

CERTIFICATION OF ENROLLMENT

**SUBSTITUTE SENATE BILL 6847**

60th Legislature  
2008 Regular Session

Passed by the Senate February 19, 2008  
YEAS 48 NAYS 0

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**President of the Senate**

Passed by the House March 6, 2008  
YEAS 93 NAYS 0

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**Speaker of the House of Representatives**

Approved

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**Governor of the State of Washington**

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 6847** as passed by the Senate and the House of Representatives on the dates hereon set forth.

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**Secretary**

FILED

**Secretary of State  
State of Washington**

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**SUBSTITUTE SENATE BILL 6847**

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Passed Legislature - 2008 Regular Session

**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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