

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 575

BY WAYS AND MEANS COMMITTEE

AN ACT

1 RELATING TO TITLE INSURANCE; AMENDING SECTION 41-2704, IDAHO CODE, TO ESTAB-  
2 LISH ADDITIONAL PROVISIONS RELATING TO THE BUSINESS OF TITLE INSURANCE  
3 AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 41-2705, IDAHO  
4 CODE, TO ESTABLISH ADDITIONAL PROVISIONS RELATING TO THE BUSINESS OF  
5 TITLE INSURANCE OPERATING UNDER THE CONTROL AND SUPERVISION OF THE DI-  
6 RECTOR OF THE DEPARTMENT OF INSURANCE; AMENDING SECTION 41-2707, IDAHO  
7 CODE, TO REQUIRE THAT EVERY TITLE INSURER OR RATING ORGANIZATION FILE  
8 WITH THE DIRECTOR OF THE DEPARTMENT OF INSURANCE CLOSING OR SETTLEMENT  
9 PROTECTION AND TO MAKE CODIFIER'S CORRECTIONS; AND AMENDING CHAPTER 27,  
10 TITLE 41, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 41-2714, IDAHO  
11 CODE, TO PROVIDE THAT A TITLE INSURER MAY ISSUE CLOSING OR SETTLEMENT  
12 PROTECTION TO CERTAIN PERSONS AND TO PROVIDE RELATED REQUIREMENTS.  
13

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

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

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

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

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

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

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

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

40 SECTION 2. That Section 41-2705, Idaho Code, be, and the same is hereby  
41 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, the proportion of  
19 the premium for title insurance which is retained by a title insurance agent  
20 and the portion which is retained by a title insurer, shall be determined  
21 within the provisions of sections 41-2706, 41-2707 and 41-2708, Idaho Code,  
22 and the general provisions of title 41, Idaho Code; provided, not later than  
23 the effective date hereof each title insurer shall file its premium rates and  
24 basic policy classification in relation thereto, and the said rate so filed  
25 shall continue until changed as herein provided.

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

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

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

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

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

46           SECTION 3. That Section 41-2707, Idaho Code, be, and the same is hereby  
47 amended to read as follows:

48           41-2707. FILING OF TITLE INSURANCE RATES -- HEARINGS. (1) Pursuant to  
49 such regulations as the director of the department of insurance may adopt,

1 every title insurer or rating organization shall file with the director of  
 2 the department of insurance its schedule of rates, basic classifications of  
 3 policies or contracts, closing or settlement protection, and rules pertain-  
 4 ing thereto, and every modification of any of the foregoing, and the direc-  
 5 tor of the department of insurance may file for modifications of any of such  
 6 rates, basic classifications, and rules previously filed and approved or un-  
 7 der consideration for approval. Every filing by a title insurer, rating or-  
 8 ganization of the director of the department of insurance shall propose an  
 9 effective date and shall not be effective until:

10 (a) ~~a~~Notice of such filing shall forthwith be given to title insurers  
 11 qualified to do business in the state of Idaho and the filing shall be avail-  
 12 able for public inspection for thirty (30) days after its date of filing;

13 (b) ~~a~~Any interested party may file comments on and objections to the  
 14 proposed filing or any part set forth therein during said period of public  
 15 inspection;

16 (c) ~~i~~In the event of a filing by a title insurer or rating organization,  
 17 whether or not comment or objection thereon has been received, which, in the  
 18 judgment of the director, meets the requirements of section 41-2706, Idaho  
 19 Code, the same may be approved without public hearing; and

20 (d) ~~e~~On any filing by an insurer or rating organization which upon re-  
 21 view the director believes he may disapprove, or on a filing made by the di-  
 22 rector, the director shall hold a public hearing on or before sixty (60) days  
 23 from the date of the original filing upon not less than ten (10) days' written  
 24 notice of the hearing specifying in reasonable detail the matters to be con-  
 25 sidered at such hearing, notice to be given to every title insurer and title  
 26 insurance rating organization, and to such other persons who have filed ob-  
 27 jection or comment thereto.

28 Upon such hearing, and not later than thirty (30) days thereafter, the  
 29 director of the department of insurance shall order all or any part of such  
 30 filing which he deems approved to be in effect as of the date of such order,  
 31 and if he finds the filing or a part thereof does not meet the requirements of  
 32 title 41, Idaho Code, he shall issue an order specifying in what respects he  
 33 finds that it so fails, stating when, within a reasonable period thereafter,  
 34 such filing or a part thereof shall no longer be deemed effective if such fil-  
 35 ing or a part thereof has been effective prior thereto. Such order shall not  
 36 affect any contract or policy made or issued prior to the effective date of  
 37 said order changing any rate, or policy classification or form.

38 A title insurer, a title insurance rating organization or the director  
 39 shall have the right at any time prior to an order thereon to withdraw a fil-  
 40 ing or a part thereof. Notice of such withdrawal shall be sent to each title  
 41 insurer in the state that received notice of the original filing and to any  
 42 person commenting on the filing.

43 (2) Any person or organization, other than a title insurer or title in-  
 44 surance rating organization, aggrieved by any filing in effect or proposed  
 45 may make written application to the director specifying in reasonable de-  
 46 tail the grounds of the objection relied upon by the applicant. The direc-  
 47 tor, upon finding such application is made in good faith, there is reasonable  
 48 cause for the grounds alleged by the applicant, that the applicant would be  
 49 so aggrieved if his grounds are established, and that such grounds otherwise  
 50 justify holding a hearing, shall, within ninety (90) days after receipt of

1 such application, hold a hearing upon not less than thirty (30) days' written  
 2 notice to the applicant and to every title insurer, title insurance rating  
 3 organization, and agent involved in the filing challenged. If, after such  
 4 hearing, the director finds that the filing or a part thereof does not meet  
 5 the requirements of title 41, Idaho Code, he shall issue an order specifying  
 6 in what respect he finds that such filing or part thereof fails to meet the  
 7 requirements, and stating when, within a reasonable period thereafter, such  
 8 filing or a part thereof shall be deemed no longer effective. Copies of the  
 9 order shall be sent to the applicant and to every such title insurer and ti-  
 10 tle insurance rating organization and agent. Such order shall not affect any  
 11 contract or policy made or issued prior to the expiration of the period set  
 12 forth in the order.

13 (3) No filing nor any modification thereof shall be disapproved if the  
 14 rate in connection therewith meets the requirements of this chapter.

15 SECTION 4. That Chapter 27, Title 41, Idaho Code, be, and the same is  
 16 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
 17 ignated as Section 41-2714, Idaho Code, and to read as follows:

18 41-2714. CLOSING OR SETTLEMENT PROTECTION. (1) A title insurer may is-  
 19 sue closing or settlement protection to a buyer, borrower or lender that is a  
 20 party to a transaction in which a title insurance policy will be issued. The  
 21 closing or settlement protection shall be on a form filed with the department  
 22 in accordance with section 41-2705, Idaho Code.

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

28 (a) Theft or misappropriation of settlement funds in connection with a  
 29 transaction in which a title insurance policy or title insurance poli-  
 30 cies will be issued by or on behalf of the title insurer issuing the  
 31 closing or settlement protection, but only to the extent that the theft  
 32 relates to the status of the title to that interest in land or to the va-  
 33 lidity, enforceability and priority of the lien of the mortgage on that  
 34 interest in land.

35 (b) Failure to comply with the written closing instructions when  
 36 agreed to by the settlement agent, title agent or employee of the title  
 37 insurer, but only to the extent that the failure to follow the instruc-  
 38 tions relates to the status of the title to that interest in land or the  
 39 validity, enforceability and priority of the lien of the mortgage on  
 40 that interest in land.

41 (3) The fee charged by a title insurer for each transaction that in-  
 42 cludes closing protection coverage shall not be subject to any agreement re-  
 43 quiring a division of fees or premiums collected on behalf of the title in-  
 44 surer. The fee shall:

45 (a) Be filed with the department according to section 41-2707, Idaho  
 46 Code; and

47 (b) Be the only fee charged for closing protection.

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