

Introduced by Senator Berryhill

February 23, 2012

An act to amend Section 12404 of the Insurance Code, relating to title insurance.

LEGISLATIVE COUNSEL'S DIGEST

SB 1223, as introduced, Berryhill. Title insurance: commissions.

Existing law makes it unlawful for any title insurer, underwritten title company, or controlled escrow company to pay, directly or indirectly, any commission, compensation, or other consideration to any person as an inducement for the placement or referral of title business.

This bill would make technical, nonsubstantive changes to those provisions.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 12404 of the Insurance Code is amended
2 to read:
3 12404. (a) It is unlawful for ~~any~~ a title insurer, underwritten
4 title company, or controlled escrow company to pay, directly or
5 indirectly, any commission, compensation, or other consideration
6 to ~~any~~ a person as an inducement for the placement or referral of
7 title business. Actual placement or referral of title business is not
8 a precondition to a violation of this section, whether the violation
9 is or is not a per se violation pursuant to subdivision (c).
10 (b) For purposes of this section, the following definitions are
11 applicable:

1 (1) “Compensating balance” is a balance maintained in a lending
2 institution by ~~any~~ a title insurer, underwritten title company, or
3 controlled escrow company for the express or implied purpose of
4 influencing the extension of credit to a third party or the provision
5 of goods, services, or benefits to a third party as an inducement
6 for the placement or referral of title business by a third party.

7 (2) “Person” means ~~any~~ an individual or entity who is ~~any~~ an
8 owner or prospective owner, lessee or prospective lessee of real
9 property or any interest therein, any obligee or prospective obligee
10 of an obligation secured or to be secured either in whole or in part
11 by real property or any interest therein, or ~~any~~ a person who is
12 acting or who is in the business of acting as agent, representative,
13 attorney, or employee of those persons.

14 (3) “Title business” means the “business of title insurance” as
15 defined in Section 12340.3, and includes, but is not limited to, the
16 offering of title insurance, escrow, or other services by a title
17 insurer, underwritten title company, or controlled escrow company.

18 (c) The following activities, whether performed directly or
19 indirectly, are deemed per se inducements for the placement or
20 referral of title insurance business by ~~any~~ a person and are
21 unlawful:

22 (1) Paying or offering to pay, furnishing or offering to furnish,
23 or providing or offering to provide assistance with the business
24 expenses of ~~any~~ a person, including, but not limited to, rent,
25 employee salaries, furniture, copiers, facsimile machines,
26 automobiles, telephone services or equipment, or computers.

27 (2) Providing or offering to provide any form of consideration
28 intended for the benefit of ~~any~~ a person, including cash, below
29 market rate loans, automobile charges, or merchandise or
30 merchandise credits.

31 (3) Placing or offering to place on behalf of ~~any~~ a person,
32 compensating balances.

33 (4) Advancing or paying or offering to advance or pay money
34 on behalf of ~~any~~ a person into an escrow to facilitate the closing
35 thereof *of escrow*, other than ~~any sum which~~ a sum that represents
36 the proceeds of a loan made in the ordinary course of business; or
37 an advance not to exceed 2 percent of the sales price of the real
38 property being sold or exchanged through the escrow or the amount
39 of ~~any~~ a loan secured by real property involved in the escrow,
40 whichever is greater; or the extension of credit or an advance for

1 the costs, fees, and expenses of the escrow or of the title insurance
2 issued or to be issued in connection therewith.

3 (5) Disbursing or offering to disburse on behalf of ~~any~~ a person
4 escrow funds held by a title insurer, underwritten title company,
5 or controlled escrow company before the conditions of the escrow
6 applicable to that disbursement have been met, or in a manner
7 ~~which~~ *that* does not conform to Section 12413.1, including
8 disbursing or offering to disburse before the expiration of the
9 appropriate period established in Section 12413.1.

10 (6) Furnishing or offering to furnish all or any part of the time
11 or productive effort of ~~any~~ an employee of the title insurer,
12 underwritten title company, or controlled escrow company to ~~any~~
13 a person for any service unrelated to the title business.

14 (7) Advertising or paying for the advertising in any newspaper,
15 newsletter, magazine, or publication that is produced by, or on
16 behalf of, a person, or that results in a direct, or indirect, subsidy
17 to a person.

18 (8) Expenditures for food, beverages, and entertainment for a
19 person.

20 (d) Expenditures for the following are not deemed to be unlawful
21 or in violation of this section:

22 (1) Promotional items with a permanently affixed company logo
23 of the underwritten title company, title insurer, or controlled escrow
24 company, with a value of not more than ten dollars (\$10) each.
25 “Promotional item” does not include a gift certificate, gift card,
26 or other item that has a specific monetary value on its face, or that
27 may be exchanged for any other item having a specific monetary
28 value.

29 (2) Furnishing education or educational materials exclusively
30 related to the business of title insurance for a person if continuing
31 education credits are not provided.

32 (3) Other expenditures for a person, as permitted by the
33 ~~Department of Insurance~~ *department* by regulation.

34 (e) The provision or payment of any form of consideration as
35 an inducement for the placement or referral of title business not
36 specifically set forth in this section shall not be presumed lawful
37 merely because they are not specifically prohibited.

38 (f) ~~The Insurance Commissioner~~ *commissioner* may determine
39 compliance and enforce the provisions of this section by written
40 order, regulation, or written consent ~~which~~ *that* may take into

1 consideration standards, conditions, guidelines, principles, or
2 definitions utilized by other states or federal agencies but those
3 standards, conditions, guidelines, principles, or definitions shall
4 not be determinative.

5 (g) It is the intent of the Legislature that the enactment of this
6 section shall have no effect on the applicability of other sections
7 of ~~the Insurance Code~~ *this code* that are in existence prior to the
8 enactment of this section and ~~which~~ *that* specifically, or by
9 implication, refer to this section. The Legislature hereby intends
10 that this section, including the specific terms employed within it,
11 shall be liberally construed for the purpose of protecting consumers
12 of title business.