

IN THE SENATE

SENATE BILL NO. 1087

BY COMMERCE AND HUMAN RESOURCES COMMITTEE

AN ACT

1 RELATING TO TITLE INSURANCE; AMENDING SECTION 41-2705, IDAHO CODE, TO REVISE
2 AND TO PROVIDE ADDITIONAL PROVISIONS RELATING TO THE FILING OF ESCROW
3 FEES OF TITLE INSURERS AND TITLE INSURANCE AGENTS; AND AMENDING SECTION
4 41-2706, IDAHO CODE, TO REMOVE PROVISIONS RELATING TO THE FILING OF CER-
5 TAIN FEES BY A TITLE INSURER OR AGENT.
6

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

8 SECTION 1. That Section 41-2705, Idaho Code, be, and the same is hereby
9 amended to read as follows:

10 41-2705. SUPERVISION -- POLICY FORMS -- PREMIUMS. (1) The business of
11 title insurance shall operate in Idaho under the control and supervision of
12 the director of the department of insurance as to the premium rates for basic
13 classifications of policy and underwriting contracts in relation thereto,
14 escrow fee, rates, tract indexes and abstract records, and insurability as
15 provided in title 41, Idaho Code, and under such uniform rules and regula-
16 tions as may be from time to time prescribed by the director of the department
17 of insurance. No title insurer shall engage in the title insurance business
18 with respect to any interest in Idaho property other than under the applica-
19 ble laws of the state of Idaho and under such rules and regulations as may be
20 issued by the director of the department of insurance. No policy of title in-
21 surance or guarantee of any character on Idaho property shall be issued un-
22 less written by a title insurer complying with all the provisions of the laws
23 of the state of Idaho, holding a certificate of authority under chapter 3,
24 title 41, Idaho Code, and under such rules and regulations as may be issued by
25 the director of the department of insurance.

26 (2) The rates for the premiums for title insurance, the proportion of
27 the premium for title insurance which is retained by a title insurance agent
28 and the portion which is retained by a title insurer, ~~and the escrow fees of~~
29 ~~title insurers and title insurance agents~~ shall be determined within the
30 provisions of sections 41-2706, 41-2707 and 41-2708, Idaho Code, and the
31 general provisions of title 41, Idaho Code; provided, not later than the ef-
32 fective date hereof each title insurer shall file its premium rates and basic
33 policy classification in relation thereto, ~~and each title insurer and title~~
34 ~~insurance agent shall file its escrow fee, in effect on January 1, 1973,~~ and
35 the said rate ~~and fee~~ so filed shall continue until changed as herein pro-
36 vided.

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

40 (4) A title insurer shall file each form of certificate, policy, pre-
41 liminary report, binder, guaranty or other underwriting contract of title
42 insurance prior to the delivery or issuance thereof in Idaho. The filing of

1 the form of policies and contracts of title insurance and the approval of the
2 same shall be in accordance with sections 41-1812 and 41-1813, Idaho Code, as
3 well as in conformance with chapter 27, title 41, Idaho Code.

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

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

12 (7) Any person aggrieved by any order, act or regulation of the director
13 hereunder shall have the rights and remedies set forth in chapter 52, title
14 67, Idaho Code.

15 SECTION 2. That Section 41-2706, Idaho Code, be, and the same is hereby
16 amended to read as follows:

17 41-2706. TITLE INSURANCE RATES -- JUSTIFICATION. Title insurance pre-
18 mium rates for the basic classification of policies and underwriting con-
19 tracts shall be those filed by a title insurer or a title insurance rating
20 organization with justification and approved by order of the director of the
21 department of insurance, or, those filed by the director of the department of
22 insurance with his justification therefor, hearing thereon and order of the
23 director, both as more particularly hereinafter set forth. The division of
24 the total premium between a title insurer and a title insurance agent shall
25 be filed by the title insurer, ~~and the escrow, closing or settlement fees~~
26 ~~shall be filed by the title insurer or agent as applicable and approved in the~~
27 ~~same manner as title insurance premiums.~~ The insurance premium rates on ba-
28 sic classification of policies, ~~and said division of total premium and said~~
29 ~~escrow fees~~ shall be deemed fixed by the director of the department of insur-
30 ance upon the director's order approving the same (i) as filed and justified
31 by a title insurer, ~~or~~ title insurance rating organization ~~or title insur-~~
32 ~~ance agent~~, with or without hearing, or (ii) following a hearing on the same
33 as filed and justified by the director of the department of insurance.

34 (1) Justification of title insurance rates proposed by a title insurer,
35 a title insurance rating organization, or the director of the department of
36 insurance shall be filed with any proposed change of rate, and the filing
37 shall be justified by:

38 (a) the experience or judgment of the title insurer or title insurance
39 rating organization or the director proposing the rates; or

40 (b) its interpretation of any statistical data relied upon; or

41 (c) the experience of other title insurers or title insurance rating
42 organizations; or

43 (d) any other factors which the title insurer or rating organization or
44 director deems relevant.

45 (2) Rates made hereunder shall not be excessive, nor inadequate for
46 the safety and soundness of the title insurer and title insurance agent, and
47 shall not be unfairly discriminatory, and shall be adopted giving due con-
48 sideration to:

49 (a) desirability of stability of rate structures;

1 (b) necessity of assuring the financial solvency of a title insurer
2 and title insurance agent in periods of economic depression by encouraging
3 growth in assets of title insurers and title insurance agents in periods of
4 high business and activity; and

5 (c) necessity for assuring a reasonable margin of underwriting profit
6 sufficient to induce capital to be invested therein.

7 (3) Every title insurer and every title insurance rating organization
8 shall adopt basic classifications of policies and contracts of title insur-
9 ance which shall be used as the basis for rates. Rates for each classifi-
10 cation may, at the discretion of the title insurer, or the title insurance
11 rating organization filing the rate, be less than the cost of the expense
12 elements in the case of smaller insurances, and the excess may be charged
13 against larger insurances without rendering the rate unfairly discrimina-
14 tory.

15 (4) When the director finds upon application by a title insurer that any
16 rate for a particular kind or class of risk cannot practicably be filed be-
17 fore it is used, or any contract or kind of title insurance, by reason of rar-
18 ity or peculiar circumstances, does not lend itself to advance determination
19 and filing of rates, he may, under such rules and regulations as he may pre-
20 scribe, permit such rate or contract or kind of title insurance to be used
21 without a previous notice and thirty (30) day waiting period.