

AMENDED IN SENATE MAY 9, 2000
AMENDED IN SENATE MAY 1, 2000
AMENDED IN SENATE APRIL 24, 2000

SENATE BILL

No. 2168

Introduced by Senator Polanco

February 25, 2000

An act to amend Section 10177.4 of the Business and Professions Code, to add Section 1103.15 to the Civil Code, and to amend Section 12404 of the Insurance Code, relating to kickbacks.

LEGISLATIVE COUNSEL'S DIGEST

SB 2168, as amended, Polanco. Natural hazard disclosure statements: kickbacks.

Existing law requires the disclosure of natural hazards upon transfer of residential property, as specified, and provides for the preparation of natural hazard disclosure statements in that regard.

This bill would prohibit any person ~~who~~ *or entity that* generates, for marketing and sale, natural hazard disclosure statements pursuant to these provisions from providing any commission, fee, consideration, compensation, or inducement to the property transferor's listing or selling agent in exchange for the referral of customers.

Existing law provides for the licensing and regulation of real estate agents and brokers by the Real Estate Commissioner, and authorizes the commissioner to suspend or revoke the license of a licensee who claims, demands, or receives a

commission, fee, or other consideration as compensation or inducement for referral of customers to escrow agents, structural pest control firms, title insurers, and various other parties.

This bill would also authorize the commissioner to suspend or revoke the license of a licensee with respect to similar referrals of customers to persons who generate natural hazard disclosure statements for marketing or sale.

Existing law provides for the licensing and regulation of title insurers by the Insurance Commissioner. Existing law prohibits a title insurer, underwritten title company, or controlled escrow company from paying any commission, compensation, or other consideration to any person as an inducement for the placement or referral of title business, as defined. A willful violation of these provisions is a crime.

This bill would expand the definition of “title business” for these purposes to include the offering of endorsements, indemnities, or guarantees filed with the Department of Insurance, thereby expanding the definition of a crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

1 SECTION 1. Section 10177.4 of the Business and
 2 Professions Code is amended to read:
 3 10177.4. (a) Notwithstanding any other provision of
 4 law, the commissioner may, after hearing in accordance
 5 with this part relating to hearings, suspend or revoke the
 6 license of a real estate licensee who claims, demands, or
 7 receives a commission, fee, or other consideration, as
 8 compensation or inducement, for referral of customers to
 9 ~~any person who generates, for marketing and sale, natural~~
 10 ~~hazard disclosure statements, as described in Section~~



1 ~~1103.2 of the Civil Code~~, any escrow agent, structural pest
2 control firm, home protection company, title insurer,
3 controlled escrow company, ~~or~~ underwritten title
4 company, or any person who generates, for marketing
5 and sale, natural hazard disclosure statements, as
6 described in Section 1103.2 of the Civil Code. A licensee
7 may not be disciplined under any provision of this part for
8 reporting to the commissioner violations of this section by
9 another licensee, unless the licensee making the report
10 had guilty knowledge of, or committed or participated in,
11 the violation of this section.

12 (b) The term “other consideration” as used in this
13 section does not include any of the following:

14 (1) Bona fide payments for goods or facilities actually
15 furnished by a licensee or for services actually performed
16 by a licensee, provided these payments are reasonably
17 related to the value of the goods, facilities, or services
18 furnished.

19 (2) Furnishing of documents, services, information,
20 advertising, educational materials, or items of a like
21 nature that are customary in the real estate business and
22 that relate to the product or services of the furnisher and
23 that are available on a similar and essentially equal basis
24 to all customers or the agents of the customers of the
25 furnisher.

26 (3) Moderate expenses for food, meals, beverages, and
27 similar items furnished to individual licensees or groups
28 or associations of licensees within a context of customary
29 business, educational, or promotional practices
30 pertaining to the business of the furnisher.

31 (4) Items of a character and magnitude similar to those
32 in paragraphs (2) and (3) that are promotional of the
33 furnisher’s business customary in the real estate business,
34 and available on a similar and essentially equal basis to all
35 customers, or the agents of the customers, of the
36 furnisher.

37 (c) Nothing in this section shall relieve any licensee of
38 the obligation of disclosure otherwise required by this
39 part.



1 SEC. 2. Section 1103.15 is added to the Civil Code, to
2 read:

3 1103.15. Any person ~~who~~ or entity that generates, for
4 marketing and sale, natural hazard disclosure statements
5 pursuant to this article shall not provide any commission,
6 fee, consideration, compensation, or inducement to the
7 transferor’s listing or selling agent, as defined in Section
8 1103.14, in exchange for the referral of customers.

9 SEC. 3. Section 12404 of the Insurance Code is
10 amended to read:

11 12404. (a) It is unlawful for any title insurer,
12 underwritten title company or controlled escrow
13 company to pay, directly or indirectly, any commission,
14 compensation, or other consideration to any person as an
15 inducement for the placement or referral of title business.
16 Actual placement or referral of title business is not a
17 precondition to a violation of this section, whether the
18 violation is or is not a per se violation pursuant to
19 subdivision (c).

20 (b) For purposes of this section, the following
21 definitions are applicable:

22 (1) “Person” means any individual or entity who is any
23 owner or prospective owner, lessee or prospective lessee
24 of real property or any interest therein, any obligee or
25 prospective obligee of an obligation secured or to be
26 secured either in whole or in part by real property or any
27 interest therein, or any person who is acting or who is in
28 the business of acting as agent, representative, attorney,
29 or employee of those persons.

30 (2) “Title business” means the “business of title
31 insurance” as defined in Section 12340.3, and includes, but
32 is not limited to, the offering of title insurance, escrow
33 services, other title endorsements, indemnities, or
34 guarantees filed with the department, or other services
35 by a title insurer, underwritten title company, or
36 controlled escrow company.

37 (3) “Compensating balance” is a balance maintained
38 in a lending institution by any title insurer, underwritten
39 title company, or controlled escrow company for the
40 express or implied purpose of influencing the extension



1 of credit to a third party or the provision of goods, services
2 or benefits to a third party as an inducement for the
3 placement or referral of title business by a third party.

4 (c) The following activities, whether performed
5 directly or indirectly, are deemed per se inducements for
6 the placement or referral of title insurance business by
7 any person and are unlawful:

8 (1) Paying or offering to pay, furnishing or offering to
9 furnish, or providing or offering to provide assistance
10 with the business expenses of any person, including, but
11 not limited to, rent, employee salaries, furniture, copiers,
12 facsimile machines, automobiles, telephone services or
13 equipment, or computers.

14 (2) Providing or offering to provide any form of
15 consideration intended for the benefit of any person,
16 including cash, below market rate loans, automobile
17 charges, or merchandise or merchandise credits.

18 (3) Placing or offering to place on behalf of any person,
19 compensating balances.

20 (4) Advancing or paying or offering to advance or pay
21 money on behalf of any person into an escrow to facilitate
22 the closing thereof, other than any sum which represents
23 the proceeds of a loan made in the ordinary course of
24 business and in compliance with Section 1176; or an
25 advance not to exceed 2 percent of the sales price of the
26 real property being sold or exchanged through the
27 escrow or the amount of any loan secured by real
28 property involved in the escrow, whichever is greater; or
29 the extension of credit or an advance for the costs, fees
30 and expenses of the escrow or of the title insurance issued
31 or to be issued in connection therewith.

32 (5) Disbursing or offering to disburse on behalf of any
33 person escrow funds held by a title insurer, underwritten
34 title company or controlled escrow company before the
35 conditions of the escrow applicable to that disbursement
36 have been met, or in a manner which does not conform
37 to Section 12413.1, including disbursing or offering to
38 disburse before the expiration of the appropriate period
39 established in Section 12413.1.



1 (6) Furnishing or offering to furnish all or any part of
2 the time or productive effort of any employee of the title
3 insurer, underwritten title company, or controlled
4 escrow company to any person for any service unrelated
5 to the title business.

6 (d) Reasonable expenditures for food, beverages,
7 entertainment, educational programs, and promotional
8 items constituting ordinary business expenses are
9 deemed not to constitute an inducement for the
10 placement or referral of title business, if the expenditures
11 are correctly reported and properly substantiated as an
12 ordinary and necessary business expense under
13 provisions of the Internal Revenue Code and regulations
14 issued thereunder, and the expenditures do not violate
15 any other section of law, including, but not limited to,
16 Section 10177.4 of the Business and Professions Code.

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

22 (f) The Insurance Commissioner may determine
23 compliance and enforce the provisions of this section by
24 written order, regulation or written consent which may
25 take into consideration standards, conditions, guidelines,
26 principles, or definitions utilized by other states or federal
27 agencies but those standards, conditions, guidelines,
28 principles, or definitions shall not be determinative.

29 (g) It is the intent of the Legislature that the
30 enactment of this section shall have no effect on the
31 applicability of other sections of the Insurance Code that
32 are in existence prior to the enactment of this section and
33 which specifically, or by implication, refer to this section.
34 The Legislature hereby intends that this section,
35 including the specific terms employed within it, shall be
36 liberally construed for the purpose of protecting
37 consumers of title business.

38 SEC. 4. No reimbursement is required by this act
39 pursuant to Section 6 of Article XIII B of the California
40 Constitution because the only costs that may be incurred



1 by a local agency or school district will be incurred
2 because this act creates a new crime or infraction,
3 eliminates a crime or infraction, or changes the penalty
4 for a crime or infraction, within the meaning of Section
5 17556 of the Government Code, or changes the definition
6 of a crime within the meaning of Section 6 of Article
7 XIII B of the California Constitution.

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