

HOUSE BILL REPORT

SSB 6847

As Passed House:

March 6, 2008

Title: An act relating to real estate settlement services.

Brief Description: Regulating real estate settlement services.

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

Brief History:

Committee Activity:

Insurance, Financial Services & Consumer Protection: 2/26/08, 2/28/08 [DP].

Floor Activity:

Passed House: 3/6/08, 93-0.

Brief Summary of Substitute Bill

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

HOUSE COMMITTEE ON INSURANCE, FINANCIAL SERVICES & CONSUMER PROTECTION

Majority Report: Do pass. Signed by 9 members: Representatives Kirby, Chair; Kelley, Vice Chair; Roach, Ranking Minority Member; Hurst, Loomis, Rodne, Santos, Simpson and Smith.

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

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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 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 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 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 a website of an insurer or agent; and
- be kept by an insurer and agent for one 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.

Staff Summary of Public Testimony:

(In support) This bill came from the Commissioner's Task Force. Many people may remember recent newspaper reports regarding kickback scandals in title insurance. Generally, people don't seek out title insurers. Usually, a realtor will refer a home buyer to a title insurer. The result is that title insurers don't market to consumers; they market to other parties. This bill requires disclosure of business relationships. The OIC will adopt rules to establish a framework for appropriate business gifts. People who buy title insurance are usually directed to the title insurer by a realtor or another third-party. The title insurers usually market to these third-parties. This can lead to a conflict of interest. National and state investigations have discovered many problems in title insurance. The OIC had an investigation that found such widespread violations that no enforcement action was taken. Instead, the violators were told to comply with the law. Those violators were investigated again and subsequent violations were found. The Task Force was established in response to the OIC investigations.

The Task Force had eight members. Four members were from industries related to real estate closings. Four members were consumer representatives. The report was adopted unanimously. The report had a number of recommendations. The Task Force addressed the report to the Commissioner. The Task Force did not draft a bill. Many of the recommendations of the Task Force are a part of Substitute Senate Bill 6847. In 1988 the OIC adopted a rule limiting gifts to \$25. The Task Force supported the idea of the rule but thought the amount and application of the rules was somewhat arbitrary. The Task Force looked at laws and rules from other states regarding inducements. A majority of states have a framework similar to the bill. The Task Force recommended that title agents report information to the OIC. The Task Force also recommended greater consumer access to information. There is little competition in the area of title insurance. The OIC has very little authority over rates. The Commissioner can investigate a rate and order a modification but this has never happened. The bill requires existing rates to be filed with supporting information for the approval of the Commissioner. This was not a recommendation of the Task Force. It was discussed but not adopted. There was a consensus that any new rates would have to be filed for approval. The Task Force did a great job working with stakeholders. This bill brings stability and balance to the regulation of title insurance. Realtors worked with the Task Force and the OIC. The dialogue is appreciated. Realtors support the bill. The bill defines standards for the various stakeholders. Realtors look forward to working with the OIC on the rule-making. The industry has changed quite a bit over the years. The regulations need to be changed also. This subject is different from most insurance issues. The title insurers are not marketing to the home buyer who is the actual purchaser of title insurance. It is important that the rate review and disclosure pieces are adopted. The bill looks at any transfer of things of value. It is more than those transfers that can be proven to be directly linked to a referral of business. It is difficult to prove that something was provided in

return for a referral. The idea is to adopt rules to create a safe harbor for appropriate business practices. Any other gift would be illegal.

(Opposed) I was a member of the Task Force. I am the president of the only title insurer domiciled in Washington. This bill is a big mistake. It should be slowed down. Washington has some of the lowest title insurance rates in the country. This is because there is little regulation. Requiring approval of rates will lead to a bureaucrats slowing the use of new rates in the market. I think the bill will result in higher rates. Deregulation is a better path. Title insurers are not really insurers. They are in the business of real estate closing. All industries involved in real estate closing should be regulated by the same agency. This bill doesn't necessarily follow the recommendations of the Task Force. The RESPA prohibits kickbacks. That is the standard that should be used. This bill should be made consistent with the law applicable to escrow agents. The Task Force recommended that the OIC revisit their rule. It would be logical for a new OIC rule to parallel the escrow standard.

Persons Testifying: (In support) Senator Weinstein, prime sponsor; Mike Kreidler, Insurance Commissioner; Dick Van Wagenen, Title Insurance Task Force; Carrie Tellefson and Kevin Chiarello, Fidelity National Financial; Bob Mitchell, Washington Association of Realtors; and Bill Daley.

(Opposed) Ray Davis, Title Insurance Task Force and Pacific Northwest Title; and Dwight Brickel.

Persons Signed In To Testify But Not Testifying: None.