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COMMITTEE REPORT
SENATE

2/16/82

FURTHER: None

Date: 10 MARCH 1982

Mr. President:

The Committee on LABOR & COMMERCE has had SE 798
relating to title insurance rating organizations

under consideration and (a majority of the committee) (the committee)
reports it back with the following recommendations:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for _____ same title
 new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

Edce

Robert Anderson

...

...

Bob Anderson

CHAIRMAN

STATE OF ALASKA

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF INSURANCE

JAY S. HAMMOND, GOVERNOR

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LEGISLATIVE POSITION PAPER
SB 798 and HB 846
March 8, 1982

SB 798 and HB 846 are identical proposals relating to title insurance rating organizations. The proposal would permit the use of a title insurance rating organization by title insurance companies doing business in this state. Current Alaska law regulating title insurance (AS 21.66) derives from a model law drafted by the American Land Title Association which includes a provision for title insurance rating organizations. This provision was not included when the current Alaska title insurance law was adopted in 1974. This was due primarily to the objections of this division. It was felt that rating organizations for title insurance would not be in the best interest of the Alaska insuring public.

Rating organizations typically develop and file rates, rules, rating plans, statistical plans, contract forms and endorsements on behalf of member and subscriber companies. They enable companies to act together in these issues and provide a broader base of experience and credibility for the rates used as well as reduce insurance company expenses by avoiding duplication of some rate development functions. Insurers are able to act in this fashion because of enabling Federal legislation, namely, the McCarran-Ferguson Act (Public Law No. 15, 79th Congress, 1st Session 1945, 59 Stat. 33, 15 U.S.C. Secs. 1011-1015). This approach has been used in property, casualty, surety and marine lines of insurance for most of this century. Rating organizations have been viewed as anti-competitive devices in the property, casualty, surety and marine field and indeed some modification of their role in those markets should be and is being considered.

The marketing of title insurance is distinctly different from property, casualty, surety and marine kinds of insurance. Competition is structured differently. This is due in part to the fact that title insurance is almost always an incidental part of a transaction involving real estate. It is also due in part to the fact that while most other kinds of insurance are based on a rate making methodology that reflects

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risk assumption and distribution, title insurance is based on a methodology that looks to risk avoidance or risk elimination. There is no one way to establish and support rates for title insurance in this state. In fact the principal method currently is to follow the leader. We have concluded that the best way to develop a rate-making methodology with all that is needed to support such a system is to enable a rating organization for title insurance. It would admittedly provide a rating system with uniform rates, but we have rates that are uniform now. It would provide a vehicle for developing supportive statistics and distributing information to the public. We believe that a title insurance rating organization could provide a positive and favorable force in this state and assist the division to effectively meet its responsibilities under the insurance law of Alaska.

We have one principal concern with the bill. That concern is that current problems with the divisions procedures for disapproving a filing relating to title insurance would be compounded with passage of this proposal. AS 21.66.400 now provides that the division can only disapprove a filing after a hearing has been held. We would propose that the authority to disapprove a filing without first holding a hearing be granted. Our proposal would still provide for a hearing when it is requested by the person which made the disapproved filing. This approach is currently incorporated in the property, casualty, surety and marine rate law (AS 21.39.120). Given this change (proposed language attached) we support the enabling authority for a title insurance rating organization proposed in SB 798 and HB 846.

Suggested amendments to SB 798 and HB 846

In both bills, remove the material on page 3, lines 5 through 29 and page 4, lines 1 through 15 and replace with the following:

CURRENT LAW

Sec. 21.66.400. Disapproval of filings. (a) Upon the review at any time by the director of a filing, he shall, before issuing an order of disapproval, hold a hearing upon not less than 10 days written notice, specifying in reasonable detail the matters to be considered at the hearing. Notice of the hearing shall be given to each title insurance company which made a filing, and if, after the hearing, the director finds that the filing or a part of the filing does not meet the requirements of this chapter, he shall issue an order specifying how it is deficient, and when, within a reasonable period thereafter, the filing or a part of it is considered no longer effective, if the filing or a part of it has become effective under the provisions of sec. 370 of this chapter. A title insurance company has the right at any time to withdraw a filing or a part of a filing. Copies of the order issued under this section shall be sent to every title insurance company affected. The order does not affect a contract or policy made or issued before the expiration of the period set out in the order.

PROPOSED LAW

Sec. 21.66.400. DISAPPROVAL OF FILINGS. (a) If within the waiting period provided for in sec. 370(c) of this chapter, the director finds that a filing does not meet the requirements of this chapter, he shall send to the title insurance company or title insurance rating organization which made the filing, written notice of disapproval of the filing specifying in what respects he finds the filing fails to meet the requirements of this chapter and stating that the filing shall not become effective.

(b) If at any time subsequent to the applicable review period provided for in sec. 370(c) of this chapter, the director finds that a filing does not meet the requirements of this chapter, he shall, before issuing an order of disapproval, hold a hearing upon not less than 10 days written notice, specifying in reasonable detail the matters to be considered at the hearing. Notice of hearing shall be given to each title insurance company or title insurance rating organization which made the filing, and if, after the hearing, the director finds that the filing or a part of the filing does not meet the requirements of this chapter, he shall issue an order specifying how it is deficient, and when, within a reasonable period thereafter, the filing or a part of it is considered no longer effective. A title insurance company or title insurance rating organization has the right to withdraw a filing or a part of a filing. Copies of the order issued under this section shall be sent to every title insurance company and title insurance rating organization affected. The order does not affect a contract or policy made or issued before the expiration of the period set out in the order.

COMMENTS

The proposed law splits the current subsection (a). The new subsection (a) allows disapproval of a title filing, when done within the waiting period, without a hearing. The new subsection (d) provides for a hearing in such cases when requested. This procedure is the same as is now being used for property, casualty, surety, and marine insurance regulated under AS 21.39.

The new subsection (b) is the same procedure applied to filings to be disapproved after the filing has become effective. The only difference basically is the added language for title insurance rating organizations.

CURRENT LAW

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

PROPOSED LAW

(c) A person or organization aggrieved with respect to a filing which is in effect may make a written application to the director for a hearing on the filing. The title insurance company or title insurance rating organization that made the filing may not proceed under this subsection. The application shall specify in reasonable detail the grounds to be relied upon by the applicant. If the director finds that the application is made in good faith, and that the applicant would be aggrieved if his grounds are established, and that his grounds otherwise justify holding a hearing, he shall, within 60 days after receipt of the application, hold a hearing upon not less than 10 days written notice to the applicant and to each title insurance company or title insurance rating organization which made such a filing. If, after the hearing, the director finds that the filing or a part of it does not meet the requirements of this chapter, he shall issue an order specifying how the filing or a part of it fails to meet the requirements of this chapter, stating when, within a reasonable period after the order is issued, the filing or a part of it is considered no longer effective. Copies of the order shall be sent to the applicant and to every affected title insurance company or title insurance rating organization. The order does not affect a contract or policy made or issued before the expiration of the period set out in the order.

COMMENTS

Current subsection (b) is the same as proposed subsection (c) except that title insurance rating organizations have been reflected and the period for granting a hearing under the subsection has been extended from 30 days to 60 days. The real effect is to require notice of hearing within 50 days rather than 20 days.

CURRENT LAW

PROPOSED LAW

COMMENTS

NONE

(d) A title insurance company or title insurance rating organization to which the director has issued an order made without a hearing may, within 30 days after notice to it of the order, make a written request to the director for a hearing. The director shall hear the party or parties within 60 days after receipt of the request and shall give not less than 10 days written notice of the time and place of the hearing. Within 15 days after the hearing the director shall affirm, reverse or modify his previous action, specifying his reasons. Pending the hearing and decision the director may suspend or postpone the effective date of his previous action.

This subsection has been noted in the discussion relating to the splitting of current subsection (a).

NONE

(e) A hearing under this section is not required to observe formal rules of pleading or evidence.

This is a new subsection and is self-explanatory.

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

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

Current subsection is identical to proposed subsection (f).



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-- SB 798 Sectional Analysis:

Section 1) Amends AS 21.66.370(a) relating to title insurance rate filings; new language provides that a title insurance company may make rate filings by becoming a member, or a subscriber, to a licensed title insurance rating organization that makes such filings, and by authorizing the commissioner to accept filings on its behalf.

Section 2) Amends AS 21.66.370(c) relating to 30 day waiting periods and extensions for review of rate filings by the director of insurance. Inserts the words "or rating organization" following title insurance company throughout the section.

Section 3) Amends AS 21.66.380(a) relating to justification of rates by inserting the words or title rating organization throughout the section.

Section 4) Amends section dealing with rate making; inserting words title insurance rating organization throughout the section.

Section 5) and 6): relating to disapproval of filings inserting the words title insurance rating organization throughout the section.

Section 7)A. adds new section relating to licensing title insurance rating organizations and specifies criteria to be addressed as part of the application:

- (1) a copy of its constitution, its articles of agreement, or its certificate of incorporation and a copy of its bylaws and rules governing the the conduct of its business;
- (2) A list of its members and subscribers;
- (3) the name and address of a resident of the state upon whom notices or orders of the director or process affecting the rating organization may be served; and
- (4) A statement of its qualifications as a title insurance rating organization



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SB 798 continued:

Section 7 (b): If the director finds the applicant to be qualified as a title insurance rating organization, and its rules governing the conduct of its business conform to the requirements of the law, the director shall issue to the title insurance rating organization a license. Each application shall be granted or denied in whole or in part within 60 days after the date of filing with the Director of Insurance.

(c): The fee for a license is \$100, and the license remains in effect for three years unless it is withdrawn by the licensee, or suspended or revoked by the director.

(d): a title insurance rating organization license may be suspended or revoked by the director, after a hearing and upon notice, if the organization fails to meet the requirements of this subsection. Each title insurance rating organization shall notify the director of a change in:

- (1) its constitution, articles of agreement, or its certificate of incorporation, and its bylaws and rules governing the conduct of its business.
- (2) its list of members and subscribers
- (3) the name and address of a resident of the state designated by it and to whom notices or orders of the director may be sent.

(e): Subject to rules that have been approved by the director, each title insurance rating organization shall permit any title insurance company to be a member without discrimination, or to withdraw as a member, and rating services shall be at a reasonable cost.

(f) Notice of a proposed change in rules of the title insurance rating organization must be given to members and subscribers. The reasonableness of a rule or the refusal of a rating organization to admit a title insurance company as a subscriber shall, at the request of a subscriber or a title insurance company, be reviewed by the director, at a hearing held at least 10 days after written notice to the rating organization and to the subscriber. If the director finds that the rule is unreasonable, he shall order that the rule may not apply to subscribers. If the title insurance

rating organization fails to grant or reject an application for subscribership within 30 days, the title insurance company may request a review by the director as if the applicaiton had been rejected. If the director finds that the title insurance company has been refused admittance to the rating organization without justification, he shall order the rating organization to admit them. If he finds the action was justified, he shall make an order affirming the action.

(g) Concert of action among title insurance companies and rating organizations is authorized if the resulting filing is subject to the porvisions of this section that apply to filings generally.

(h) Two or more title insurance companies who are members of ^A rating organization may act in concert with each other with respect to rate making, policy forms, underwriting rules, surveys, inspections and investigations, loss and expense data, and research

(i) the director may review activities and rpactices of the rating orgaiztion, and if after a hearing, he finds the action inconsistent with the provisions of this section, he may issue a written order requiring the discontinuance of the practice.

Sec 21.66.402 DEVIATIONS FROM FILINGS OF RATING ORGANIZATIONS each member of a rating organization must adhere to the filings made in its behalf, except that a title insurance company may file with the director a decrease or increase to be applied to the rates of a rating organization, if the increase or decrease is found by the director to be a proper rating for a particular area. The filing must specify the basis for the deviaiton in the rating, and a copy of the filing and data shall be sent to the rating organization. Each deviation shall be in effect for one year, unless terminated with the approval of the director or in accordance with the provisions of AS 21.66.400.

Sec 21.66.403 APPEAL FROM ACTION OF RATING ORGANIZATION. A member of a rating organization may appeal to the director an action from the rating organization approving or rejecting a proposed change in the filing of a rating organization. If the rating organization fail to act on a sukmission (proposal) within 30 days, it shall mean a rejection of the proposal.

(b) The director shall, after a hearing held with at least 10 days written notice to the appellant and rating organization, issue an order approving the decision of a rating organization, or an order directing the rating organization to give further consideration to the proposal, and take action within 30 days.

(c) If the director finds that the action on an appeal, by the rating organization, was unreasonable, he may issue an order to the rating organization to make an addition to its filing, in a manner consistent with his findings, and within a reasonable time after the issuance of his order. If either the action of the rating organization (proposed changes in rate filings) or the modificaiton proposed by the appellant is in accordance with this chapter, the director shall approve the action.

(d) An appeal, based on the failure of a rating organization to make a filing on

on behalf of a member, in accordance with the rights granted in AS 21.66.390, the director shall, if he grants the appeal, order the rating organization to make the requested filing for use by the appellant. In deciding the appeal, the director shall apply the standards set out in AS 21.66.390.

Section 8 Amends AS 21.66.410 (c) inserts the phrase title insurance rating organization in the presently established section.

Section 9 Addresses the prohibition against giving false or misleading information to the title insurance rating organization by title insurance companies or agents which would effect filing rates allowable under this chapter.

Section 10) Adds title insurance rating organizations to the list of organizations which may have a penalty imposed by the director for violations of this chapter.

Section 11) Adds title insurance rating organizations to whom the director may suspend the certificate of authority for failure to comply with an order of the director within the time limit allowed by the order. Certificate may not be suspended until the time for an appeal has expired, or if an appeal has been taken, until the order has been affirmed.

Section 12) Immediate effective date.



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SB 798; Summary

Allows a title insurance company to become a member of a title insurance rating organization in order to satisfy its obligations in filing schedules, and rules and plans relating to schedules of rates or manuals of classification, and modifications it proposes to use in the state.

The director, Div of Insurance, may issue licenses to title insurance rating organizations, if he finds the applicant competent, trustworthy, and qualified. License to be in effect for three years, and may be suspended or revoked if the organization ceases to meet its requirements. Rating organizations must allow any title insurance company to become a member at a reasonable cost. Members or subscribers must adhere to filings made on its behalf except that the company may file a decrease or increase to be applied to any element of the rates produced by the rating system for a class of title insurance that is found, by the director, to be a proper rating unit for the application of the decrease or increase, or to be applied to the rates for a particular area. Further grants the right to appeal to the director, actions and decisions of the rating organization.

Makes amendments to the various sections dealing with title insurance companies to include title rating organizations (rate filing, justification of rates, making of rates, disapproval of filings, false or misleading information and penalties.)

Sec. 21.66.330. Examination of records. If the director has reason to believe that a title insurance agent has violated or is in violation of AS 21.66.310, he shall immediately examine the title insurance agent's books of account and record and vouchers pertaining to the business of title insurance. The title insurance agent shall pay to the director the cost of an examination conducted under this section. (§ 6 ch 120 SLA 1974)

Sec. 21.66.340. Additional penalty for rebates. A person who violates AS 21.66.310 is liable to the state for five times the amount or value of the rebate, reduction, or abatement of any rate or charge made incident to the issuance of title insurance, or a special favor or advantage, or a monetary consideration or inducement. (§ 6 ch 120 SLA 1974)

Sec. 21.66.350. Division of rates. Nothing in AS 21.66.010 — 21.66.480 prohibits the division of rates and charges between or among a title insurance company and its agent, two or more title insurance companies, one or more title insurance companies and one or more title insurance agents, or two or more title insurance agents, if the division of rates and charges does not constitute an unlawful rebate and is not in payment of a forwarding fee or finder's fee. (§ 6 ch 120 SLA 1974)

Sec. 21.66.360. Purpose of title insurance rate regulation. The purpose of AS 21.66.370 — 21.66.400 is to promote the public welfare by regulating title insurance rates so that they are not excessive, inadequate or unfairly discriminatory, and to authorize cooperative action between or among title insurance companies in rate making and other matters within the scope of AS 21.66.010 — 21.66.480. Nothing in AS 21.66.010 — 21.66.480 is intended to prohibit or discourage uniformity in title insurance rates, rating systems and rating plans and practices. (§ 6 ch 120 SLA 1974)

Sec. 21.66.370. Rate filing. (a) A title insurance company shall file with the director its schedules of rates, manuals of classifications, rules and plans relating to schedules of rates or manuals of classification, and every modification of the schedules or manuals which it proposes to use in this state. A filing under this section shall contain the effective dates of the documents filed, and indicate the character and extent of the coverage contemplated.

(b) The director shall review the filings as necessary to carry out the provisions of AS 21.66.010 — 21.66.480.

(c) Subject to the provisions of (e) of this section, each filing shall be on file for a period of 30 days before it becomes effective. The director may, upon written notice given within the 30-day period to the person making the filing, extend the waiting period for an additional period, not to exceed 30 days, in order to complete the review of the filing. Additional extensions of the waiting period may also be made with the

consent of the title insurance company. Upon written application by the title insurance company, the director, after review of the application, may authorize a filing or any part of it to become effective upon the expiration of the waiting period or its extension.

(d) Except for rates filed under (e) of this section, a filing which has become effective is considered to meet the requirements of AS 21.66.010 — 21.66.480.

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

(f) Beginning November 12, 1974, no title insurance company or agent of a title insurance company may charge a rate for a policy or contract of title insurance except in accordance with filings or rates which are in effect for the title insurance company as provided in AS 21.66.010 — 21.66.480.

(g) The director may not regulate, or require the filing of, rates paid by title insurance companies for reinsurance contracts or agreements, or policies of excess co-insurance. (§ 6 ch 120 SLA 1974)

Sec. 21.66.380. Justification for rates. (a) A rate filing shall be accompanied by a statement of the title insurance company making the filing, setting out the basis on which the rate was determined, with the rates computed. A filing of rates may be justified by the following:

- (1) the experience or judgment of the title insurance company making the filing,
- (2) its interpretation of any statistical data relied upon,
- (3) the experience of other title insurance companies making the filings, or
- (4) any other factors which the title insurance company considers relevant.

(b) The statement and justification provided for in this section shall be open to public inspection. (§ 6 ch 120 SLA 1974)

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

- (1) the desirability for stability of rate structures;
- (2) the necessity of assuring the financial solvency of title insurance companies in period of economic depression by encouraging growth in assets of title insurance companies in periods of high business activity; and

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(3) the necessity for assuring a reasonable margin of underwriting and operating profit.

(b) A title insurance company that makes its own rates shall adopt basic classifications of policies or contracts of title insurance which shall be used as the basis for rate-making. (§ 6 ch 120 SLA 1974)

Sec. 21.66.400. Disapproval of filings. (a) Upon the review at any time by the director of a filing, he shall, before issuing an order of disapproval, hold a hearing upon not less than 10 days written notice, specifying in reasonable detail the matters to be considered at the hearing. Notice of the hearing shall be given to each title insurance company which made a filing, and if, after the hearing, the director finds that the filing or a part of the filing does not meet the requirements of AS 21.66.010 — 21.66.480, he shall issue an order specifying how it is deficient, and when, within a reasonable period thereafter, the filing or a part of it is considered no longer effective, if the filing or a part of it has become effective under the provisions of AS 21.66.370. A title insurance company has the right at any time to withdraw a filing or a part of a filing. Copies of the order issued under this section shall be sent to every title insurance company affected. The order does not affect a contract or policy made or issued before the expiration of the period set out in the order.

(b) A person or organization aggrieved with respect to a filing which is in effect, may make written application to the director for a hearing on the filing. The title insurance company that made the filing may not proceed under this subsection. The application shall specify in reasonable detail the grounds to be relied upon by the applicant. If the director finds that the application is made in good faith, and that the applicant would be aggrieved if his grounds are established, and that his grounds otherwise justify holding a hearing, he shall, within 30 days after receipt of the application, hold a hearing upon not less than 10 days written notice to the applicant and to each title insurance company which made such a filing. If, after the hearing, the director finds that the filing or a part of it does not meet the requirements of AS 21.66.010 — 21.66.480, he shall issue an order specifying how the filing or a part of it fails to meet the requirements of AS 21.66.010 — 21.66.480, stating when, within a reasonable period after the order is issued, the filing or a part of it is considered no longer effective. Copies of the order shall be sent to the applicant and to every such title insurance company. The order does not affect a contract or policy made or issued before the expiration of the period set out in the order.

(c) No filing, or modification of a filing may be disapproved if the rates in connection with the filing meet the requirements of AS 21.66.010 — 21.66.480. (§ 6 ch 120 SLA 1974)

Sec. 21.66.410. Rate administration. (a) The director may prescribe by regulation (1) guidelines reasonably adaptable to each of the

rating system: (1) file with him; (2) a uniform classification of accounts to be observed, (3) statistics to be reported; and (4) uniform forms for reporting this data by all title insurance companies.

(b) Regulations may be promulgated by the director for the interchange of data necessary for the application of rating plans.

(c) In order to more uniformly administer rate regulations, the director and each title insurance company may exchange information and experience data with insurance supervisory officials, title insurance companies and title insurance rating organizations in other states, and may consult with them and with each other with respect to rate making and the application of rating systems. (§ 6 ch 120 SLA 1974)

Sec. 21.66.420. False or misleading information. No title insurance company or title insurance agent may wilfully withhold information from, or knowingly give false or misleading information to the director. (§ 6 ch 120 SLA 1974)

Sec. 21.66.430. Penalties. (a) The director may, if he finds that a title insurance company, or title insurance agent has violated a provision of AS 21.66.010 — 21.66.480, impose a penalty of not more than \$100 for each violation. However, if the violation is wilful, he shall impose a penalty of not more than \$1,000 for each violation. Penalties imposed under this section are in addition to any other penalties provided by law.

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

(c) The director may determine when a suspension of a certificate of authority becomes effective, and it remains in effect until modified or rescinded by the director or until the order upon which the suspension is based is modified, rescinded or reversed.

(d) No penalty may be imposed and no certificate of authority may be suspended or revoked except upon a written order of the director, stating his findings, and made after a hearing held upon not less than 10 days written notice to the person or organization, specifying the alleged violation. (§ 6 ch 120 SLA 1974)

Sec. 21.66.440. Existing filings and hearings continued. All title insurance manuals of classifications, rules and rates, rating plans and their modifications filed before August 14, 1974 shall be considered to have been filed under AS 21.66.010 — 21.66.480. All hearings and investigations pending before August 14, 1974 shall be continued under AS 21.66.010 — 21.66.480. (§ 6 ch 120 SLA 1974)

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