
**Insurance, Financial Services &
Consumer Protection Committee**

SSB 6847

Brief Description: Regulating real estate settlement services.

Sponsors: Senate Committee on Consumer Protection & Housing (originally sponsored by Senators Weinstein, Delvin, Haugen and Shin; by request of Insurance Commissioner).

Brief Summary of Substitute Bill

- Creates new standards for the review of title insurance rates.
- Prohibits illegal inducements in the title insurance business.

Hearing Date: 2/26/08

Staff: Jon Hedegard (786-7127).

Background:

Title insurance offers protection against the risk that the title to the specified property may be encumbered. Before issuing a policy, title insurers conduct a title search in order to determine possible encumbrances. Title insurers (insurers) and title agents (agents) are licensed and regulated by the Office of the Insurance Commissioner (OIC). Each insurer must file a rate schedule with the OIC. Every change to a schedule or a rate must be filed with the OIC. A rate is effective 15 days after filing. The Insurance Commissioner (Commissioner) may hold a hearing on a rate or schedule. The Commissioner may order the modification of any premium rate or schedule of premium rates that is found to be to be excessive, or inadequate, or unfairly discriminatory. No order may require retroactive modification.

The federal Real Estate Settlement Procedures Act (RESPA) prohibits the giving or receiving of anything of value to encourage the referral of business incident to real estate settlement services, including title insurance. Washington insurance statute prohibits insurers and agents from providing anything of value in excess of \$25 in connection with an insurance transaction. An OIC rule goes into greater detail regarding illegal inducements concerning title insurance. The rule

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

uses a \$25 per person over a 12 month period as an inducement, payment or reward for placing or causing title insurance business to be given to the title company. The OIC may take administrative action against licensees for a violation.

The Department of Financial Institutions (DFI) regulates financial institutions, escrow agents and mortgage brokers and loan originators. The Department of Licensing (DOL) regulates real estate brokers and salespersons. The DOL also regulates real estate appraisers.

In December 2006 the Commissioner appointed a Title Insurance Review Task Force (Task Force). The Task Force made approximately 16 recommendations. Several recommendations involved actions by the OIC, the DFI, or the DOL. Six of the recommendations involved legislation.

Summary of Bill:

Definitions.

"Financial interest" is as any interest that entitles the holder to any of the net profits or net worth of the entity in which the interest is held.

"Producers of title insurance business" includes real estate agents and brokers, lawyers, mortgagees, mortgage loan brokers, financial institutions, escrow agents, persons who lend money for the purchase of real estate, building contractors, real estate developers and subdividers, and any other person who may be in a position to influence the selection of an insurer or agent.

"Associates of producers" means any person or entity that is:

- a spouse, parent, or child of a producer;
- a business that controls, is controlled by, or is under common control with a producer;
- an employer, employee, independent contractor, officer, director, partner, franchiser, or franchisee of a producer; or
- a person who has any agreement with a producer to benefit financially by influencing the selection of an insurer or agent.

Title Insurance Rates.

The Commissioner must by rule set a date by which insurers must file title insurance rates under new standards. This date may not be prior to January 1, 2010.

New Rate Standards - Every insurer must file title insurance rates, rating plan, and rating rules with the Commissioner. Every filing must include sufficient information to permit the Commissioner to determine whether rates are excessive, inadequate, or unfairly discriminatory. A rate is not excessive, inadequate, or unfairly discriminatory if it is an actuarially sound estimate of the expected value of all future costs associated with an individual risk transfer.

The rate filing must not be effective before 30 days after filing with the Commissioner. The Commissioner may extend this for up to an additional 15 days. If the Commissioner does not disapprove the filing during the review period, the filing takes effect on its proposed effective date. The Commissioner must notify the insurer if the filing has been disapproved and inform the insurer where the filing fails to meet the statutory requirements.

Hearings - The Commissioner must hold a hearing within 30 days if:

- after the review period, the Commissioner has reason to believe that a title insurer's rates do not meet the requirements of the law;

- any person having an interest in the rates makes a written complaint to the Commissioner setting forth specific and reasonable grounds for the complaint and requests a hearing; or
- any insurer requests a hearing after the Commissioner's disapproval of a filing.

In any hearing regarding title insurance rates, the burden is on the insurer to prove that the rates are not excessive, inadequate, or unfairly discriminatory. After a hearing, the Commissioner may issue an order that confirms, modifies, or rescinds any previous action.

Escrow Fees Provided by an Insurer or Agent.

Each insurer and agent must immediately file with the Commissioner a schedule of its fees for providing escrow services. The schedule is not effective until 15 days after the schedule is filed.

Schedules of Title Insurance Premiums and Escrow Fees Provided by an Insurer or Agent.

Insurers and agents must make available schedules of currently effective title insurance premiums and any fees for providing escrow services. These schedules must:

- be available to the public at the office of an insurer or agent;
- be posted on website of an insurer or agent; and
- be kept by an insurer and agent for a year after it is no longer in effect.

Illegal Inducements.

An insurer, agent, or the employee or representative of an insurer or agent must not give any fee or other thing of value to:

- any person as an inducement or payment for placing business or referring business to the insurer or agent; or

- any person in a position to refer or influence the referral of title insurance business to either the insurer or agent, except as permitted under rules adopted by the Commissioner.

There are parallel provisions applicable to real estate brokers and salespersons, escrow agents, mortgage brokers, loan originators, and any person who has a controlling interest in a real estate licensee, escrow agent, or mortgage broker (referred to here as "licensees"). The provisions prohibit a licensee from:

- giving any fee, kickback, payment, or other thing of value to any other licensee as an inducement or reward for placing, referring, or causing title insurance business to be given to an agent in which the licensee also has a financial interest;
- soliciting or accepting anything of value from an insurer or a agent is not permitted by law or OIC rule;
- requiring a consumer to obtain title insurance from an agent in which the person has a financial interest in order to obtain the person's services; and
- preventing or deterring an insurer from delivering printed promotional materials to the employees, independent contractors, office, or clients of a licensee.

It is not unlawful for an insurer or agent to pay and for a producer of title insurance business to receive a return on ownership interest in the title insurer or title insurance agent. A return on ownership interest may include bona fide:

- dividends and capital or equity distributions between affiliated entities; and
- business loans, advances, and capital or equity contributions between affiliated entities as long as they are for ordinary business purposes and are not referral fees or unearned fees.

A return on ownership interest does not include:

- Any payment with no apparent business motive or calculation other than payments based on the amount of their actual, estimated, or anticipated referrals; and
- A payment based on an ownership interest which has been adjusted on the basis of previous relative referrals by recipients of similar payments.

Record-keeping and Reporting.

An agent must maintain records that indicate the source of the title orders. Every agent must annually report:

- the percent of title orders originating from each person who had a financial interest in the agent; and
- the names and addresses of those persons who had a financial interest in the agent and are known or reasonably believed by the agent to be producers or associates of producers.

Each agent must file the report within 30 days after the effective date of this act.

Rules.

The Commissioner may adopt rules to implement and administer the chapter concerning title insurance, Chapter 48.29 RCW.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.