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INSURANCE CODE - INS

DIVISION 2. CLASSES OF INSURANCE [1880 - 12880.8] (*Division 2 enacted by Stats. 1935, Ch. 145.*)

PART 6. INSURANCE COVERING LAND [12340 - 12661] (*Part 6 enacted by Stats. 1935, Ch. 145.*)

CHAPTER 1. Title Insurance [12340 - 12418.4] (*Chapter 1 enacted by Stats. 1935, Ch. 145.*)

ARTICLE 5.5. Rate Filing and Regulation [12401 - 12401.10] (*Article 5.5 added by Stats. 1973, Ch. 1130.*)

12401. The purpose of this article is to promote the public welfare by regulating rates for the business of title insurance as herein provided to the end that they shall not be excessive, inadequate or unfairly discriminatory. It is the express intent of this article to permit and encourage competition between persons or entities engaged in the business of title insurance on a sound financial basis, and nothing in this article is intended to give the commissioner power to fix and determine a rate level by classification or otherwise.

(*Repealed and added by Stats. 1973, Ch. 1130.*)

12401.1. Every title insurer, underwritten title company, and controlled escrow company shall file with the commissioner its schedules of rates, all regularly issued forms of title policies to which such rates apply, and every modification thereof which it proposes to use in this state. Every schedule of rates filed by a title insurer shall set forth the entire charge to the public for each type of title policy included within such schedule and shall include without separate statement thereof that portion of the charge, if any, which is based upon work performed by an underwritten title company; there shall be no separate filing by an underwritten title company for such work. Every filing shall set forth its effective date, which shall be not earlier than the 30th day following its receipt by the commissioner, and shall indicate the character and extent of the coverages and services contemplated.

(*Added by Stats. 1973, Ch. 1130.*)

12401.2. Every title insurer, underwritten title company and controlled escrow company shall establish basic classifications of coverages and services to be used as the basis for determining rates.

(*Added by Stats. 1973, Ch. 1130.*)

12401.3. The following standards shall apply to the making and use of rates pertaining to all the business of title insurance to which the provisions of this article are applicable:

(a) Rates shall not be excessive or inadequate, as herein defined, nor shall they be unfairly discriminatory.

No rate shall be held excessive unless (1) the rate is unreasonably high for the insurance or other services provided, and (2) a reasonable degree of competition does not exist in the particular phase of the business of title insurance to which the rate is applicable.

No rate shall be held to be inadequate unless (1) the rate is unreasonably low for the insurance or other services provided and (2) the continued use of the rate endangers the solvency of the person or entity using it, or unless (3) the rate is unreasonably low for the insurance or other services provided and the use of the rate by the person or entity using it has, or if continued will have, the effect of destroying competition or creating a monopoly. However, no rate or rate classification shall be held to be inadequate for the reason that a rate within a rating classification is less than the cost of the risk and expense elements assigned to smaller insurances within that classification, and the excess of the costs may be charged against larger insurances within the classification without rendering the rate or rate classification unfairly discriminatory.

(b) Consideration shall be given, to the extent applicable, to past and prospective loss experience within and outside this state, to a reasonable margin for profit and contingencies, to past and prospective expenses both countrywide and those specially applicable to this state, and to all other factors, including judgment factors, deemed relevant within and outside this state.

(c) The systems of expense provisions included in the rates for use by any title insurer, underwritten title company, or controlled escrow company may differ from those of other title insurers, underwritten title companies, or controlled escrow companies to reflect

the operating methods of the person or entity with respect to any kind of insurance, or other service, or with respect to any combination thereof.

(d) For the establishment of rates, risks, and services in the business of title insurance may be grouped by classifications into the various types of title policies or services offered. The classifications may be further divided to produce rates for individual risks or services within a classification. Those classifications or further divisions thereof may be established based upon any one or more of the following: (1) the size of a transaction and its effect upon the continuing solvency of the person or entity using the rate in question if a loss should occur; (2) expense elements, including the management time that would ordinarily be expended in a typical transaction of a particular size; (3) the geographic location of a transaction, including variations in risk and expense elements attributable thereto; (4) the individual experience of the person or entity using the rate in question; and (5) any other reasonable considerations. Those classifications or further divisions thereof shall apply to all risks and services in the business of title insurance under the same or under substantially the same circumstances or conditions.

(Amended by Stats. 1981, Ch. 714, Sec. 311.)

12401.4. In order to further uniform administration of rate regulatory laws, the commissioner and every person or entity in the business of title insurance and every advisory organization in this state may exchange information and experience data with insurance supervisory officials of this and other states and rating organizations in other states and may consult with them with respect to such information and data.

(Added by Stats. 1973, Ch. 1130.)

12401.5. As a further aid to uniform administration of rate regulatory laws of this state, the commissioner may prescribe by reasonable rules and regulations:

(a) For the annual reporting of financial data relating to the aggregate economic performance of all title insurance entities conducting the business of title insurance in this state. That data, if required, shall be for the purpose of determining the industry financial experience for the reporting year and shall reflect the after-tax rate of return on total capital, including investment income and realized and unrealized capital gains, from whatever source attributable to operations in this state.

(b) A statistical plan, reasonably adapted to each of the rating systems in use within the state. Any plan may be modified from time to time by the commissioner and shall be used thereafter by each title insurer in the reporting of data required by the plan, so that the experience of all title insurers is available to the commissioner on an annual basis. The commissioner, through regulations, shall prescribe the form and detail of the financial data to be submitted and the time period the data shall cover. In promulgating the plan, the commissioner may give due consideration to the rating systems in use and, in order that the plan may be as uniform as is practicable among the several states, to the rules and to the form of the plan used for these rating systems in other states. Every licensed title insurer in the state shall be required to record and report data directly to the commissioner. The commissioner shall designate one or more advisory organizations to assist in the development of the statistical plan and to further assist in gathering data and making compilations thereof, and these compilations shall be made available, subject to reasonable rules adopted by the commissioner, to title insurers and advisory organizations.

(c) No statistical plan or modifications thereto, or rules or regulations pertaining thereto, shall be adopted or implemented absent compliance with the provisions of Article 5 (commencing with Section 11346) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code, except that any plan, rule, or regulation shall not become effective for a period of 120 days following its adoption, and any plan, rule, or regulation shall be deemed to be a regulation required to be filed with the Secretary of State for purposes of Article 5 (commencing with Section 11346) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code.

(d) Data gathered under the statistical plan may be used in conjunction with analytical input from an industry advisory organization to generate statistical information for use in reviewing and evaluating individual rate filings by title insurers pursuant to the standards set forth in Section 12401.3. However, no statistical plan or modifications thereto, or rules or regulations pertaining thereto, shall do any of the following:

(1) Serve as the basis for an assessment not otherwise authorized by law.

(2) Conflict with the purpose and express intent of Section 12401.

(3) Fix, determine, or in any way impair competitive rating or the free market.

(e) This section shall not require a title insurer to refile an existing rate. However, this section shall apply to the filing of a changed or otherwise modified rate, pursuant to the regulations adopted to implement this chapter.

(Amended by Stats. 1998, Ch. 919, Sec. 1. Effective January 1, 1999.)

12401.6. Nothing in this article shall be construed to prohibit concert of action between entities under the same general management and control.

(Added by Stats. 1973, Ch. 1130.)

12401.7. No title insurer, underwritten title company or controlled escrow company shall use any rate in the business of title insurance prior to its effective date nor prior to the filing with respect to such rate having been publicly displayed and made readily available to the public for a period of no less than 30 days in each office of the title insurer, underwritten title company, or controlled escrow company in the county to which such rate applies, and no rate increase shall apply to title policies or services which have been contracted for prior to such effective date.

(Added by Stats. 1973, Ch. 1130.)

12401.71. (a) Notwithstanding Sections 12401.1 and 12401.7, a title insurer, underwritten title company, or controlled escrow company may use a new rate prior to 30 days after the filing if the new rate results in a reduction from an existing rate, the earlier effective date is set forth in the filing, and the new rate has been publicly displayed and made readily available to the public prior to its effective date.

(b) Any rate reduction filed by a title insurer, underwritten title company, or controlled escrow company pursuant to subdivision (a) shall be subject to the authority of the commissioner as set forth in this article and Article 6.7 (commencing with Section 12414.13).

(c) Five years from the effective date of this section, and within existing resources, the department shall review the reduced rates authorized by this section to determine if they are inadequate or if they increase the possibility of title insurers becoming insolvent. This review shall be in addition to any other authorized by statute.

(Added by Stats. 2003, Ch. 440, Sec. 1. Effective January 1, 2004.)

12401.8. Charges in excess of those set forth in a rate filing which has become effective may be made when such filing includes a statement that such charges may be made in the event unusual insurance risks are assumed or unusual services performed in the transaction of the business of title insurance; provided, that such charges are reasonably commensurate with the risks assumed or the costs of the services performed and provided further that each person or entity obligated to pay all or any part of such charges consents thereto in writing in advance.

(Added by Stats. 1973, Ch. 1130.)

12401.9. The schedules of rates which are required to be filed with the commissioner under the provisions of Section 12401.1 shall be printed or typed in type not smaller than 10-point and, so long as they are effective, full copies thereof, showing their effective date or dates, shall be kept at all times available to the public and prominently displayed in a public place in each office of a title insurer, an underwritten title company and a controlled escrow company in the county to which such rates apply. On request, copies of such schedules or adequate summaries of the pertinent part or parts thereof shall be furnished to the public.

(Added by Stats. 1973, Ch. 1130.)

12401.10. Nothing in this article shall require the filing of rates by title insurers for reinsurance contracts or agreements or policies of excess coinsurance.

(Added by Stats. 1973, Ch. 1130.)