
SENATE BILL 6847

State of Washington 60th Legislature 2008 Regular Session

By Senators Weinstein, Delvin, Haugen, and Shin; by request of Insurance Commissioner

Read first time 01/28/08. Referred to Committee on Consumer Protection & Housing.

1 AN ACT Relating to real estate settlement services; amending RCW
2 48.29.010 and 48.29.140; adding new sections to chapter 48.29 RCW;
3 adding a new section to chapter 18.85 RCW; adding a new section to
4 chapter 18.44 RCW; and adding a new section to chapter 19.146 RCW.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 48.29.010 and 2005 c 223 s 14 are each amended to read
7 as follows:

8 (1) This chapter relates only to title insurers for real property.

9 (2) This code does not apply to persons engaged in the business of
10 preparing and issuing abstracts of title to property and certifying to
11 their correctness so long as the persons do not guarantee or insure the
12 titles.

13 (3) For purposes of this chapter, unless the context clearly
14 requires otherwise:

15 (a) "Title policy" means any written instrument, contract, or
16 guarantee by means of which title insurance liability is assumed.

17 (b) "Abstract of title" means a written representation, provided
18 under contract, whether written or oral, intended to be relied upon by
19 the person who has contracted for the receipt of this representation,

1 listing all recorded conveyances, instruments, or documents that, under
2 the laws of the state of Washington, impart constructive notice with
3 respect to the chain of title to the real property described. An
4 abstract of title is not a title policy as defined in this subsection.

5 (c) "Preliminary report," "commitment," or "binder" means reports
6 furnished in connection with an application for title insurance and are
7 offers to issue a title policy subject to the stated exceptions in the
8 reports, the conditions and stipulations of the report and the issued
9 policy, and other matters as may be incorporated by reference. The
10 reports are not abstracts of title, nor are any of the rights, duties,
11 or responsibilities applicable to the preparation and issuance of an
12 abstract of title applicable to the issuance of any report. The report
13 is not a representation as to the condition of the title to real
14 property, but is a statement of terms and conditions upon which the
15 issuer is willing to issue its title policy, if the offer is accepted.

16 (d) "Financial interest" means any interest, legal or beneficial,
17 that entitles the holder directly or indirectly to five percent or more
18 of the net profits or net worth of the entity in which the interest is
19 held.

20 (e) "Producers of title insurance business" means real estate
21 agents and brokers, lawyers, mortgagees, mortgage loan brokers,
22 financial institutions, escrow agents, persons who lend money for the
23 purchase of real estate or interests therein, building contractors,
24 real estate developers and subdividers, and any other person who is or
25 may be in a position to influence the selection of a title insurer or
26 title insurance agent whether or not the consent or approval of any
27 other person is sought or obtained with respect to the selection of the
28 title insurer or title insurance agent.

29 (f) "Associates of producers" means any person who has one or more
30 of the following relationships with a producer of title insurance
31 business:

32 (i) A spouse, parent, or child of a producer;

33 (ii) A corporation or business entity that controls, is controlled
34 by, or is under common control with a producer;

35 (iii) An employer, employee, officer, director, partner,
36 franchiser, or franchisee of a producer; or

37 (iv) Anyone who has an agreement, arrangement, or understanding
38 with a producer, the purpose or substantial effect of which is to

1 enable the person in a position to influence the selection of a title
2 insurer or title insurance agent to benefit financially from the
3 selection of the title insurer or title insurance agent.

4 NEW SECTION. Sec. 2. A new section is added to chapter 48.29 RCW
5 to read as follows:

6 (1) A title insurance agent shall maintain records of its title
7 orders sufficient to indicate the source of the title orders.

8 (2) Every title insurance agent shall file with the commissioner
9 annually by March 15th of each year for the previous calendar year,
10 unless the commissioner for good cause shown extends the time for
11 filing, a report, on a form prescribed by the commissioner, setting
12 forth:

13 (a) The names and addresses of those persons, if any, who have had
14 a financial interest in the title insurance agent during the calendar
15 year, who are known or reasonably believed by the title insurance agent
16 to be producers of title business or associates of producers; and

17 (b) The percent of title orders originating from each person who
18 owns, or had owned during the preceding calendar year, a financial
19 interest in the title insurance agent.

20 (3) Each title insurance agent shall keep current the information
21 required by that portion of the report required by subsection (2)(a) of
22 this section by reporting all changes or additions within fifteen days
23 after the end of the month in which it learns of each change or
24 addition.

25 (4) Each title insurance agent shall file that portion of the
26 report required by subsection (2)(a) of this section with its
27 application for a license.

28 (5) Each title insurance agent licensed on the effective date of
29 this section shall file the report required under this section within
30 thirty days after the effective date of this section.

31 NEW SECTION. Sec. 3. A new section is added to chapter 48.29 RCW
32 to read as follows:

33 (1) A title insurer, title insurance agent, or employee, agent, or
34 other representative of a title insurer or title insurance agent shall
35 not, directly or indirectly, give any fee, kickback, or other thing of

1 value to any person as an inducement, payment, or reward for placing
2 business, referring business, or causing title insurance business to be
3 given to either the title insurer, or title insurance agent, or both.

4 (2)(a) A title insurer, title insurance agent, or employee, agent,
5 or other representative of a title insurer or title insurance agent
6 shall not, directly or indirectly, give any thing of value to any
7 person in a position to refer or influence the referral of title
8 insurance business to either the title insurance company or title
9 insurance agent, or both, except as provided in (b) of this subsection
10 and subsection (3) of this section.

11 (b) A title insurer, title insurance agent, or employee, agent, or
12 other representative of a title insurer or title insurance agent may
13 provide a thing of value to any person in a position to refer or
14 influence the referral of title insurance business as long as the value
15 provided is reasonably commensurate with the value received by the
16 title insurer or title insurance agent. Title insurers and title
17 insurance agents must maintain records of all such expenditures
18 sufficient to demonstrate that they were commensurate with the value
19 received by the title insurer or title insurance agent.

20 (3) This section does not prohibit a title insurer, title insurance
21 agent, or employee, agent, or other representative of a title insurer
22 or title insurance agent from providing normal promotional and
23 educational activities to any person in a position to refer or
24 influence the referral of title insurance business to either the title
25 insurance company or title insurance agent, or both, that are not
26 conditioned on the referral of title insurance business, that do not
27 involve the defraying of expenses that otherwise would be incurred by
28 persons in a position to refer title insurance business, and that are
29 permitted under rules adopted by the commissioner.

30 NEW SECTION. **Sec. 4.** A new section is added to chapter 48.29 RCW
31 to read as follows:

32 (1) Premium rates for the insuring or guaranteeing of titles shall
33 not be excessive, inadequate, or unfairly discriminatory.

34 (2) A rate is not excessive, inadequate, or unfairly discriminatory
35 if it is an actuarially sound estimate of the expected value of all
36 future costs associated with an individual risk transfer. Such costs

1 include claims, claim settlement expenses, operational and
2 administrative expenses, and the cost of capital.

3 NEW SECTION. **Sec. 5.** A new section is added to chapter 48.29 RCW
4 to read as follows:

5 (1) Every title insurer shall, before using, file with the
6 commissioner every manual of rules and rates, rating plan, rate
7 schedule, minimum rate, class rate, and rating rule, and every
8 modification of any of the filings under this subsection which it
9 proposes.

10 (2) Every filing shall be accompanied by sufficient information to
11 permit the commissioner to determine whether the filing meets the
12 requirements of section 4 of this act. This information must include,
13 but is not limited to, a history of premiums, losses, and expenses.

14 (3) Data used to justify title insurance rates may not include
15 escrow income or expenses. The title insurance company shall include
16 a detailed explanation showing how expenses are allocated between the
17 title operations and escrow operations of the insurer or title
18 insurance agent.

19 (4) Every such filing shall state its proposed effective date.

20 (5) The commissioner shall review a filing as soon as reasonably
21 possible after it is received, to determine whether it meets the
22 requirements of section 4 of this act.

23 (6) The filing's proposed effective date shall be no earlier than
24 thirty days after the date on which the filing is received by the
25 commissioner. By giving notice to the insurer within this thirty days,
26 the commissioner may extend this waiting period for an additional
27 period not to exceed an additional fifteen days. The commissioner may,
28 upon application and for cause shown, waive part or all of the waiting
29 period with respect to a filing the commissioner has not disapproved.
30 If the commissioner does not disapprove the filing during the waiting
31 period, the filing takes effect on its proposed effective date.

32 (7) If within the waiting period or any extension thereof as
33 provided in subsection (6) of this section, the commissioner finds that
34 a filing does not meet the requirements of section 4 of this act or the
35 requirements of subsections (2) through (4) of this section, the
36 commissioner shall disapprove the filing and shall give notice to the
37 insurer that the filing has been disapproved. This notice shall

1 specify the respect in which the commissioner finds the filing fails to
2 meet the requirements and shall state that the filing does not become
3 effective as proposed.

4 (8) If a filing is not disapproved by the commissioner within the
5 waiting period or any extension thereof, the filing becomes effective
6 as proposed.

7 (9) A filing made under this section is exempt from RCW
8 48.02.120(3). However, the filing and all supporting information
9 accompanying it is open to public inspection only after the filing
10 becomes effective.

11 (10) A title insurer or title insurance agent shall not make or
12 issue a title insurance contract or policy, or use or collect any
13 premium on or after a date set by the commissioner by rule, which date
14 shall not be any earlier than January 1, 2010, except in accordance
15 with rates and rules filed with the commissioner as required by this
16 section.

17 (11) If at any time subsequent to the applicable review period
18 provided for in subsection (6) of this section, the commissioner has
19 reason to believe that a title insurer's rates do not meet the
20 requirements of section 4 of this act or are otherwise contrary to law,
21 or if any person having an interest in the rates makes a written
22 complaint to the commissioner setting forth specific and reasonable
23 grounds for the complaint and requests a hearing, or if any insurer
24 upon notice of the commissioner's disapproval of a filing made under
25 this section requests a hearing, the commissioner shall hold a hearing
26 within thirty days and shall, in advance of it, give written notice of
27 the hearing to all parties in interest. The commissioner may, by
28 issuing an order, confirm, modify, change, or rescind any previous
29 action, if it is warranted by the facts shown at the hearing. The
30 order shall not affect any contract or policy made or issued prior to
31 a reasonable period of time, to be specified in the order, after the
32 order is issued.

33 (12) In any hearing regarding rates filed under this chapter the
34 burden shall be upon the title insurer to prove by a preponderance of
35 the evidence that the rates comply with section 4 of this act.

36 NEW SECTION. **Sec. 6.** A new section is added to chapter 48.29 RCW
37 to read as follows:

1 (1) Each title insurer and title insurance agent shall immediately
2 file with the commissioner a schedule of its fees for providing escrow
3 services.

4 (2) The schedule shall:

5 (a) Be dated to show the date the fees for providing escrow
6 services are to become effective, which date shall be no earlier than
7 fifteen days after the schedule has been filed with the commissioner;
8 and

9 (b) Set forth the total fees for providing escrow services by
10 clearly stating the amounts to be charged for the escrow services, the
11 manner in which the fees for the escrow services are to be determined,
12 and any charges that will be charged to the consumer that are not
13 included in the total escrow fee.

14 NEW SECTION. **Sec. 7.** A new section is added to chapter 48.29 RCW
15 to read as follows:

16 (1) Each title insurer and title insurance agent shall make
17 available to the public schedules of its currently effective title
18 insurance premiums and fees for providing escrow services.

19 (2) The schedules shall:

20 (a) Be dated to show the date the title insurance premiums or fees
21 for providing escrow services became effective;

22 (b) Be made available to the public during normal business hours in
23 each office of the title insurer and its appointed title insurance
24 agents in this state;

25 (c) Be made available on the title insurer's and title insurance
26 agent's web site, if the title insurer or title insurance agent has a
27 web site;

28 (d) Set forth the total title insurance premium charged for the
29 title insurance policy issued by the title insurer either by stating
30 the premium for each title insurance policy in given amounts of
31 coverage, or by stating the charge per unit amount of coverage, or by
32 a combination of the two; and

33 (e) Set forth the total fees for providing escrow services by
34 clearly stating the amounts to be charged for the escrow services, the
35 manner in which the fees for the escrow services are to be determined,
36 and any charges that will be charged to the consumer that are not
37 included in the total escrow fee.

1 (3) Each title insurer and title insurance agent shall keep a
2 complete file of its schedules of title insurance premiums and fees for
3 providing escrow services and all changes and amendments to those
4 schedules until at least one year after they have ceased to be in
5 effect.

6 **Sec. 8.** RCW 48.29.140 and 1947 c 79 s .29.14 are each amended to
7 read as follows:

8 (1) Premium rates for the insuring or guaranteeing of titles shall
9 not be excessive, inadequate, or unfairly discriminatory.

10 (2) Each title insurer shall forthwith file with the commissioner
11 a schedule showing the premium rates to be charged by it. Every
12 addition to or modification of such schedule or of any rate therein
13 contained shall likewise be filed with the commissioner, and no such
14 addition or modification shall be effective until expiration of fifteen
15 days after date of such filing.

16 (3) The commissioner may order the modification of any premium rate
17 or schedule of premium rates found by him or her after a hearing to be
18 excessive, or inadequate, or unfairly discriminatory. No such order
19 shall require retroactive modification.

20 (4) The commissioner shall by rule set a date, which shall not be
21 earlier than January 1, 2010, under which title insurers must file
22 every manual of rules and rates, rating plan, rate schedule, minimum
23 rate, class rate, and rating rule, and every modification of any of
24 these filings under sections 4 and 5 of this act, rather than under
25 this section.

26 NEW SECTION. **Sec. 9.** A new section is added to chapter 48.29 RCW
27 to read as follows:

28 The commissioner may adopt rules to implement and administer this
29 chapter, including but not limited to:

30 (1) Establishing the information to be included in the report
31 required under section 2 of this act;

32 (2) Establishing the information required for the filing of rates
33 for title insurance;

34 (3) Establishing standards which title insurance rate filings must
35 satisfy;

1 (4) Establishing a date, which date shall not be earlier than
2 January 1, 2010, by which all title insurers selling policies in this
3 state must file their rates with the commissioner under sections 4 and
4 5 of this act rather than under RCW 48.29.140 and refile any rates that
5 were in effect prior to the date established by the commissioner; and

6 (5) Defining what are permitted normal promotional and educational
7 activities under section 3(3) of this act. In adopting rules under
8 this subsection, the commissioner shall work with representatives of
9 the title insurance and real estate industries and consumer groups in
10 developing the rules.

11 NEW SECTION. **Sec. 10.** A new section is added to chapter 18.85 RCW
12 to read as follows:

13 (1) A real estate firm, person who has a controlling interest in a
14 real estate firm, broker, or designated broker shall not, directly or
15 indirectly, give any fee, kickback, payment, or other thing of value to
16 any other broker as an inducement, reward for placing business,
17 referring business, or causing title insurance business to be given to
18 a title insurance agent in which the real estate firm, person having a
19 controlling interest in a real estate firm, broker, or designated
20 broker also has a financial interest.

21 (2) A real estate firm, broker, designated broker, managing broker,
22 or person who has a controlling interest in a real estate firm shall
23 not either solicit or accept, or both, anything of value from: A title
24 insurance company, a title insurance agent, or the employees'
25 representatives of a title insurance company or title insurance agent,
26 that a title insurance company or title insurance agent is not
27 permitted by law or rule to give to the real estate firm, broker,
28 designated broker, managing broker, or person who has a controlling
29 interest in a real estate firm.

30 (3) A real estate firm, person who has a controlling interest in a
31 real estate firm, broker, designated broker, or managing broker shall
32 not discriminate among title insurance companies, title insurance
33 agents, or their employees and representatives in providing access to
34 the real estate firm's: Offices, brokers, employees, representatives,
35 independent contractors, or clients.

36 (4) A real estate firm, broker, designated broker, or managing
37 broker shall not require a consumer, as a condition of providing real

1 estate brokerage services, to obtain title insurance from a title
2 insurance agent in which the real estate firm, person who has a
3 controlling interest in a real estate firm, broker, designated broker,
4 or managing broker has a financial interest.

5 NEW SECTION. **Sec. 11.** A new section is added to chapter 18.44 RCW
6 to read as follows:

7 (1) An escrow agent, officer or employee of any escrow agent, or
8 person who has a financial interest in an escrow agent shall not,
9 directly or indirectly, give any fee, kickback, payment, or other thing
10 of value to any person as an inducement, reward for placing business,
11 referring business, or causing title insurance business to be given to
12 a title insurance agent in which the escrow agent or person having a
13 financial interest in the escrow agent also has a financial interest.

14 (2) An escrow agent or person who has a financial interest in an
15 escrow agent shall not either solicit or accept, or both, anything of
16 value from: A title insurance company, a title insurance agent, or the
17 employees' representatives of a title insurance company or title
18 insurance agent, that a title insurance company or title insurance
19 agent is not permitted by law or rule to give to the escrow agent or
20 person who has a financial interest in the escrow agent.

21 (3) An escrow agent or person who has a financial interest in an
22 escrow agent shall not discriminate among title insurance companies,
23 title insurance agents, or their employees and representatives in
24 providing access to the escrow agent's: Offices, employees,
25 representatives, independent contractors, or clients.

26 (4) An escrow agent shall not require a consumer, as a condition of
27 providing real estate settlement services, to obtain title insurance
28 from a title insurance agent in which the escrow agent has a financial
29 interest.

30 NEW SECTION. **Sec. 12.** A new section is added to chapter 19.146
31 RCW to read as follows:

32 (1) A mortgage broker, loan originator, officer or employee of any
33 mortgage broker, or person who has a financial interest in a mortgage
34 broker shall not, directly or indirectly, give any fee, kickback,
35 payment, or other thing of value to any person as an inducement, reward
36 for placing business, referring business, or causing title insurance

1 business to be given to a title insurance agent in which the mortgage
2 broker, loan originator, or person having a financial interest in the
3 mortgage broker also has a financial interest.

4 (2) A mortgage broker, loan originator, or person who has a
5 financial interest in a mortgage broker shall not either solicit or
6 accept, or both, anything of value from: A title insurance company, a
7 title insurance agent, or the employees' representatives of a title
8 insurance company or title insurance agent, that a title insurance
9 company or title insurance agent is not permitted by law or rule to
10 give to the mortgage broker, loan originator, or person who has a
11 financial interest in the mortgage broker.

12 (3) A mortgage broker, loan originator, or person who has a
13 financial interest in a mortgage broker shall not discriminate among
14 title insurance companies, title insurance agents, or their employees
15 and representatives in providing access to the mortgage broker's or
16 loan originator's: Offices, employees, representatives, independent
17 contractors, or clients.

18 (4) A mortgage broker or loan originator shall not require a
19 consumer, as a condition of providing loans or real estate settlement
20 services, to obtain title insurance from a title insurance agent in
21 which the mortgage broker or loan originator has a financial interest.

22 NEW SECTION. **Sec. 13.** If any provision of this act or its
23 application to any person or circumstance is held invalid, the
24 remainder of the act or the application of the provision to other
25 persons or circumstances is not affected.

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