
SUBSTITUTE SENATE BILL 6847

State of Washington

60th Legislature

2008 Regular Session

By Senate Consumer Protection & Housing (originally sponsored by Senators Weinstein, Delvin, Haugen, and Shin; by request of Insurance Commissioner)

READ FIRST TIME 02/08/08.

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 any of the net
18 profits or net worth of the entity in which the interest is held.

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

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

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

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

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

36 (iv) Anyone who has an agreement, arrangement, or understanding
37 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 title insurer, title insurance agent, or employee, agent, or
5 other representative of a title insurer or title insurance agent shall
6 not, directly or indirectly, give anything of value to any person in a
7 position to refer or influence the referral of title insurance business
8 to either the title insurance company or title insurance agent, or
9 both, except as permitted under rules adopted by the commissioner.

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

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

14 (2) A rate is not excessive, inadequate, or unfairly discriminatory
15 if it is an actuarially sound estimate of the expected value of all
16 future costs associated with an individual risk transfer. Such costs
17 include claims, claim settlement expenses, operational and
18 administrative expenses, and the cost of capital.

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

21 (1) Every title insurer shall, before using, file with the
22 commissioner every manual of title insurance rules and rates, rating
23 plan, rate schedule, minimum rate, class rate, and rating rule, and
24 every modification of any of the filings under this subsection which it
25 proposes.

26 (2) Every filing shall be accompanied by sufficient information to
27 permit the commissioner to determine whether the filing meets the
28 requirements of section 4 of this act.

29 (3) Data used to justify title insurance rates may not include
30 escrow income or expenses. The title insurance company shall include
31 a detailed explanation showing how expenses are allocated between the
32 title operations and escrow operations of the insurer or title
33 insurance agent.

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

35 (5) The commissioner shall review a filing as soon as reasonably

1 possible after it is received, to determine whether it meets the
2 requirements of section 4 of this act.

3 (6) The filing's proposed effective date shall be no earlier than
4 thirty days after the date on which the filing is received by the
5 commissioner. By giving notice to the insurer within this thirty days,
6 the commissioner may extend this waiting period for an additional
7 period not to exceed an additional fifteen days. The commissioner may,
8 upon application and for cause shown, waive part or all of the waiting
9 period with respect to a filing the commissioner has not disapproved.
10 If the commissioner does not disapprove the filing during the waiting
11 period, the filing takes effect on its proposed effective date.

12 (7) If within the waiting period or any extension thereof as
13 provided in subsection (6) of this section, the commissioner finds that
14 a filing does not meet the requirements of section 4 of this act or the
15 requirements of subsections (2) through (4) of this section, the
16 commissioner shall disapprove the filing and shall give notice to the
17 insurer that the filing has been disapproved. This notice shall
18 specify the respect in which the commissioner finds the filing fails to
19 meet the requirements and shall state that the filing does not become
20 effective as proposed.

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

24 (9) A filing made under this section is exempt from RCW
25 48.02.120(3). However, the filing and all supporting information
26 accompanying it is open to public inspection only after the filing
27 becomes effective.

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

34 (11) If at any time subsequent to the applicable review period
35 provided for in subsection (6) of this section, the commissioner has
36 reason to believe that a title insurer's rates do not meet the
37 requirements of section 4 of this act or are otherwise contrary to law,
38 or if any person having an interest in the rates makes a written

1 complaint to the commissioner setting forth specific and reasonable
2 grounds for the complaint and requests a hearing, or if any insurer
3 upon notice of the commissioner's disapproval of a filing made under
4 this section requests a hearing, the commissioner shall hold a hearing
5 within thirty days and shall, in advance of it, give written notice of
6 the hearing to all parties in interest. The commissioner may, by
7 issuing an order, confirm, modify, change, or rescind any previous
8 action, if it is warranted by the facts shown at the hearing. The
9 order shall not affect any contract or policy made or issued prior to
10 a reasonable period of time, to be specified in the order, after the
11 order is issued.

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

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

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

20 (2) The schedule shall:

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

25 (b) Set forth the total fees for providing escrow services by
26 clearly stating the amounts to be charged for the escrow services, the
27 manner in which the fees for the escrow services are to be determined,
28 and any charges that will be charged to the consumer that are not
29 included in the total escrow fee.

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

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

35 (2) The schedules shall:

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

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

6 (c) Be made available on the title insurer's and title insurance
7 agent's web site, if the title insurer or title insurance agent has a
8 web site;

9 (d) Set forth the total title insurance premium charged for the
10 title insurance policy issued by the title insurer either by stating
11 the premium for each title insurance policy in given amounts of
12 coverage, or by stating the charge per unit amount of coverage, or by
13 a combination of the two; and

14 (e) Set forth the total fees for providing escrow services by
15 clearly stating the amounts to be charged for the escrow services, the
16 manner in which the fees for the escrow services are to be determined,
17 and any charges that will be charged to the consumer that are not
18 included in the total escrow fee.

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

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

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

28 (2) Each title insurer shall forthwith file with the commissioner
29 a schedule showing the premium rates to be charged by it. Every
30 addition to or modification of such schedule or of any rate therein
31 contained shall likewise be filed with the commissioner, and no such
32 addition or modification shall be effective until expiration of fifteen
33 days after date of such filing.

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

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

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

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

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

13 (2) Establishing the information required for the filing of rates
14 for title insurance under section 5 of this act;

15 (3) Establishing standards which title insurance rate filings must
16 satisfy under section 5 of this act;

17 (4) Establishing a date, which date shall not be earlier than
18 January 1, 2010, by which all title insurers selling policies in this
19 state must file their rates with the commissioner under sections 4 and
20 5 of this act rather than under RCW 48.29.140 and refile any rates that
21 were in effect prior to the date established by the commissioner; and

22 (5) Defining what things of value a title insurance insurer or
23 title insurance agent is permitted to give to any person in a position
24 to refer or influence the referral of title insurance business under
25 section 3(2) of this act. In adopting rules under this subsection, the
26 commissioner shall work with representatives of the title insurance and
27 real estate industries and consumer groups in developing the rules.

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

30 (1) A real estate licensee or person who has a controlling interest
31 in a real estate business shall not, directly or indirectly, give any
32 fee, kickback, payment, or other thing of value to any other real
33 estate licensee as an inducement, reward for placing title insurance
34 business, referring title insurance business, or causing title
35 insurance business to be given to a title insurance agent in which the

1 real estate licensee or person having a controlling interest in a real
2 estate business also has a financial interest.

3 (2) A real estate licensee or person who has a controlling interest
4 in a real estate business shall not either solicit or accept, or both,
5 anything of value from: A title insurance company, a title insurance
6 agent, or the employees or representatives of a title insurance company
7 or title insurance agent, that a title insurance company or title
8 insurance agent is not permitted by law or rule to give to the real
9 estate licensee or person who has a controlling interest in a real
10 estate business.

11 (3) A real estate licensee or person who has a controlling interest
12 in a real estate business shall not prevent or deter a title insurance
13 company, title insurance agent, or their employees or representatives
14 from delivering to a real estate licensee or its employees, independent
15 contractors, and clients printed promotional material concerning only
16 title insurance services as long as:

17 (a) The material is business appropriate and is not misleading or
18 false;

19 (b) The material does not malign the real estate licensee, its
20 employees, independent contractors, or affiliates;

21 (c) The delivery of the materials is limited to those areas of the
22 real estate licensee's physical office reserved for unrestricted public
23 access; and

24 (d) The conduct of the employees or representatives is appropriate
25 for a business setting and does not threaten the safety or health of
26 anyone in the real estate licensee's office.

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

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

33 (1) An escrow agent, officer or employee of any escrow agent, or
34 person who has a financial interest in an escrow agent shall not,
35 directly or indirectly, give any fee, kickback, payment, or other thing
36 of value to any person as an inducement, reward for placing business,

1 referring business, or causing title insurance business to be given to
2 a title insurance agent in which the escrow agent or person having a
3 financial interest in the escrow agent also has a financial interest.

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

11 (3) An escrow agent or person who has a financial interest in an
12 escrow agent shall not prevent or deter a title insurance company,
13 title insurance agent, or their employees or representatives from
14 delivering to an escrow agent or its employees, independent
15 contractors, and clients printed promotional material concerning only
16 title insurance services as long as:

17 (a) The material is business appropriate and is not misleading or
18 false;

19 (b) The material does not malign the escrow agent, its employees,
20 independent contractors, or affiliates;

21 (c) The delivery of the materials is limited to those areas of the
22 escrow agent's physical office reserved for unrestricted public access;
23 and

24 (d) The conduct of the employees or representatives are appropriate
25 for a business setting and do not threaten the safety or health of
26 anyone in the escrow agent's office.

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

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

33 (1) A mortgage broker, loan originator, officer or employee of any
34 mortgage broker, or person who has a financial interest in a mortgage
35 broker shall not, directly or indirectly, give any fee, kickback,
36 payment, or other thing of value to any person as an inducement, reward
37 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 or 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 prevent or deter a
14 title insurance company, title insurance agent, or their employees or
15 representatives from delivering to a mortgage broker or loan originator
16 or its employees, independent contractors, and clients printed
17 promotional material concerning only title insurance services as long
18 as:

19 (a) The material is business appropriate and is not misleading or
20 false;

21 (b) The material does not malign the mortgage broker or loan
22 originator, its employees, independent contractors, or affiliates;

23 (c) The delivery of the materials is limited to those areas of the
24 mortgage broker or loan originator's physical office reserved for
25 unrestricted public access; and

26 (d) The conduct of the employees or representatives is appropriate
27 for a business setting and does not threaten the safety or health of
28 anyone in the mortgage broker's or loan originator's office.

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

33 NEW SECTION. **Sec. 13.** A new section is added to chapter 48.29 RCW
34 to read as follows:

35 (1) Section 3, 10, 11, or 12 of this act does not make unlawful the
36 payment by a title insurer or title insurance agent and the receipt by

1 a producer of title insurance business of a return on ownership
2 interest in the title insurer or title insurance agent.

3 (2) A return on ownership interest may include:

4 (a) Bona fide dividends, and capital or equity distributions,
5 related to ownership interest or franchise relationship, between
6 entities in an affiliated relationship; and

7 (b) Bona fide business loans, advances, and capital or equity
8 contributions between entities in an affiliate relationship (in any
9 direction), so long as they are for ordinary business purposes and are
10 not fees for the referral of settlement service business or unearned
11 fees.

12 (3) A return on ownership interest does not include:

13 (a) Any payment which has a basis of calculation of no apparent
14 business motive other than distinguishing among recipients of payments
15 on the basis of the amount of their actual, estimated, or anticipated
16 referrals;

17 (b) Any payment which varies according to the relative amount of
18 referrals by the different recipients of similar payments; or

19 (c) A payment based on an ownership, partnership, or joint venture
20 share which has been adjusted on the basis of previous relative
21 referrals by recipients of similar payments.

22 NEW SECTION. **Sec. 14.** 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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