construed as an error, omission or other breach of duty of a buyer, borrower
43 or lender.