

FINAL BILL REPORT

SSB 6847

C 110 L 08

Synopsis as Enacted

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).

Senate Committee on Consumer Protection & Housing
House Committee on Insurance, Financial Services & Consumer Protection

Background: Title insurance guarantees that the owner of real estate being sold or refinanced has clear title to transfer the property. Before issuing a policy, a title insurance company conducts a search of past records to determine if there are any encumbrances, liens, or other clouds on the title. If there is a challenge to the title, the title insurance company pays to defend the buyer and pays to indemnify the buyer and the buyer's lender if the property is lost.

Title insurance is not marketed to the end user of the product. Instead, it is marketed to intermediaries, usually realtors, who assist parties in closing real estate deals. When a realtor owns a financial interest in a title company, this is commonly referred to as an affiliated business arrangement.

Title insurance companies must file their rates with the Office of the Insurance Commissioner (OIC), but can use the rates as soon as they are filed.

The federal Real Estate Settlement Procedures Act forbids giving or receiving anything of value to encourage the referral of business incident to real estate settlement services, including title insurance. Washington law prohibits title insurers and agents from providing anything of value in excess of \$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 fine title companies \$10,000 for each violation.

Despite these prohibitions, studies conducted by OIC in 2006 and 2007 found industry-wide, pervasive violations. Consequently, OIC convened a task force to review the title insurance industry and recommend any improvements to serve consumers better. The task force members included representatives from title companies and real estate brokers, lenders, and consumer advocates.

Summary: As a condition of licensing, title insurance agents must submit an annual report to the OIC containing the contact information of anyone who owns any financial interest in the agent and either: (1) produces business for the agent; or (2) is an associate of producers of business for the agent.

Title insurers and agents are prohibited from giving any gift or payment to influence the referral of business, or to reward the referral of business. However, gifts and payments are permitted if they are given in exchange for like value or comply with OIC rules. Realtors,

escrow agents, and mortgage brokers (collectively, "producers") are prohibited from accepting any gift or payment that is illegal for a title insurer or agent to give.

Payments between title companies and producers are also permitted when the payment is a return on the producer's ownership interest in that title company. Such payments may include dividends, equity distributions, and business loans, and may flow from the title company to the producer, or vice versa. However, a payment is not a return on ownership interest, and is prohibited if the amount or frequency of the payment is tied to the amount of business the producer directly, or indirectly, refers to the title company.

Future title insurance rates must be filed 30 days before use, and title insurers must justify with actuarially sound data. Current rates must be re-filed at a date to be set by the OIC by rule; however, the date will be no earlier than January 1, 2010. Title insurers must also file escrow fees or rates with the OIC 15 days prior to use.

Title insurance companies must make their rates and fees publicly available through their web site.

Producers with a financial interest in a title agent or insurer may not give any gift or payment to induce another producer to give that title company business. A producer with a financial interest in a title company may not prevent or deter title companies from delivering printed promotional materials to the producer's employees, independent contractors, office, or clients.

Producers may not require consumers to buy title insurance from an agency that the realtor, escrow agent, or mortgage broker has a financial interest in.

Votes on Final Passage:

Senate	48	0
House	93	0

Effective: June 12, 2008