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Referred: Commerce and  
Judiciary

1 IN THE HOUSE

BY THE COMMERCE COMMITTEE

2 HOUSE BILL NO. 803

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 EIGHTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to title insurance."

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 \* Section 1. AS 21.66.010 is repealed and re-enacted to read:

9 Sec. 21.66.010. PAID IN CAPITAL AND RESERVES. (a) Before a  
10 domestic or foreign title insurance company is entitled to a certificate  
11 of authority to transact a title insurance business in this state it shall  
12 have a paid-up unimpaired cash capital equal to not less than \$250,000,  
13 \$100,000 of which shall be deposited with the director of insurance as a  
14 guaranty fund for the protection of the insured under policies of title  
15 insurance issued by the company.

16 (b) A domestic or foreign title insurance company shall have on  
17 deposit with the director or insurance commissioner of the state of its  
18 domicile, before the issuance of any policy of title insurance in this  
19 state, the sum of \$100,000 as a guarantee fund for the security and  
20 protection of its policyholders or their beneficiaries wherever situated  
21 The amount of this deposit shall be increased by the sum of \$50,000 for  
22 each state or territorial subdivision of the United States or the District  
23 of Columbia, other than the state of its domicile, in which it becomes  
24 qualified to engage in the business of title insurance, less the amount  
25 required by and deposited in the other states or territorial subdivisions;  
26 however, the deposits shall be for the security and protection of its  
27 policyholders or their beneficiaries, wherever situated. When the  
28 aggregate of amounts deposited in this or other states or territorial  
29 subdivisions or the District of Columbia, has reached the sum of \$750,000

1 no further deposit is required of the title insurance company as a condi-  
2 tion of engaging in the business of title insurance in this state.

3 (c) If a company is unable to make the deposits required under this  
4 section in the state of its domicile because of a lack of statutory  
5 authority for making the deposits, the deposits may be made with the  
6 director of insurance of this state.

7 \* Sec. 2. AS 21.66.020 is amended to read:

8 Sec. 21.66.020. DEPOSITS IN GUARANTY FUND. Within 30 days after  
9 the filing of each annual statement the corporation shall deposit with  
10 the director [COMMISSIONER OF REVENUE] a sum equal to 10 per cent of the  
11 premiums received by it during the preceding year covering property in  
12 this state, as shown by the annual statement, until the accumulated  
13 deposits, added to the sums originally deposited with the director  
14 [COMMISSIONER OF REVENUE], as provided herein, total \$100,000 but in  
15 no event may the corporation be required to deposit more than \$10,000  
16 in any one year.

17 \* Sec. 3. AS 21.66.030 is amended to read:

18 Sec. 21.66.030. SECURITIES AUTHORIZED AS DEPOSITS. The deposits  
19 required to be kept with the director [COMMISSIONER OF REVENUE] as a  
20 guaranty fund may be made either in lawful money of the United States or  
21 in one or more of the following classes of securities:

22 (1) interest bearing obligations of the United States or of  
23 those for the payment of the principal and interest on which the faith  
24 of the United States is pledged;

25 (2) bonds of a state in the United States;

26 (3) bonds of a municipality in the United States having a  
27 population of more than 50,000, or bonds of a municipality, municipal  
28 corporation or civil subdivision in this state having a population of  
29 more than 2,000, the market value of which bonds, at all times while so

1 deposited, shall be not less than 90 per cent of par value;

2 (4) a deposit not in excess of \$10,000 in any one bank organ-  
3 ized and existing under the laws of this state in a savings deposit  
4 account free of offsetting debts and claims insured in full by the  
5 Federal Deposit Insurance Corporation and entered in the name of the  
6 "director of insurance [COMMISSIONER OF REVENUE] of the State of Alaska  
7 in trust for the holders of the obligations of the (depositing company)  
8 under AS 21.66.020";

9 (5) a deposit not in excess of \$10,000 in any one issuing  
10 institution, in investment certificates or share accounts of savings and  
11 loan associations organized and existing under the laws of this state, or  
12 of the United States, and holding membership in the Federal Home Loan  
13 Bank System; the certificates and share accounts shall be free of off-  
14 setting debts and claims and shall be issued in the name of the director  
15 [COMMISSIONER OF REVENUE] in the form indicated in (4) of this section;

16 (6) with the written approval of the director bonds or notes  
17 secured by trust deed or first mortgage upon improved real property in  
18 this state not otherwise encumbered, and having a value of at least  
19 twice the amount loaned thereon or otherwise insured by an agency of the  
20 United States, which shall be accompanied by a policy of title insurance  
21 of a company qualified to insure title in this state insuring that the  
22 mortgage or trust deed so deposited is a first lien on the real property  
23 covered thereby.

24 \* Sec. 4. AS 21.66.040 is amended to read:

25 Sec. 21.66.040. SPECIAL GUARANTY FUND. The securities to be  
26 deposited as provided in this chapter shall be held by the director  
27 [COMMISSIONER OF REVENUE] as a special guaranty fund securing the faith-  
28 ful performance on the part of the company of all its undertakings and  
29 liabilities upon its guaranteed certificates of title, policies of title

1 insurance, or other guarantees of title to property and to the extent  
2 of any outstanding liabilities thereon; but shall not be subject to any  
3 other outstanding liabilities of the company while the securities are  
4 held by the director [COMMISSIONER OF REVENUE]. They shall be held  
5 subject to the following conditions:

6 (1) the director [COMMISSIONER OF REVENUE] shall deliver to the  
7 company depositing the guaranty fund a receipt in full for all securities  
8 deposited with him; the company may from time to time withdraw securities  
9 or a part of them on depositing with the director [COMMISSIONER OF  
10 REVENUE] cash or other authorized securities, to at all times maintain  
11 the value of the guaranty fund deposit at not less than the amount  
12 required by this chapter;

13 (2) all interest or dividends accruing on the securities  
14 deposited with the director [COMMISSIONER OF REVENUE] under the authority  
15 of this chapter shall belong to and at all times be available to the  
16 company making the deposit, and the director [COMMISSIONER OF REVENUE]  
17 shall permit the company, as long as it shall continue solvent, to  
18 collect the interest or dividends on the securities deposited; the  
19 director [COMMISSIONER OF REVENUE] shall be the agent of both parties to  
20 receive, receipt for and pay over the interest or dividends when the same  
21 are paid to him by reason of the custody of the deposit, and he is  
22 authorized to make the endorsements on the securities which the occasion  
23 and the due and orderly course of business may require; the rights of the  
24 company to demand of and receive from the director [COMMISSIONER OF  
25 REVENUE] the interest or dividends, shall be subject, however, to the  
26 provisions of (3) of this section;

27 (3) if, under liability on guaranteed certificate of title,  
28 or policy of title insurance or other guaranty of title to property, a  
29 civil judgment is entered in a court of general jurisdiction in this

1 state against a company which has made a deposit of securities with the  
2 director [COMMISSIONER OF REVENUE] subject to the provisions of this  
3 chapter and the judgment has become final either by failure to appeal,  
4 dismissal of appeal, or by affirmance on appeal, or otherwise, and  
5 the judgment is not paid and satisfied in full within 60 days after the  
6 judgment has become final, in every such case the judgment may be enforced  
7 against the securities deposited with the director [COMMISSIONER OF  
8 REVENUE] upon petition of the judgment creditor in the same cause wherein  
9 judgment was obtained, setting out the facts aforesaid, whereupon it  
10 shall be the duty of the court wherein said judgment is entered to  
11 direct the issuance of a special execution directed to the proper peace  
12 officer, enforcing the executions, in the City of Juneau, Alaska, which  
13 execution shall be as near as may be in the usual form and shall require  
14 on the part of the officer the sale of the securities or as much thereof  
15 as may be necessary to the satisfaction of the judgment; when applica-  
16 tion is made for the issuance of the special execution herein provided  
17 for, and the court allows the same, the order in which the special  
18 execution is authorized shall direct that service of a copy of the  
19 judgment and the petition shall be made within five days thereafter  
20 upon the director [COMMISSIONER OF REVENUE]; all proceedings relating  
21 to the enforcement of the writ of execution against the securities shall  
22 conform as near as may be to the practice in ordinary cases except as  
23 herein otherwise specially provided; proceedings under the execution  
24 shall be a sufficient authority, where notices aforesaid have been  
25 served on the director [COMMISSIONER OF REVENUE], for the delivery by  
26 the director [COMMISSIONER OF REVENUE] to the officer of the securities  
27 to be sold upon the execution;

28 (4) except as herein provided, the director [COMMISSIONER OF  
29 REVENUE] shall hold intact the securities deposited with him and shall

1 retain the same until such time as all liabilities under any guaranteed  
2 certificate of title or policy of title insurance, or other guaranty of  
3 title covering property in this state, issued by the company having  
4 deposited the securities, shall have legally terminated, or until such  
5 time as all liabilities of said company under such guaranteed certificates  
6 of title or policies of title insurance or other guarantees of title  
7 shall have been assumed by some other title insurance company authorized  
8 to transact business in this state. After [IT SHALL BE THE DUTY OF THE  
9 DIRECTOR TO ADVISE THE COMMISSIONER OF REVENUE OF] the termination of  
10 all liability of the title insurance company, and after the director  
11 completes [SHALL HAVE COMPLETED] an examination into the affairs of the  
12 company and determines [DETERMINED] that all liability against the  
13 guaranty fund has been legally terminated or satisfactorily assumed by  
14 some other title insurance company licensed to do a title insurance  
15 business in this state; he is [UPON THE ADVICE OF THE DIRECTOR, THE  
16 COMMISSIONER OF REVENUE SHALL BE] authorized [AND IT SHALL BE HIS DUTY]  
17 to immediately return the securities to the said company and [CONCUR-  
18 RENTLY HEREWITH THE DIRECTOR SHALL] revoke the certificate of authority  
19 granted the company to do any title insurance business in the state;

20 (5) [PROVIDED] however, [THAT] if the guarantee fund is at  
21 any time impaired by reason of the payment of any judgment against the  
22 company depositing the funds or for any reason whatsoever and remains so  
23 impaired for a period of 30 days after written notice to the company,  
24 the director is authorized and it shall be his duty to immediately  
25 revoke the certificate of authority granted the company, and to publish  
26 a notice of the revocation in a daily paper of general circulation  
27 published in the city wherein the company has its principal offices at  
28 least once a week for six successive weeks, the expense of the publica-  
29 tion to be chargeable against the guaranty fund of the company.

1 \* Sec. 5. AS 21.66.050(a) is amended to read:

2 (a) Every title insurance company, either foreign or domestic,  
3 operating in this state under the provisions of this chapter, shall  
4 annually set apart, establish, segregate and maintain at the end of each  
5 year into an account to be known as Title Insurance Unearned Premium  
6 Reserve Fund, a sum equal to three per cent of its gross premiums on  
7 title insurance policies issued during the year then ending covering  
8 property in this state. The reserve fund shall be in addition to the  
9 deposit with the director [COMMISSIONER OF REVENUE]. There shall be no  
10 other reserve requirements. The reserve must be maintained separately  
11 and apart from the capital of the company, and shall be invested in the  
12 securities which are authorized for investment by domestic insurance  
13 companies under the laws of this state. Funds accumulated under this  
14 provision shall never be used for the payment of an obligation other  
15 than those incurred in connection with title insurance, and, in the event  
16 of the insolvency of a company, the fund hereby provided shall be used  
17 to pay losses and to purchase reinsurance to protect title insurance  
18 policyholders even though there are no accrued title insurance claims.  
19 The reserve fund shall be considered and shall constitute unearned  
20 portions of the original premiums and shall be charged as a reserve  
21 liability of the company in determining its financial condition.

22 \* Sec. 6. AS 21.66 is amended by adding new sections to read:

23 Sec. 21.66.170. DETERMINATION OF INSURABILITY REQUIRED. (a) No  
24 policy or contract of title insurance may be written until the title  
25 insurance company conducts or has conducted a reasonable search and  
26 examination of the title and has made a determination in insurability of  
27 title in accordance with its established underwriting practices. Evi-  
28 dence of the determination shall be preserved and retained in the files  
29 of the title insurance company or its agent for a period of not less

1 than 15 years after the policy or contract of title insurance has been  
2 issued. In lieu of retaining the original evidence, the title insurance  
3 company or the title insurance agent, may, in the regular course of  
4 business, establish a system by which all or part of these writings are  
5 recorded, copied or reproduced by any photographic, photostatic,  
6 microfilm, microcard, miniature photographic, or other process which  
7 accurately reproduces or forms a durable medium for reproducing the  
8 original.

9 (b) This section does not apply to (1) a company assuming no  
10 primary liability in a contract of reinsurance; or (2) a company acting  
11 as a co-insurer if one of the other co-insuring companies has complied  
12 with this section.

13 Sec. 21.66.180. GENERAL POWERS. A title insurance company may:

14 (1) do business as defined in sec. 480(1) and (2) of this  
15 chapter;

16 (2) do any act, directly or through a title insurance agent,  
17 incidental to making a contract or policy of title insurance, including,  
18 but not limited to, conducting or holding an escrow, settlement or  
19 closing of a transaction; and,

20 (3) provide other services relative or incidental to the sale  
21 and transfer of real or personal property.

22 Sec. 21.66.190. LIMITATIONS ON POWERS. (a) An insurer which  
23 transacts any class or kind of insurance other than title insurance is  
24 not eligible for the issuance or renewal of a certificate of authority  
25 to transact the business of title insurance in this state.

26 (b) No title insurance company may engage in the business of  
27 guaranteeing the payment of the principal or the interest of bonds or  
28 other obligations.

29 Sec. 21.66.200. TITLE PLANT REQUIREMENTS. A title insurance

1 company shall own and maintain in the recording district in which its  
2 principal office in the state is located a title plant consisting of  
3 adequate maps and fully indexed records showing all instruments of  
4 record affecting all land within the recording district for a period of  
5 at least 25 years immediately before the date a policy of title insurance  
6 is issued by the title insurance company. It shall also directly or  
7 through its agent own and maintain a comparable title plant for each  
8 additional recording district in which it or its agent maintains an  
9 office to transact a title insurance business.

10 Sec. 21.66.210. JOINT PLANT COMPANIES. (a) Two or more title  
11 insurance companies and one or more title insurance agents may apply to  
12 the director of insurance to form an association, corporation or other  
13 legal entity, for the purpose of engaging in the business of preparing  
14 abstracts of title searches from public records or from records to be  
15 owned by the entity, upon the basis of which a title insurance agent or  
16 a title insurance company will issue title policies. The owners or  
17 participants are considered to be in compliance with the provisions of  
18 this section if the title plant of the association, corporation or other  
19 legal entity complies with the provisions of this section. The applica-  
20 tion shall contain the following:

- 21 (1) a copy of the proposed articles of incorporation or  
22 association and the bylaws or agreement governing the operation of the  
23 entity;
- 24 (2) a list of the owners or participants;
- 25 (3) the names and addresses of the persons who will operate  
26 the entity, with a description of their experience and qualifications;
- 27 (4) the conditions under which ownership or participation in  
28 the entity may be sold or acquired;
- 29 (5) a statement of whether or not title information will be

1 compiled and sold to persons other than owners of or participants in  
2 the entity;

3 (6) a pro forma balance sheet and other financial information  
4 to indicate the sufficiency of financing the entity.

5 (b) If the director finds that (1) the entity will be adequately  
6 financed, (2) the persons who will be operating the entity are qualified  
7 and (3) the rules of operation as expressed in the articles of incor-  
8 poration or association and the bylaws will promote the efficiency of  
9 the operation of the subscribing owners or participants and will not  
10 unduly restrict competition, he shall issue a certificate of authority  
11 to the entity and permit it to organize. Each application under this  
12 section shall be granted or denied in whole or in part by the director  
13 within 60 days from the date it is filed. A certificate of authority  
14 issued under this section remains in effect until suspended or revoked  
15 by the director. The fee for the certificate of authority is \$75 a  
16 year. A certificate of authority issued under this section may be  
17 suspended or revoked by the director after hearing upon notice if the  
18 entity ceases to operate as provided in the application or if the  
19 director determines that the operation has become a restraint on com-  
20 petition and is not in the interests of the public. Every entity  
21 issued a certificate of authority under this section shall notify the  
22 director promptly of every change occurring under this section.

23 Sec. 21.66.220. NET RETAINED LIABILITY. (a) The net retained  
24 liability of a title insurance company under a single title insurance  
25 risk assumed in this state may not exceed 50 per cent of the net amount  
26 remaining after deducting from the sum of its capital, surplus, unearned  
27 premium reserve and voluntary reserves, the value, if any, assigned in  
28 the summation to its title plants, as shown in its most recent report  
29 on file with the director. The same limitation applies to any secondary

1 risk assumed by means of reinsurance or to a policy of excess co-  
2 insurance. Upon application by a title insurance company and the show-  
3 ing of good cause, the director may waive the limitation in connection  
4 with the assumption of a particular risk.

5 (b) Nothing in this section is intended to limit the amount of a  
6 single insurance risk, as defined in sec. 480(8) of this chapter, that  
7 may be written or assumed by a title insurance company, if (1) it cedes  
8 to one or more other title insurance companies, on or before the effec-  
9 tive date of the writing or assumption, the portion, or portions, of the  
10 risk sufficient to bring its net retained liability within the limits  
11 provided in this section; and (2) each cession of risk is also within  
12 the limits of this section as applied to the sum of the capital, surplus,  
13 unearned premium reserve and voluntary reserves, less the value, if any,  
14 assigned in the summation to the title plants of the assuming and  
15 reinsuring title insurance company, as shown by its most recent report  
16 on file with the director or commissioner of insurance in the state of  
17 its domicile.

18 Sec. 21.66.230. POWER TO REINSURE. A title insurance company  
19 authorized to engage in the business of title insurance in this state  
20 may cede reinsurance of all or any part of its liability under one or  
21 more of its policies or contracts of reinsurance agreements to a title  
22 insurance company authorized to engage in the business of title insurance  
23 in this or any other state or the District of Columbia. However, no  
24 larger amount of reinsurance may be assumed by a title insurance com-  
25 pany on a single policy, or contract of title insurance, or on any  
26 single title insurance risk as defined in sec. 480(8) of this chapter,  
27 than the title insurance company would be permitted to retain if  
28 authorized to engage in the business of title insurance in this state.  
29 It may also reinsure policies of title insurance issued by other

1 companies on risks whether located in or out of this state. A title  
2 insurance company authorized to transact business in this state shall  
3 pay to this state taxes required on all business taxable in this state  
4 and reinsured, as provided in this section, with any foreign or alien  
5 company not authorized to do business in this state. Issuance of  
6 contracts of reinsurance by a title insurance company not authorized to  
7 engage in the business of title insurance in a state or the District of  
8 Columbia, reinsuring a title insurance company authorized to engage in  
9 the business of title insurance in this state on property located in  
10 this state, does not of itself constitute the doing of business in this  
11 state by the reinsuring company.

12 Sec. 21.66.240. TITLE PLANTS. A title insurance company may  
13 invest in title plants if it complies at all times with the minimum  
14 capital investment requirements under this chapter. A title plant shall  
15 be considered an asset at its fair value. In determining the fair value  
16 of a title plant, no value may be attributed to furniture and fixtures,  
17 and the real estate in which the title plant is housed shall be carried  
18 as real estate. The value of title abstracts, title briefs, copies of  
19 conveyances or other documents, indices and other records comprising  
20 the title plant shall be determined by considering the expenses incurred  
21 in obtaining them, the age of them, the cost of replacements less  
22 depreciation, and all other relevant factors. Once the value of a  
23 title plant is determined under this section, the value may be increased  
24 only by the acquisition of another title plant by purchase, consolida-  
25 tion or merger; however, in no event may the value of the title plant  
26 be increased by additions made to it as part of the normal course of  
27 abstracting and insuring titles to real estate. Subject to the limita-  
28 tions in this section and with the approval of the director as provided  
29 by sec. 210 of this chapter, a title insurance company may enter into

1 agreements with other title insurance companies to participate in the  
2 use, ownership, management and control of a title plant in order to  
3 service the needs of all the title insurance companies, or the title  
4 insurance companies may hold stock of a corporation owning and operating  
5 a title plant for this purpose.

6 Sec. 21.66.250. TRUST FUNDS. Trust funds or assets held in a  
7 fiduciary capacity by a title insurance company which is authorized to  
8 do a trust business shall be invested in accordance with AS 06.25.

9 Sec. 21.66.260. TITLE INSURANCE AGENTS CERTIFICATION. Each title  
10 insurance company authorized to transact business in this state shall  
11 certify annually to the director the names of all title insurance agents  
12 representing it in this state.

13 Sec. 21.66.270. TITLE INSURANCE AGENTS TO BE LICENSED. Title  
14 insurance agents shall be licensed in the manner provided for agents  
15 of insurance companies in ch. 27 of this title.

16 Sec. 21.66.280. AGENTS, BOOKS AND RECORDS. (a) Each title  
17 insurance agent shall maintain books of accounts and records and  
18 vouchers pertaining to the business of title insurance in a manner that  
19 the director, or his authorized representative, may readily ascertain  
20 whether the agent has complied with the provisions of this chapter.

21 (b) A title insurance agent may engage in the business of handling  
22 escrows, settlements and closings in connection with the business of  
23 title insurance; however,

24 (1) the agent shall maintain a separate record of all  
25 receipts and disbursements of escrow funds and may not commingle the  
26 funds with his own funds or with funds held by the agent in any other  
27 capacity;

28 (2) the agent shall comply with the standards of solvency  
29 that the director requires; and

1 (3) the agent shall submit financial statements that the  
2 director requires.

3 (c) If the director determines that an agent has failed to comply  
4 with a provision of this section, he may, after a hearing, revoke the  
5 license of the agent.

6 Sec. 21.66.290. AGENT REPLIES TO DIRECTOR INQUIRIES. Each title  
7 insurance agent shall reply in writing promptly, with a copy of the  
8 reply mailed to each title insurance company for which the agent is  
9 acting, to an inquiry of the director relating to his acts as a title  
10 insurance agent. Failure to reply is a ground for revocation of the  
11 agent's license. In addition, a copy of the inquiry shall be sent by  
12 the director to each title insurance company for which the agent is  
13 acting.

14 Sec. 21.66.300. PROHIBITION OF CERTAIN TITLE INSURANCE NAMES.  
15 After the effective date of this Act, no agent for a title insurance  
16 company may adopt a firm name containing the words "title insurance",  
17 "title guaranty", or "title guarantee", unless the words are followed by  
18 the words "agent" or "agency" in the same size and type as the words  
19 preceding them. This does not apply to a title insurance company acting  
20 as an agent for another title insurance company.

21 Sec. 21.66.310. REBATES PROHIBITED. (a) No title insurer, or  
22 officer, employee, attorney, agent or solicitor of a title insurer, may  
23 pay, allow or give or offer to pay, allow or give, directly or indirectly,  
24 as an inducement to obtaining a title insurance business, a rebate, re-  
25 duction or abatement of a rate or change made incident to the issuance  
26 of the title insurance, a special favor or advantage, money consideration  
27 or other inducement. A change made incident to the issuance of the  
28 insurance is construed to include, without limitation, escrow, settle-  
29 ment and closing charges.

1 (b) No insured named in a title insurance policy or any other person  
2 directly or indirectly connected with the transaction involving the  
3 issuance of a title insurance policy, including, but not limited to a  
4 mortgage lender, real estate broker, builder or attorney, or an officer,  
5 employee, agent, representative or solicitor of a mortgage lender, real  
6 estate broker, builder, attorney, or other person, may knowingly receive  
7 or accept, directly or indirectly, a rebate, reduction or abatement of  
8 a charge or premium or a special favor or advantage, or a monetary con-  
9 sideration or inducement.

10 (c) Nothing in this section prohibits (1) the payment of fees for  
11 services actually rendered as a result of a title insurance transaction;  
12 or (2) the payment of a commission to a legally appointed title insur-  
13 ance agent who issues the policy of title insurance.

14 Sec. 21.66.330. EXAMINATION OF RECORDS. If the director has  
15 reason to believe that a title insurance agent has violated or is in  
16 violation of sec. 310 of this chapter, he shall immediately examine the  
17 title insurance agent's books of account and record and vouchers per-  
18 taining to the business of title insurance. The title insurance agent  
19 shall pay to the director the cost of an examination conducted under  
20 this section.

21 Sec. 21.66.340. ADDITIONAL PENALTY FOR REBATES. A person who  
22 violates sec. 310 of this chapter is liable to the state for five times  
23 the amount or value of the rebate, reduction, or abatement of any rate  
24 or charge made incident to the issuance of title insurance, or a special  
25 favor or advantage, or a monetary consideration or inducement.

26 Sec. 21.66.350. DIVISION OF RATES. Nothing in this chapter pro-  
27 hibits the division of rates and charges between or among a title  
28 insurance company and its agent, two or more title insurance companies,  
29 one or more title insurance companies and one or more title insurance

1 agents, or two or more title insurance agents, if the division of rates  
2 and charges does not constitute an unlawful rebate and is not in payment  
3 of a forwarding fee or finder's fee.

4 Sec. 21.66.360. PURPOSE OF TITLE INSURANCE RATE REGULATION. The  
5 purpose of secs. 370 - 400 of this chapter is to promote the public  
6 welfare by regulating title insurance rates so that they are not exces-  
7 sive, inadequate or unfairly discriminatory, and to authorize cooperative  
8 action between or among title insurance companies in rate making and  
9 other matters within the scope of this chapter. Nothing in this chapter  
10 is intended to prohibit or discourage uniformity in title insurance  
11 rates, rating systems and rating plans and practices.

12 Sec. 21.66.370. RATE FILING. (a) A title insurance company shall  
13 file with the director its schedules of rates, manuals of classifications,  
14 rules and plans relating to schedules of rates or manuals of classifica-  
15 tion, and every modification of the schedules or manuals which it pro-  
16 poses to use in this state. A filing under this section shall contain  
17 the effective dates of the documents filed, and indicate the character  
18 and extent of the coverage contemplated.

19 (b) The director shall review the filings as necessary to carry  
20 out the provisions of this chapter.

21 (c) Subject to the provisions of (e) of this section, each filing  
22 shall be on file for a period of 30 days before it becomes effective.  
23 The director may, upon written notice given within the 30-day period to  
24 the person making the filing, extend the waiting period for an addi-  
25 tional period, not to exceed 30 days, in order to complete the review of  
26 the filing. Additional extensions of the waiting period may also be  
27 made with the consent of the title insurance company. Upon written  
28 application by the title insurance company, the director, after review  
29 of the application, may authorize a filing or any part of it to become

1 effective upon the expiration of the waiting period or its extension.

2 (d) Except for rates filed under (e) of this section, a filing  
3 which has become effective is considered to meet the requirements of  
4 this chapter.

5 (e) When the director finds that a rate for a particular kind or  
6 class of risk cannot practicably be filed before it is used, or any  
7 contract or kind of title insurance, by reason of rarity or peculiar  
8 circumstances, does not lend itself to advance determination and filing  
9 of rates, he may, under appropriate regulations, permit the rate to be  
10 used without a previous filing and waiting period.

11 (f) Beginning 90 days after the effective date of this Act, no  
12 title insurance company or agent of a title insurance company may charge  
13 a rate for a policy or contract of title insurance except in accordance  
14 with filings or rates which are in effect for the title insurance company  
15 as provided in this chapter.

16 (g) The director may not regulate, or require the filing of, rates  
17 paid by title insurance companies for reinsurance contracts or agree-  
18 ments, or policies of excess co-insurance.

19 Sec. 21.66.380. JUSTIFICATION FOR RATES. (a) A rate filing shall  
20 be accompanied by a statement of the title insurance company making the  
21 filing, setting out the basis on which the rate was determined, with  
22 the rates computed. A filing of rates may be justified by the following:

23 (1) the experience or judgment of the title insurance company  
24 making the filing,

25 (2) its interpretation of any statistical data relied upon,

26 (3) the experience of other title insurance companies making  
27 the filings, or

28 (4) any other factors which the title insurance company  
29 considers relevant.

1 (b) The statement and justification provided for in this section  
2 shall be open to public inspection.

3 Sec. 21.66.390. MAKING OF RATES. (a) A title insurance company  
4 that makes its own rates shall make rates that are not excessive or  
5 inadequate and which do not unfairly discriminate between risks in this  
6 state which involve essentially the same exposure to loss and expense  
7 elements, and which give due consideration to the following matters:

8 (1) the desirability for stability of rate structures;

9 (2) the necessity of assuring the financial solvency of title  
10 insurance companies in period of economic depression by encouraging  
11 growth in assets of title insurance companies in periods of high  
12 business activity; and

13 (3) the necessity for assuring a reasonable margin of under-  
14 writing and operating profit.

15 (b) A title insurance company that makes its own rates shall  
16 adopt basic classifications of policies or contracts of title insurance  
17 which shall be used as the basis for rate-making.

18 Sec. 21.66.400. DISAPPROVAL OF FILINGS. (a) Upon the review at  
19 any time by the director of a filing, he shall, before issuing an order  
20 of disapproval, hold a hearing upon not less than 10 days written  
21 notice, specifying in reasonable detail the matters to be considered at  
22 the hearing. Notice of the hearing shall be given to each title  
23 insurance company which made a filing, and if, after the hearing, the  
24 director finds that the filing or a part of the filing does not meet the  
25 requirements of this chapter, he shall issue an order specifying how  
26 it is deficient, and when, within a reasonable period thereafter, the  
27 filing or a part of it is considered no longer effective, if the  
28 filing or a part of it has become effective under the provisions of  
29 sec. 370 of this chapter. A title insurance company has the right at

1 any time to withdraw a filing or a part of a filing. Copies of the  
2 order issued under this section shall be sent to every title insurance  
3 company affected. The order does not affect a contract or policy made  
4 or issued before the expiration of the period set out in the order.

5 (b) A person or organization aggrieved with respect to a filing  
6 which is in effect, may make written application to the director for a  
7 hearing on the filing. The title insurance company that made the filing  
8 may not proceed under this subsection. The application shall specify in  
9 reasonable detail the grounds to be relied upon by the applicant. If  
10 the director finds that the application is made in good faith, and that  
11 the applicant would be aggrieved if his grounds are established, and  
12 that his grounds otherwise justify holding such a hearing, he shall,  
13 within 30 days after receipt of the application, hold a hearing upon  
14 not less than 10 days written notice to the applicant and to each title  
15 insurance company which made such a filing. If, after the hearing, the  
16 director finds that the filing or a part of it does not meet the require-  
17 ments of this chapter, he shall issue an order specifying how the filing  
18 or a part of it fails to meet the requirements of this chapter, stating  
19 when, within a reasonable period after the order is issued, the filing  
20 or a part of it is considered no longer effective. Copies of the order  
21 shall be sent to the applicant and to every such title insurance  
22 company. The order does not affect a contract or policy made or issued  
23 before the expiration of the period set out in the order.

24 (c) No filing or modification of a filing may be disapproved if  
25 the rates in connection with the filing meet the requirements of this  
26 chapter.

27 Sec. 21.66.410. RATE ADMINISTRATION. (a) The director may  
28 prescribe by regulation (1) guidelines reasonably adaptable to each of  
29 the rating systems on file with him; (2) a uniform classification of

1 accounts to be observed; (3) statistics to be reported; and (4) uniform  
2 forms for reporting this data by all title insurance companies.

3 (b) Regulations may be promulgated by the director for the inter-  
4 change of data necessary for the application of rating plans.

5 (c) In order to more uniformly administer rate regulations, the  
6 director and each title insurance company may exchange information and  
7 experience data with insurance supervisory officials, title insurance  
8 companies and title insurance rating organizations in other states, and  
9 may consult with them and with each other with respect to rate making  
10 and the application of rating systems.

11 Sec. 21.66.420. FALSE OR MISLEADING INFORMATION. No title  
12 insurance company or title insurance agent may wilfully withhold infor-  
13 mation from, or knowingly give false or misleading information to the  
14 director.

15 Sec. 21.66.430. PENALTIES. (a) The director may, if he finds  
16 that a title insurance company, or title insurance agent has violated  
17 a provision of this chapter, impose a penalty of not more than \$100  
18 for each violation. However, if the violation is wilful, he shall  
19 impose a penalty of not more than \$1,000 for each violation. Penalties  
20 imposed under this section are in addition to any other penalties  
21 provided by law.

22 (b) In addition to the penalty provided in (a) of this section,  
23 the director may suspend the certificate of authority of a title  
24 insurance company, or title insurance agent upon failure to comply with  
25 an order of the director within the time limit allowed by the order.  
26 No certificate of authority may be suspended for failure to comply with  
27 an order until the time prescribed for an appeal has expired, or, if  
28 an appeal has been taken, until the order has been affirmed.

29 (c) The director may determine when a suspension of a certificate

1 of authority becomes effective, and it remains in effect until modified  
2 or rescinded by the director, or until the order upon which the sus-  
3 pension is based is modified, rescinded or reversed.

4 (d) No penalty may be imposed and no certificate of authority may  
5 be suspended or revoked except upon a written order of the director,  
6 stating his findings, and made after a hearing held upon not less than  
7 10 days written notice to the person or organization, specifying the  
8 alleged violation.

9 Sec. 21.66.440. EXISTING FILINGS AND HEARINGS CONTINUED. All  
10 title insurance manuals of classifications, rules and rates, rating  
11 plans and their modifications filed before the effective date of this  
12 Act shall be considered to have been filed under this chapter. All  
13 hearings and investigations pending before the effective date of this  
14 Act shall be continued under this chapter.

15 Sec. 21.66.450. FORMS OF POLICIES AND OTHER CONTRACTS OF TITLE  
16 INSURANCE. Each title insurance company shall file with the director  
17 all forms of title policies and other contracts of title insurance  
18 which it proposes to issue in this state before their issuance; however,  
19 in no event may a title insurance company issue a form of policy or  
20 contract before 30 days after it has been filed with the director,  
21 unless it has received earlier approval by the director. Unless the  
22 director disapproves a form of title policy or contract of title  
23 insurance within 30 days from the date of its filing, the filing is  
24 considered to be approved.

25 (b) Forms of title policies and other contracts of insurance, as  
26 used in this section, are considered to include preliminary reports of  
27 title, binders for insurance, commitments to insure and policies of  
28 insurance or guaranty, together with all the terms and conditions of  
29 insurance coverage or guaranty that relate to title to any interest in

1 property, offered by a title insurance company. Forms of title policies  
2 and other contracts of insurance shall specifically exclude (1) re-  
3 insurance contracts or agreements; (2) all specific defects in title  
4 that may be ascertained from an examination of the risk and excepted in  
5 such reports, binder, commitments or policies, together with any affir-  
6 mative assurances of the title insurance company with respect to the  
7 defects whether given by endorsement or otherwise; and (3) further  
8 exceptions from coverage by reason of limitations upon the examination  
9 of the risk imposed by an applicant for insurance or through failure of  
10 an applicant for insurance to provide the data requisite to a judgment  
11 of insurability.

12 Sec. 21.66.460. FILING REQUIRED FOR ESCROW, SETTLEMENT AND  
13 CLOSING CHARGES. (a) Each title insurance company shall file with the  
14 director a schedule of the escrow, settlement and closing charges which  
15 it proposes to use in this state for these services when performed in  
16 connection with the issuance of policies of title insurance. The filing  
17 shall state the effective date of the schedule, which shall be not less  
18 than 30 days after the date of filing with the director.

19 (b) All or any part of the schedule may be amended at any time.  
20 Each amendment shall be filed with the director, and shall state its  
21 effective date, which shall be not less than 30 days after the date of  
22 its filing with the director.

23 (c) Copies of schedules filed under this section shall be  
24 retained in each of the offices of a title insurance company in this  
25 state, and, upon request shall be furnished to the public.

26 (d) No title insurance company may make or impose a charge for  
27 escrow, settlement or closing services when performed in connection with  
28 the issuance of a policy of title insurance except in accordance with  
29 the schedule of the charges filed with the director under this section.

1           Sec. 21.66.470. OTHER SECTIONS APPLICABLE. The provisions of  
2 this title governing insurance companies, except to the extent that they  
3 are inconsistent with the provisions of this chapter, apply to the  
4 business of title insurance and to title insurance companies.

5           Sec. 21.66.480. DEFINITIONS. In this chapter

6           (1) "applicants for insurance" means those persons, whether  
7 or not prospectively insured, who apply to a title insurance company or  
8 to its agent, for title insurance, and who at the time of the applica-  
9 tion are not agents for a title insurance company;

10          (2) "business of title insurance" is

11           (A) the making or proposing to make as insurer,  
12 guarantor or surety, a contract or policy of title insurance; or

13           (B) the transacting or proposing to transact, any phase  
14 of title insurance including solicitation, negotiation preliminary  
15 to execution, execution of a title insurance contract, and insuring  
16 and transacting matters subsequent to the execution of the contract  
17 and arising out of it, including reinsurance;

18          (3) "director" means the director, division of insurance,  
19 Department of Commerce;

20          (4) "net retained liability" means the total liability  
21 retained by a title insurance company under a policy or contract of  
22 insurance, or under a single insurance risk as defined in or computed  
23 in accordance with (6) of this section, less the amount of reinsurance  
24 ceded;

25          (5) "rate" means a charge for title insurance risk, ab-  
26 stracting, searching, examination or determination of insurability and  
27 every other activity, exclusive of escrow, settlement or closing  
28 charges, whether denominated premium or otherwise, made by a title  
29 insurance company or an agent of a title insurance company to an

1 insured or to an applicant for insurance, for a policy or contract of  
2 title insurance; however, "rate" does not include charges paid to and  
3 retained by an attorney at law, abstracter, surveyor, tax service or  
4 any other person acting in a capacity other than as a title insurance  
5 agent and on behalf of a client other than a title insurance company,  
6 or charges made for special services, even though performed in connec-  
7 tion with a title insurance policy or contract;

8 (6) "single insurance risk" means the insured amount of a  
9 policy or contract of title insurance issued by a title insurance  
10 company unless two or more policies or contracts are simultaneously  
11 issued on different estates in identical real property, in which case,  
12 it means the sum of the insured amounts of all of the policies or  
13 contracts; however, any policy or contract that insures a mortgage  
14 interest that is excepted in a fee or leasehold policy or contract, and  
15 which does not exceed the insured amount of the fee or leasehold policy  
16 or contract, is excluded in computing the amount of a single insurance  
17 risk;

18 (7) "title insurance" means insuring, guaranteeing or  
19 indemnifying owners of real or personal property or the holders of liens  
20 or encumbrances on it or others interested therein against loss or  
21 damage suffered by reason of

22 (A) liens, encumbrances upon, defects in or the un-  
23 marketability of the title to the property; or

24 (B) the invalidity or unenforceability of liens or  
25 encumbrances on the property;

26 (8) "title insurance agent" means a person, firm, association,  
27 trust, corporation, cooperative, joint-stock company or other legal  
28 entity authorized in writing by a title insurance company to solicit  
29 title insurance, collect premiums, determine insurability in accordance

1 with the underwriting rules and standards prescribed by the title  
2 insurance company which the agent represents, and issue policies in its  
3 behalf; however, the term "title insurance agent" does not include  
4 officers and salaried employees of a title insurance company;

5 (9) "title insurance company" means a domestic company  
6 organized under the provisions of this title for the purpose of carrying  
7 on the business of title insurance, or any foreign title insurance  
8 company issued a certificate of authority to transact a title insurance  
9 business in this state and any title insurance company having the power  
10 and authority to transact a title insurance business within this state  
11 as of the effective date of this Act.

12 \* Sec. 7. Nothing in this chapter affects an act done, liability incurred,  
13 or right accrued or established, or suit or prosecution pending to enforce  
14 a right or penalty under the authority of a statute or regulation existing  
15 before the effective date of this Act.

16 \* Sec. 8. AS 21.12.100, 21.66.070, and 21.66.150 are repealed.  
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