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HOUSE BILL NO. 1994

Offered January 10, 2007

Prefiled January 8, 2007

A BILL to amend and reenact § 38.2-4614 of the Code of Virginia, relating to using title insurance premiums to subsidize settlement costs.

 Patron—Suit

 Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:**1. That § 38.2-4614 of the Code of Virginia is amended and reenacted as follows:**

§ 38.2-4614. Prohibition against payment or receipt of title insurance kickbacks, rebates, commissions and other payments; penalty.

A. 1. No person selling real property, or performing services as a real estate agent, attorney, or lender incident to any real estate settlement or sale, shall pay or receive, directly or indirectly, any kickback, rebate, commission, thing of value or other payment pursuant to any agreement or understanding, oral or otherwise, that business incident to the issuance of any title insurance be referred to any title insurance company, title insurance agency or agent. No title insurance company, title insurance agency or agent shall give any such kickback, rebate, commission, thing of value or other payment pursuant to any such agreement or understanding. For purposes of this section, "thing of value" means any payment, advance, funds, loan, service or other consideration. This section shall not prevent any federally insured lenders, holding companies to which they belong, or subsidiaries of such lenders or holding companies from being licensed by the Commission as title insurance agents or agencies and receiving commissions from the sale of the title insurance policies in their capacities as title insurance agents or agencies.

2. Nothing in this section shall be construed to prohibit (i) payments of sums spent for bona fide advertising and marketing promotions otherwise permissible under the provisions of the Real Estate Settlement Procedures Act, 12 U.S.C. § 2601 et seq. or (ii) providing educational materials or classes, wherein such materials or classes are provided to a group of persons or entities pursuant to a bona fide marketing or educational effort.

B. Any person who knowingly and willfully violates this section shall be guilty of a misdemeanor and subject to a fine of not more than \$1,000 for each violation. Any criminal charge brought under this section shall be by indictment pursuant to Chapter 14 (§ 19.2-216 et seq.) of Title 19.2.

C. No person shall be in violation of this section solely by reason of ownership in a title insurance company, title insurance agency or agent as defined in this chapter, wherein such person receives returns on investments arising from the ownership interest. In addition, this section shall not prohibit (i) the payment to any person of a bona fide salary or compensation or other payment for services actually performed for the business of the title insurance company, title insurance agency or agent or; (ii) any employer's payment to its own bona fide employees for referrals; *or (iii) the payment by a title insurance company, title insurance agency, or agent, of a portion of the premium that is payable to the title insurance company, title insurance agency or agent in connection with a title insurance policy purchased by the purchaser or borrower in the real estate transaction, to the settlement agent that is providing escrow, closing or settlement services, as defined in § 6.1-2.20, for the real estate transaction, where such payment is used to subsidize all or a portion of the purchaser's or borrower's costs of the escrow, closing or settlement services.* Any employer's payment to its own employees for the referral of title insurance business shall be subject to the requirements of subdivision B 8 of § 38.2-1821.1.

INTRODUCED

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