

ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 8672

9324 HOUSE LABOR & COMMERCE

(1) Remit interest or dividends on the average monthly balance in the account, or as otherwise computed in accordance with the standard accounting practice of the Bank, Savings and Loan Association, Credit Union, or Savings Bank, less reasonable service charges and other related charges, to the Treasurer of State at least quarterly for deposit in the Legal Aid Fund established under section 120.52 of the Revised Code.

(2) At the time of each remittance, transmit to the Treasurer of State, and if requested, to The Ohio Legal Assistance Foundation, and the Title Insurance Agent or Company, a statement showing the name of the title insurance agent or company for whom the remittance is sent, the rate of interest applied, the accounting period, the net amount remitted to the Treasurer of State for each account, the total remitted, the average account balance for each month of the period for which the report is made, and the amount deducted for service charge and other related charges.

(E) The statements and reports submitted by the Bank, Savings and Loan Association, Credit Union, or Savings Bank under this section, are not public records subject to section 149.23 of the Revised Code and shall be used only to administer the legal aid fund.

(F) No funds belonging to a title insurance agent or company shall be deposited into an account established under division (A) of this section except funds necessary to pay service charges and other related charges of the Bank, Savings and Loan Association, Credit Union, or Savings Bank that are in excess of earnings on the account.

(G) No liability arising out of any negligent act or omission of any title insurance agent or company with respect to any account established under division (A) of this section shall be imputed to the Bank, Savings and Loan Association, Credit Union, or Savings Bank.

(H) No liability or responsibility arising out of any negligent act or omission of any title insurance agent with respect to any account established under division (A) of this section shall be imputed to a title insurance company.

(I) The Superintendent may adopt, in accordance with Chapter 119, of the Revised Code, rules that pertain to the use of account established under division (A) of this section and to the enforcement of this section.□□□□

# RESPA

## Statute

### *Real Estate Settlement Procedures Act*

#### Sec. 2605. Servicing of mortgage loans and administration of escrow accounts

From the U.S. Code Online via GPO Access  
[wais.access.gpo.gov]  
[Laws in effect as of January 16, 1996]  
[Document not affected by Public Laws enacted between  
January 16, 1996 and August 28, 1996]  
[CITE: 12USC2605]

#### TITLE 12--BANKS AND BANKING

#### CHAPTER 27--REAL ESTATE SETTLEMENT PROCEDURES

#### Sec. 2605. Servicing of mortgage loans and administration of escrow accounts

##### (a) Disclosure to applicant relating to assignment, sale, or transfer of loan servicing

##### (1) In general

Each person who makes a federally related mortgage loan shall disclose to each person who applies for any such loan, at the time of application for the loan--

(A) whether the servicing of any such loan may be assigned, sold, or transferred to any other person at any time while such loan is outstanding;

(B) at the choice of the person making a federally related mortgage loan--

(i) for each of the most recent 3 calendar years completed (at the time of such application), the percentage (rounded to the nearest quartile) of loans made by such person for which the servicing has been assigned, sold, or transferred as of the end of the most recent calendar year completed, except that--

(I) for any loan application during the 12-month period beginning on November 28, 1990, the information disclosed under this subparagraph may be for only the most recent calendar year completed, and for any loan application during the 12-month period beginning 1 year after November 28, 1990, the information disclosed under this subparagraph may be for the most recent 2 calendar years completed; and

(II) this subparagraph may not be construed to require the inclusion, in the percentage disclosed, of any loans the servicing of which has been assigned, sold, or transferred by the person making the loan to a transferee servicer that is an affiliate or subsidiary of such person; or

(ii) a statement that the person making the loan has previously assigned, sold, or transferred the servicing of federally related mortgage loans; and

(C) if the person who makes the loan does not engage in the servicing of any federally related mortgage loans, that there is a present intent on the part of such person (at the time of such application) to assign, sell, or transfer the servicing of such loan to another person.

(2) Model disclosure statements

Not later than 90 days after November 28, 1990, the Secretary shall develop a model disclosure statement for notification to applicants under paragraph (1) with respect to servicing procedures, transfer practices and requirements, and complaint resolution. The model statement shall provide for the person originating the loan to disclose their capacity to service loans and the best available estimate of the percentage of all loans made by such person for which the servicing will be assigned, sold, or transferred during the 12-month period beginning upon the origination. The estimate shall be expressed as one of the following range of possibilities-- between 0 and 25 percent, between 26 and 50 percent, between 51 and 75 percent, or between 76 and 100 percent. This paragraph may not be construed to require the inclusion, in the estimate disclosed, of any loans the servicing of which will be assigned, sold, or transferred by the person originating the loan to a transferee servicer that is an affiliate or subsidiary of such person.

(3) Signature of applicant

Any disclosure of the information required under paragraph (1) shall not be effective for purposes of this section unless the disclosure is accompanied by a written statement, in such form as the Secretary shall develop before the expiration of the 90-day period beginning on November 28, 1990, that the applicant has read and understood the disclosure and that is evidenced by the signature of the applicant at the place where such statement appears in the application.

(b) Notice by transferor of loan servicing at time of transfer

(1) Notice requirement

Each servicer of any federally related mortgage loan shall notify the borrower in writing of any assignment, sale, or transfer of the servicing of the loan to any other person.

(2) Time of notice

(A) In general

Except as provided under subparagraphs (B) and (C), the notice required under paragraph (1) shall be made to the borrower not less than 15 days before the effective date of transfer of the servicing of the mortgage loan (with respect to which such notice is made).

(B) Exception for certain proceedings

The notice required under paragraph (1) shall be made to the borrower not more than 30 days after the effective date of assignment, sale, or transfer of the servicing of the mortgage loan (with respect to which such notice is made) in any case in

which the assignment, sale, or transfer of the servicing of the mortgage loan is preceded by--

- (i) termination of the contract for servicing the loan for cause;
- (ii) commencement of proceedings for bankruptcy of the servicer; or
- (iii) commencement of proceedings by the Federal Deposit Insurance Corporation or the Resolution Trust Corporation for conservatorship or receivership of the servicer (or an entity by which the servicer is owned or controlled).

(C) Exception for notice provided at closing

The provisions of subparagraphs (A) and (B) shall not apply to any assignment, sale, or transfer of the servicing of any mortgage loan if the person who makes the loan provides to the borrower, at settlement (with respect to the property for which the mortgage loan is made), written notice under paragraph (3) of such transfer.

(3) Contents of notice

The notice required under paragraph (1) shall include the following information:

- (A) The effective date of transfer of the servicing described in such paragraph.
- (B) The name, address, and toll-free or collect call telephone number of the transferee servicer.
- (C) A toll-free or collect call telephone number for (i) an individual employed by the transferor servicer, or (ii) the department of the transferor servicer, that can be contacted by the borrower to answer inquiries relating to the transfer of servicing.
- (D) The name and toll-free or collect call telephone number for (i) an individual employed by the transferee servicer, or (ii) the department of the transferee servicer, that can be contacted by the borrower to answer inquiries relating to the transfer of servicing.
- (E) The date on which the transferor servicer who is servicing the mortgage loan before the assignment, sale, or transfer will cease to accept payments relating to the loan and the date on which the transferee servicer will begin to accept such payments.
- (F) Any information concerning the effect the transfer may have, if any, on the terms of or the continued availability of mortgage life or disability insurance or any other type of optional insurance and what action, if any, the borrower must take to maintain coverage.
- (G) A statement that the assignment, sale, or transfer of the servicing of the mortgage loan does not affect any term or condition of the security instruments other than terms directly related to the servicing of such loan.

(c) Notice by transferee of loan servicing at time of transfer

(1) Notice requirement

Each transferee servicer to whom the servicing of any federally related mortgage loan is assigned, sold, or transferred shall notify the borrower of any such assignment, sale, or transfer.

(2) Time of notice

(A) In general

Except as provided in subparagraphs (B) and (C), the notice required under paragraph (1) shall be made to the borrower not more than 15 days after the effective date of transfer of the servicing of the mortgage loan (with respect to which such notice is made).

(B) Exception for certain proceedings

The notice required under paragraph (1) shall be made to the borrower not more than 30 days after the effective date of assignment, sale, or transfer of the servicing of the mortgage loan (with respect to which such notice is made) in any case in which the assignment, sale, or transfer of the servicing of the mortgage loan is preceded by--

- (i) termination of the contract for servicing the loan for cause;
- (ii) commencement of proceedings for bankruptcy of the servicer; or
- (iii) commencement of proceedings by the Federal Deposit Insurance Corporation or the Resolution Trust Corporation for conservatorship or receivership of the servicer (or an entity by which the servicer is owned or controlled).

(C) Exception for notice provided at closing

The provisions of subparagraphs (A) and (B) shall not apply to any assignment, sale, or transfer of the servicing of any mortgage loan if the person who makes the loan provides to the borrower, at settlement (with respect to the property for which the mortgage loan is made), written notice under paragraph (3) of such transfer.

(3) Contents of notice

Any notice required under paragraph (1) shall include the information described in subsection (b)(3) of this section.

(d) Treatment of loan payments during transfer period

During the 60-day period beginning on the effective date of transfer of the servicing of any federally related mortgage loan, a late fee may not be imposed on the borrower with respect to any payment on such loan and no such payment may be treated as late for any other purposes, if the payment is received by the transferor servicer (rather than the transferee servicer who should properly receive payment) before the due date applicable to such payment.

(e) Duty of loan servicer to respond to borrower inquiries

(1) Notice of receipt of inquiry

(A) In general

If any servicer of a federally related mortgage loan receives a qualified written request from the borrower (or an agent of the borrower) for information relating to the servicing of such loan, the servicer shall provide a written response acknowledging receipt of the correspondence within 20 days (excluding legal public holidays, Saturdays, and Sundays) unless the action requested is taken within such period.

(B) Qualified written request

For purposes of this subsection, a qualified written request shall be a written correspondence, other than notice on a

payment coupon or other payment medium supplied by the servicer, that--

- (i) includes, or otherwise enables the servicer to identify, the name and account of the borrower; and
- (ii) includes a statement of the reasons for the belief of the borrower, to the extent applicable, that the account is in error or provides sufficient detail to the servicer regarding other information sought by the borrower.

(2) Action with respect to inquiry

Not later than 60 days (excluding legal public holidays, Saturdays, and Sundays) after the receipt from any borrower of any qualified written request under paragraph (1) and, if applicable, before taking any action with respect to the inquiry of the borrower, the servicer shall--

- (A) make appropriate corrections in the account of the borrower, including the crediting of any late charges or penalties, and transmit to the borrower a written notification of such correction (which shall include the name and telephone number of a representative of the servicer who can provide assistance to the borrower);
- (B) after conducting an investigation, provide the borrower with a written explanation or clarification that includes--
  - (i) to the extent applicable, a statement of the reasons for which the servicer believes the account of the borrower is correct as determined by the servicer; and
  - (ii) the name and telephone number of an individual employed by, or the office or department of, the servicer who can provide assistance to the borrower; or
- (C) after conducting an investigation, provide the borrower with a written explanation or clarification that includes--
  - (i) information requested by the borrower or an explanation of why the information requested is unavailable or cannot be obtained by the servicer; and
  - (ii) the name and telephone number of an individual employed by, or the office or department of, the servicer who can provide assistance to the borrower.

(3) Protection of credit rating

During the 60-day period beginning on the date of the servicer's receipt from any borrower of a qualified written request relating to a dispute regarding the borrower's payments, a servicer may not provide information regarding any overdue payment, owed by such borrower and relating to such period or qualified written request, to any consumer reporting agency (as such term is defined under section 1681a of title 15).

(f) Damages and costs

Whoever fails to comply with any provision of this section shall be liable to the borrower for each such failure in the following amounts:

(1) Individuals

In the case of any action by an individual, an amount equal to the sum of--

- (A) any actual damages to the borrower as a result of the failure; and
- (B) any additional damages, as the court may allow, in the case of a pattern or practice of noncompliance with the requirements of this section, in an amount not to exceed \$1,000.

## (2) Class actions

In the case of a class action, an amount equal to the sum of--

(A) any actual damages to each of the borrowers in the class as a result of the failure; and

(B) any additional damages, as the court may allow, in the case of a pattern or practice of noncompliance with the requirements of this section, in an amount not greater than \$1,000 for each member of the class, except that the total amount of damages under this subparagraph in any class action may not exceed the lesser of--

(i) \$500,000; or

(ii) 1 percent of the net worth of the servicer.

## (3) Costs

In addition to the amounts under paragraph (1) or (2), in the case of any successful action under this section, the costs of the action, together with any attorneys fees incurred in connection with such action as the court may determine to be reasonable under the circumstances.

## (4) Nonliability

A transferor or transferee servicer shall not be liable under this subsection for any failure to comply with any requirement under this section if, within 60 days after discovering an error (whether pursuant to a final written examination report or the servicer's own procedures) and before the commencement of an action under this subsection and the receipt of written notice of the error from the borrower, the servicer notifies the person concerned of the error and makes whatever adjustments are necessary in the appropriate account to ensure that the person will not be required to pay an amount in excess of any amount that the person otherwise would have paid.

## (g) Administration of escrow accounts

If the terms of any federally related mortgage loan require the borrower to make payments to the servicer of the loan for deposit into an escrow account for the purpose of assuring payment of taxes, insurance premiums, and other charges with respect to the property, the servicer shall make payments from the escrow account for such taxes, insurance premiums, and other charges in a timely manner as such payments become due.

## (h) Preemption of conflicting State laws

Notwithstanding any provision of any law or regulation of any State, a person who makes a federally related mortgage loan or a servicer shall be considered to have complied with the provisions of any such State law or regulation requiring notice to a borrower at the time of application for a loan or transfer of the servicing of a loan if such person or servicer complies with the requirements under this section regarding timing, content, and procedures for notification of the borrower.

## (i) Definitions

For purposes of this section:

### (1) Effective date of transfer

The term "effective date of transfer" means the date on which the mortgage payment of a borrower is first due to the transferee servicer of a mortgage loan pursuant to the assignment, sale, or

transfer of the servicing of the mortgage loan.

(2) Servicer

The term "servicer" means the person responsible for servicing of a loan (including the person who makes or holds a loan if such person also services the loan). The term does not include--

(A) the Federal Deposit Insurance Corporation or the Resolution Trust Corporation, in connection with assets acquired, assigned, sold, or transferred pursuant to section 1823(c) of this title or as receiver or conservator of an insured depository institution; and

(B) the Government National Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Resolution Trust Corporation, or the Federal Deposit Insurance Corporation, in any case in which the assignment, sale, or transfer of the servicing of the mortgage loan is preceded by--

(i) termination of the contract for servicing the loan for cause;

(ii) commencement of proceedings for bankruptcy of the servicer; or

(iii) commencement of proceedings by the Federal Deposit Insurance Corporation or the Resolution Trust Corporation for conservatorship or receivership of the servicer (or an entity by which the servicer is owned or controlled).

(3) Servicing

The term "servicing" means receiving any scheduled periodic payments from a borrower pursuant to the terms of any loan, including amounts for escrow accounts described in section 2609 of this title, and making the payments of principal and interest and such other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the loan.

(j) Transition

(1) Originator liability

A person who makes a federally related mortgage loan shall not be liable to a borrower because of a failure of such person to comply with subsection (a) of this section with respect to an application for a loan made by the borrower before the regulations referred to in paragraph (3) take effect.

(2) Servicer liability

A servicer of a federally related mortgage loan shall not be liable to a borrower because of a failure of the servicer to perform any duty under subsection (b), (c), (d), or (e) of this section that arises before the regulations referred to in paragraph (3) take effect.

(3) Regulations and effective date

The Secretary shall, by regulations that shall take effect not later than April 21, 1991, establish any requirements necessary to carry out this section. Such regulations shall include the model disclosure statement required under subsection (a)(2) of this section.

(Pub. L. 93-533, Sec. 6, as added Pub. L. 101-625, title IX, Sec. 941, Nov. 28, 1990, 104 Stat. 4405; amended Pub. L. 102-27, title III, Sec. 312(a), Apr. 10, 1991, 105 Stat. 154; Pub. L. 103-325, title III,

Sec. 345, Sept. 23, 1994, 108 Stat. 2239.)

#### Prior Provisions

A prior section 2605, Pub. L. 93-533, Sec. 6, Dec. 22, 1974, 88 Stat. 1726, related to advanced itemized disclosure of settlement costs by the lender and liability of the lender for failure to comply, prior to repeal by Pub. L. 94-205, Sec. 5, Jan. 2, 1976, 89 Stat. 1158.

#### Amendments

1994--Subsec. (a)(1)(B). Pub. L. 103-325 substituted "(B) at the choice of the person making a federally related mortgage loan--  
"(i) for each of the most recent"  
for "(B) for each of the most recent", redesignated cls. (i) and (ii) as subcls. (I) and (II), respectively, and realigned margins, substituted "or" for "and" at end of subcl. (II), and added cl. (ii).  
1991--Subsec. (j). Pub. L. 102-27 added subsec. (j).

#### Section Referred to in Other Sections

This section is referred to in sections 1619, 2610 of this title; title 15 section 1641.

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(Text matches printed bills. Document has been reformatted to meet World Wide Web specifications.)

## A BILL

TO AMEND TITLE 27, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO PROPERTY AND CONVEYANCES, BY ADDING CHAPTER 49 SO AS TO PROVIDE FOR REGULATION AND ACCOUNTABILITY OF PERSONS OFFERING CLOSING AND SETTLEMENT SERVICES IN CONNECTION WITH REAL PROPERTY TRANSACTIONS; TO DEFINE CERTAIN TERMS INCLUDING "GOOD FUNDS"; AND TO PROVIDE FOR A CIVIL REMEDY, INCLUDING ATTORNEY'S FEES TO THE PREVAILING PARTY, FOR A VIOLATION OF THIS CHAPTER.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Title 27 of the 1976 Code is amended by adding:

### "CHAPTER 49

#### Real Property Closing and Settlement Services

Section 27-49-10. This chapter may be cited as 'The Disbursement of Funds as Part of Real Property Closing and Settlement Services Act'.

Section 27-49-20. As used in this chapter:

- (1) 'Closing and settlement services' means those services which benefit the parties to the sale, transfer, conveyance, lease, encumbrance, mortgage, or creation of a secured interest in and to real property, and the receipt and disbursement of money in connection with those real property transactions.
- (2) 'Borrower' means the maker of the promissory note evidencing the loan of funds to be delivered at the loan closing.
- (3) 'Lender' means any person or entity making a loan secured by a mortgage or other instrument creating a secured interest in and to real property.
- (4) 'Financial institution' means an entity that is authorized under the laws of this State, another state, or the United States of America to make loans and receive deposits, and that has its deposits insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund.
- (5) 'Loan closing' means the time agreed upon by the borrower and lender for the execution and delivery of loan documents by the borrower.
- (6) 'Loan documents' means the note evidencing the debt due the lender, the mortgage securing the debt due to the lender, and any other documents required by the lender to be executed by the borrower as part of the real property transaction.
- (7) 'Funds' means the gross or net proceeds of the loan to be distributed by or on behalf of the lender at the loan closing, or other monies required to be delivered to the settlement agent by the parties for the completion of settlement.
- (8) 'Settlement' means the time when the settlement agent has received the duly executed documents and

funds necessary to carry out the terms of the contract between the parties.

(9) 'Party' or 'parties' means the purchaser, seller, lender, borrower, settlement agent, and their agents or representatives in a real property transaction.

(10) 'Settlement agent' means the person responsible for conducting the settlement and disbursement of the settlement proceeds and includes any individual, professional corporation, professional association, limited liability company, limited liability partnership, or other entity conducting settlement and disbursement of funds.

(11) 'Disbursement of settlement proceeds' means the payment of all proceeds of the transaction by the settlement agent to the persons entitled to them.

(12) 'Collected funds' or 'good funds' means funds which are in the form of cash, confirmed wire transfer, or negotiable instrument as provided below, except that negotiable instruments for purposes of this chapter must be signed by the drawer, be payable on demand to order or to bearer, and contain an unconditional order to pay. The following are collected funds or good funds:

(a) cash or confirmed wire transfers;

(b) certified checks, cashier's checks, and teller checks;

(c) checks issued by the United States of America or its agent;

(d) checks issued by this State or its agent;

(e) checks issued by the city and county governments or other political subdivisions in this State;

(f) funds in amounts less than five hundred dollars, including checks, traveler's checks, or money orders, but multiple items must not be used to avoid this limitation. A settlement agent may refuse to collect these funds as defined in this item if his reasonable business judgment indicates that the funds may not be collected;

(g) checks drawn on the escrow account of an attorney licensed to practice law in this State or on the escrow account of a South Carolina licensed real estate broker, provided the settlement agent believes in good faith that collected funds will be in the settlement agent's escrow account within a reasonable period, not to exceed three business days from the date of closing;

(h) a personal or commercial check that has been deposited sufficiently in advance into the settlement agent's escrow account to allow Federal Reserve clearance, and for which the settlement agent has proof that the funds are irrevocably credited to his account.

(13) 'Received and deposited' means that

(a) good funds are in the possession of the settlement agent, or an employee or representative of the settlement agent;

(b) a record of receipt is entered into the books of the settlement agent and

(c) the funds are actually delivered for deposit to the financial institution in a timely manner, not to exceed two business days after closing.

In the case of a wire transfer or other direct deposit, good funds are considered to be 'received and deposited' when the financial institution notifies the settlement agent that the funds have been received.

Section 27-49-30. (A) Except as provided in Section 27-49-20(12)(g) a settlement agent who provides closing and settlement services for a real property transaction shall not disburse funds from an escrow account until good funds related to the transaction in amounts sufficient to fund all disbursements from the transaction have been received and deposited to the escrow account.

(B) The settlement agent shall maintain records of all receipts and disbursements of escrow, settlement, and closing funds for six years.

(C) The exclusive civil remedy for a party injured by a violation of this chapter is an action for actual damages plus reasonable attorney's fees, the fees to be determined by the court in which the action is brought if the injured party prevails. Otherwise, the defending party must be awarded costs of the action and reasonable attorney's fees, the fees to be determined by the court.

(D) This chapter must not be construed to repeal or modify any provisions of law relative to the utterance or delivery of a worthless or fraudulent check, and the provisions of this chapter are cumulative of those provisions."

SECTION 2. This act takes effect upon approval by the Governor.

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# Escrow Procedures

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The following provides a brief overview of Colorado Escrow Procedures and those procedures practiced by First American Heritage Title Company. For more detailed information regarding Colorado Escrow Procedures, contact First American Heritage Title Company by simply clicking on the email icon at the bottom of this page.

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Closing and Settlement Services are very often provided with Title Insurance. Closing and Settlement Service is defined as:

"Providing services for the benefit of all necessary parties in connection with the sale, leasing, encumbering, mortgaging, creating a secured interest in and to real property, and the receipt and disbursement of money in connection with any sale, lease, encumbrance, mortgage, or deed of trust. This does not include giving legal advice to said parties, nor does it include the preparation of legal documents except insofar as the preparation of such documents is considered to be a secretarial or scribe-like function delegated to the title entity, e.g., preparing a deed as directed by closing instructions provided to the closing agent."

In Colorado, all closing transactions are "Table Funded." What this means is that funds are received and disbursed at the closing table, prior to recording the legal documents.

When a title company closes the transaction they will assume responsibility for the Gap. The Gap is the time between the latest title commitment certification and the day the documents are actually recorded with the Clerk and Recorder.

All funds received for closings must comply with the Good Funds Law. Good Funds are defined as:

"Available for immediated withdrawal as a matter of right includes any wire transfer; any certified check; cashiers check; tellers check; or any other instrument as defined by Federal Regulation CC, 12 CFR part 229.10 (c)."

In order to provide Closing and Settlement Services, the closing agent must receive written instructions for the types of services we provide.

ie. For a Purchase Transaction - the Real Estate Contract and Closing Instructions.

ie. For a Loan Transaction - the Loan Closing Instructions or Disbursement Instructions. Should there be any deviation from said instructions, they also must be backed by written instructions from all appropriate parties.

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# TABLE CLOSINGS: HAVE YOU STOLEN ANY HORSES LATELY?

By Larry Christensen



*Printed with impunity from the Wyoming Land Title Association Newsletter.*

You can take my wife or burn my house, but steal my horse and there'll be hell to pay. In Wyoming, horse thieves are dealt pretty severe penalties. Title companies and closing agents may find themselves facing the same penalties as horse thieves.

Wyoming Statute 26-23-321 requires title companies to maintain separate trust accounts for funds held in connection with closings. It also provides that funds are the property of the persons entitled thereby under the provisions of the escrow.

The most common closing practice in most of Wyoming is a "table" closing (where the seller brings clear title, the buyer brings the money, and both walk away from the closing table with what the other brought). If the title company or closing agent disburses funds to the seller before the buyer's funds are "collected" or have cleared the bank, we may be selling horses.

What constitutes collected funds? Ask five bankers and you'll get six answers.

The question is addressed at length by the Board of Governors of the Federal Reserve System in its Regulation CC entitled: "Availability of Funds and Collection of Checks" (12 C.F.R. 229, as amended). Regulation CC defines the maximum time period a bank can restrict withdrawal of a deposit made, depending on the method of deposit, i.e., cash, check, etc.

The following represents a general outline of the bank delays permitted under Regulation CC: The bank must have funds available the next business day following the deposit if it is made in cash, or with a wire transfer, or in the form of a cashier's check, a certified check or a teller's check. The bank has until the fourth business day to have funds available following the deposit if it's made with a local check, and until the seventh business day if a non-local check is deposited.

When we perform table closings, we must ensure that the buyer's funds are truly collected. Otherwise, a bank may use others' funds in the account or use its right to transfer money from our other accounts to cover the buyer's uncleared check. Wyoming Statute 6-3-402 states that any

bailee, or person entrusted with custody of any property, who converts the property to the individual's or another's use is guilty of larceny. Larceny is a felony punishable by imprisonment of not more than 10 years, a fine of not more than \$10,000, or both. This statute also provides the same penalty for stealing horses.

What if your bank says it will honor your checks? Make sure that it is not advancing the funds because of your reputation as a good customer of the bank, and therefore based upon your company's ability to cover collection problems.

We in the title industry are all familiar with indemnification from civil liability. The policy of title insurance is a contract of indemnity. I know of no company or product to protect against criminal prosecution and penalties. To continue our practices as we have in the past is to do so at considerable personal risk. At least horse thieves go into their profession fully aware of the dangers.

*Larry Christensen is Vice President, First American Title Insurance Company, Casper, Wyoming.*



# *First American Title Insurance Company*

## INTER-OFFICE COMMUNICATION

DATE: October 19, 1993  
FROM: LISA DOWNER  
OFFICE: SEATTLE  
TO: LYNNE HART  
OFFICE: ANCHORAGE  
SUBJECT: WASHINGTON, OREGON AND CALIFORNIA "GOOD FUNDS" LAWS

PER YOUR REQUEST, ENCLOSED PLEASE FIND DOCUMENTATION ON THE ABOVE REFERENCED SUBJECT. I HOPE THIS WILL BE OF ASSISTANCE TO YOU. SHOULD YOU HAVE ANY FURTHER QUESTIONS PLEASE DO NOT HESITATE TO CONTACT THIS OFFICE.

*LMD*  
LMD

ENCLOSURE

*11/10  
Larry -  
Comments?  
In  
lots of options!  
Jan*



# First American Title Insurance Company of Oregon

An assumed business name of TITLE INSURANCE COMPANY OF OREGON

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Direct Dial 790-1804

Larry Christensen, Regional Chief Title Officer  
Direct Dial 790-1802

## MEMORANDUM

**DATE:** October 14, 1993

**FROM:** John D. Dobson, Vice President

**OFFICE:** Legal Department

**TO:** Lisa Downer

**RE:** Good Funds Regulation in Oregon and Washington

Enclosed is the material you requested concerning "Good Funds" in Oregon. It is controlled by regulations issued by the Real Estate Division, the same good folks who regulate escrows in this state. In essence, the regulation requires that we have a "sufficient credit balance" and allows the bank to inform us as to when that point is reached; i.e., when the bank says we have good funds, we have good funds. Also enclosed is the material I received from Santa Ana concerning California legislation and good funds. In California, the matter is controlled by statute. As I mentioned on the phone, I assume you have the Washington material. As always, if I can be of further assistance, please feel free to contact me.

## FUNDS AVAILABILITY SCHEDULE

**I. NEXT BUSINESS DAY AVAILABILITY:** Except as provided in III and IV below, funds from the following will be available by the business day after the business day of deposit, if each of the indicated requirements is met with respect to the item:

Type of Deposit	Endorsed with recourse only by the Payee	Deposited with special deposit slip	Deposited in payee's account
Cash Deposits			
Wire transfers			
U.S. Govt. checks	X		X
State of Oregon checks	X	X	X
Oregon local govt. checks	X	X	X
Checks drawn on depository bank	X		X
Cashier's certified, teller's checks	X	X	X
1st \$100 of any other check(s)	X	X	X

**II. OTHER CHECKS:** Except as provided in III and IV, funds from checks which are not covered by I above will be available as follows:

Type of Check	Funds Availability
Drawn on local depository institution	By 3rd business day after business day of deposit
Drawn on non-local depository institution	By 7th business day after business day of deposit

**III. NEW DEPOSITORS\*:** Different rules apply to deposits by new depositors during the first 30 days after the account is opened:

Type of Deposit	Funds Availability
Cash and Wire Transfer Deposits	By business day after business day of deposit
U.S. govt., State of Oregon, Oregon local govt., cashier's, certified, teller's and depository checks meeting requirements indicated in I above, and traveler's checks:	
- 1st \$3,000 deposited within the 30 days	By business day after business day of deposit
- any remainder over \$3,000	By 9th business day after business day of deposit
Other checks and items	No deadline for funds availability

**IV. EXCEPTIONS:** The depository institution is *not* required to meet the funds availability deadlines set forth in I, II and III in the following cases:

- deposits to ATM's not owned by the depository institution
- deposits of large\* or redeposited checks
- deposits to accounts with repeated overdrafts
- deposits of checks which the institution has reasonable cause to believe are uncollectible
- deposits during emergency conditions
- deposits as to which the depository institution and customer have agreed to a longer funds availability period.

**V. ADDITIONAL INFORMATION:** THIS NOTICE MERELY SUMMARIZES THE ADMINISTRATIVE RULE ADOPTED BY THE DIVISION OF FINANCE AND CORPORATE SECURITIES. A COMPLETE COPY OF THE RULE MAY BE OBTAINED FREE OF CHARGE FROM THIS DEPOSITORY INSTITUTION UPON REQUEST.



# First American Title Company

## INTER-OFFICE COMMUNICATION

Date: April 24, 1986  
FROM: CLIFFORD L. MORGAN  
Office: Santa Ana - Staff  
TO: CALIFORNIA MANAGERS  
Office:  
Subject: GOOD FUNDS (SB 1550) CHAPTER 1004 STATUTES OF 1984

As you recall, in 1984 the Legislature passed a law which is commonly referred to as "Good Funds", SB 1550. This law, among other things, dealt with checks both in-state and out-of-state which are presented in our escrows or subescrows. This law as we have stated in previous memos, requires all checks to be deposited into your escrow depository account bank before any disbursements are to be made.

With respect to in-state checks the Department of Insurance in Bulletin No. 85-6 dated April 12, 1985 stated in pertinent part in paragraph 3b that; "A Corporation or personal check may not represent "Good Funds" until it clears. Thus, if you accept such a check, you should wait until funds are collected before disbursements are made; as an alternative, encourage customers to make arrangements to fund escrows with cashier's checks, certified checks or wire transfers".

As for out-of-state checks, even though they have been deposited with your escrow depository account bank, disbursements can not be made until the funds derived from that check are "available for withdrawal as a matter of right". Any questions you have on a particular transaction involving an out-of-state check as to when the funds will be available for withdrawal as a matter of right, should be directed to your escrow depository account bank.

In another area the bulletin from the Department of Insurance states; "The practice of closing an escrow and disbursing with funds still to come from a lender (who requires recording information to be supplied prior to actually drawing its check) is a violation of the law and is a rebate. The penalty for such rebates may be as much as five times the amount of money involved".

*Not  
True*

See 12413.1(j)

Information we have received from a very good source indicates that a small Underwritten Title Company in Los Angeles County was recently audited by the Department of Insurance. The Department took roughly six weeks to complete its audit. The purpose of the audit, we are told, was to check for compliance with SB 1550 and the laws pertaining to "Good Funds". It is reported that this small Underwritten Title Company has been fined 3 million dollars for violations of the "Good Funds" law.

Obviously, fines assessed have something to do with volume and the amount of money passing through our escrows and subescrows where compliance with the law is wanting.

Attached is a copy of the Insurance Department's Bulletin No. 85-6 which I am requesting you to review so that you can make sure your office is complying with the "Good Funds" law.

Our source of information regarding the activity of the Department of Insurance indicates that the Department has expressed an intention of auditing many, if not all, of the title companies in this State for compliance with the "Good Funds" statutes and the Department's bulletin pertaining thereto.

If you have any questions regarding this matter, feel free to contact Oscar Beasley or myself here in the Home Office.

CLM:kb

Enclosure

cc: Don Kennedy  
Park Kennedy  
Oscar Beasley  
Staff  
California Regional Counsel

GOOD FUNDS LAW FOR THE STATE OF WASHINGTON

PURSUANT TO RCW 18.44.070 AS AMENDED JUNE 7, 1990:

EVERY CERTIFICATED ESCROW AGENT SHALL KEEP ADEQUATE RECORDS OF ALL TRANSACTIONS HANDLED BY OR THROUGH THE AGENT INCLUDING ITEMIZATION OF ALL RECEIPTS AND DISBURSEMENTS OF EACH TRANSACTION, WHICH RECORDS SHALL BE OPEN TO INSPECTION BY THE DIRECTOR'S AUTHORIZED REPRESENTATIVES.

EVERY CERTIFICATED AGENT SHALL KEEP A SEPARATE ESCROW FUND ACCOUNT IN A RECOGNIZED WASHINGTON STATE DEPOSITORY AUTHORIZED TO RECEIVE FUNDS, IN WHICH SHALL BE KEPT SEPARATE AND APART AND SEGREGATED FROM THE AGENT'S OWN FUNDS, ALL FUNDS OR MONEYS OF CLIENTS WHICH ARE BEING HELD BY THE AGENT PENDING THE CLOSING OF A TRANSACTION AND SUCH FUNDS SHALL BE DEPOSITED NO LATER THAN THE FIRST BANKING DAY FOLLOWING RECEIPT THEREOF.

AN ESCROW AGENT, UNLESS EXEMPTED BY RCW 18.44.020(2) (THAT IS, ATTORNEYS IN THE PRACTICE OF LAW), SHALL NOT MAKE DISBURSEMENTS ON ANY ESCROW ACCOUNT WITHOUT FIRST RECEIVING DEPOSITS DIRECTLY RELATING TO THE ACCOUNT IN AMOUNTS AT LEAST EQUAL TO THE DISBURSEMENTS. AN ESCROW AGENT SHALL NOT MAKE DISBURSEMENTS UNTIL THE NEXT BUSINESS DAY AFTER THE BUSINESS DAY ON WHICH THE FUNDS ARE DEPOSITED UNLESS THE DEPOSIT IS MADE IN CASH, BY INTERBANK ELECTRONIC TRANSFER, OR IN A FORM THAT PERMITS CONVERSION OF THE DEPOSIT TO CASH ON THE SAME DAY THE DEPOSIT IS MADE. THE DEPOSITS SHALL BE IN ONE OF THE FOLLOWING FORMS:

- (1) CASH;
- (2) INTERBANK ELECTRONIC TRANSFERS SUCH THAT THE FUNDS ARE UNCONDITIONALLY RECEIVED BY THE ESCROW AGENT OR THE AGENT'S DEPOSITORY;
- (3) CHECKS, AND CERTIFIED CHECKS THAT ARE PAYABLE IN WASHINGTON STATE AND DRAWN ON FINANCIAL INSTITUTIONS LOCATED IN WASHINGTON STATE; OR
- (4) CHECKS, NEGOTIABLE ORDERS OF WITHDRAWAL, MONEY ORDERS, AND ANY OTHER ITEMS THAT HAVE BEEN FINALLY PAID AS DESCRIBED IN RCW 62A.4-213 BEFORE ANY DISBURSEMENT; OR
- (5) ANY DEPOSITORY CHECK, INCLUDING ANY CASHIER'S CHECK, CERTIFIED CHECK, OR TELLER'S, WHICH IS GOVERNED BY THE PROVISIONS OF THE FEDERAL EXPEDITED FUNDS AVAILABILITY ACT, 12 U.S.C. SECTION 4001 ET. SEQ.

THE WORD "ITEM" MEANS ANY INSTRUMENT FOR THE PAYMENT OF MONEY EVEN THOUGH IT IS NOT NEGOTIABLE, BUT DOES NOT INCLUDE MONEY.

VIOLATION OF THIS SECTION SHALL SUBJECT AN ESCROW AGENT TO PENALTIES AS PRESCRIBED IN TITLE 9A RCW AND REMEDIES AS PROVIDED IN CHAPTER 19.86 RCW AND SHALL CONSTITUTE GROUNDS FOR SUSPENSION OR REVOCATION OF THE REGISTRATION OR LICENSE OF ANY CERTIFIED ESCROW AGENT.

ACCOUNTING PRACTICES

863-50-055(1) A check shall not be [drawn, executed, or dated] disbursed prior to the existence in the individual escrow account or a bank escrow account against which it is drawn, executed, or dated, of a sufficient credit balance to cover the check.

(2) Transfer of funds between individual closing escrow accounts may not be accomplished by ledger entries alone. The transfer must be accompanied by written checks and receipts charging and crediting the appropriate escrow account or by a written transfer form filed in each of the escrow accounts involved. A transfer form shall contain the date of the transfer, the amount of funds being transferred, the identity of the escrow accounts being debited and credited, and the signature of a person authorized to sign checks on the escrow bank account. Transfer forms may be used only where the escrow accounts involved in the transfer are closed through the same bank account. The authorization for the transfer must be placed in each escrow file involved.

(3) Transfers between collection escrow accounts may be made by ledger entries alone. The entries must identify the transaction and be made on each affected ledger account. Transfer authorization must be filed in each escrow account.

(4) An escrow agent shall not withdraw or transfer money from any individual escrow account or bank escrow account [in excess of the amount to the credit of such account at the time of] prior to

the existence in the individual escrow account or bank escrow account of a sufficient credit balance to cover the payment or transfer.

(5) Escrow fees from a closing escrow shall not be withdrawn from the closing escrow account until it is ready for closing pursuant to the written escrow instructions. The fees must be withdrawn no later than the date of other final disbursements from the account. The fees may be posted to a separate fee ledger. If the fees are posted to a separate fee ledger, the fees must be withdrawn at least once each month. Unless transferred to a control account, the check or voucher used to withdraw closing escrow fees shall disclose the escrow number and amount for each fee withdrawn.

(6) Escrow fees from a collection escrow shall be withdrawn from the collection escrow account when the collection service has been performed. The fees may be posted to a separate fee ledger. If the fees are set aside in a separate fee ledger, the fees must be withdrawn at least once each month. Unless transferred to a control account, the check or voucher used to withdraw collection escrow fees shall disclose the escrow number and amount for each fee withdrawn.

(7) Only funds received as part of an escrow transaction may be deposited in the "Escrow" or "Trust" account established under ORS [696.560] 696.578.

(8) All funds deposited in a "Trust" or "Escrow" account established under ORS [696.560] 696.578 shall be withdrawn, paid out, or transferred to other accounts as specified in the written

escrow instructions of the principals to the escrow transaction directed to the escrow agent or pursuant to order of a court of competent jurisdiction.

(9) All receipts and disbursements of escrow funds shall be posted in the escrow ledger, or with the written permission of the Commissioner, on a separate posting sheet in the escrow file as of the date of the transaction, without regard to the date of posting.

(10) An escrow agent shall provide the Commissioner upon the Commissioner's request with a continuing authorization to certify the actual balance in any "Escrow" or "Trust" account of the escrow agent established under ORS [696.560] 696.578. The authorization shall be filed in the depository in which the account is maintained and a copy of the authorization shall be filed with the Commissioner.

(11) Upon request by an authorized representative of the Commissioner, an escrow agent must demonstrate that a "sufficient credit balance" existed in an individual escrow closing account prior to any disbursement by producing documentation and financial records showing that:

(a) The client's trust funds deposited into a clients' trust account and credited to the individual account were collected and available for disbursement; and

(b) The disbursement of these funds did not involve the use of any other client's trust funds deposited into a clients' trust account and credited to any other individual escrow closing account.

one or more title insurers" or between one or more title insurers and one or more underwritten title companies, "if such division does not constitute an unlawful rebate as defined by Section 12404.5".

The 1965 amendment substituted "between title insurers or between title insurers and underwritten title companies or between underwritten title companies" for "between two or more title insurers or between one or more title insurers or between one or more title insurer's and one or more underwritten title companies"; and inserted "or prohibited by Section 12405.7", deleted "or the certificate" following "examination" in the former second sentence, and added the former third sentence (see text set out, post).

The 1982 amendment inserted ", for work and services actually performed" following "fees or charges"; inserted "is" preceding "prohibited by"; and created two sentences out of the former first sentence by the substitution of "or 12408.5. However," for "; provided that"; and deleted the former third sentence which read:

"Notwithstanding the other provisions of this article no title insurer, no controlled escrow company and no underwritten title company shall pay any commission for the solicitation or negotiation of title policies, indorsements, guarantees and any other forms of title services".

The 1985 amendment substituted the second sentence for the former second and third sentences which previously read:

"However, a title insurer shall specify on any title policy issued by it, either in a single amount or by itemization, the entire charge made to obtain such title policy, including the charges made by any underwritten title company for the title search, title examination, certificate or abstract of title upon the basis of which such title policy is issued. If so specified in a single amount, such charge shall be clearly described as the total charge for both the title insurance fee and the title search or examination, or abstract of title, as the case may be, of any underwritten title company."

Derivation: Former § 750.1, added by Stats. 1947, c. 628, p. 1634, § 1.

#### Library References

Background and general effect of 1965 amendment. Rev. of 1965 Code Leg. (Cont.Educ. of Bar, 1965) page 160.

### § 12413. Disbursements from escrow accounts; conditions precedent

(a) No title insurance company, controlled escrow company, or underwritten title company shall disburse funds from an escrow account until items or drafts in an amount sufficient to fund any disbursements from the account have been received and deposited to the account or submitted for collection.

(b) Except as provided in Section 12404, where a draft, other than a share draft, has been received and submitted for collection, no title insurance company, controlled escrow company, or underwritten title company shall disburse funds from an escrow account with respect to the draft until the proceeds of the draft have become available for withdrawal as a matter of right from the financial institution to which the draft has been submitted for collection.

(c) Except as provided in Section 12404, where an item which is drawn on an office of a financial institution which is located in a state other than this state, has been received and deposited to the escrow account, no title insurance company, controlled escrow company, or underwritten title company shall disburse funds from the escrow account with respect to the item until the proceeds of the item have become available for withdrawal as a matter of right from the financial institution to which the deposit was made. For the purposes of this subdivision, "item" does not include any category of checks which has been found by the commissioner, in response to an application: (1) to be drawn by a financial institution insured by the Federal Deposit Insur-

REBATES AND COMMISSIONS  
Pt. 6

§ 12413

ance Corporation or the Federal Savings and Loan Insurance Corporation, (2) to qualify for use in interbank settlements in accordance with Section 4211 of the Commercial Code, (3) to be drawn on an insured bank which is located in a Federal Reserve city or which has a routing and transit code on the face of the check which is identified as a high dollar group sort clearing point by the Board of Governors of the Federal Reserve system, and (4) to be shown on the basis of verifiable information to be collected by depository banks within the same time or less as generally occurs for items drawn on California institutions. For the purposes of this subdivision, "Federal Reserve city" is a city in which is located a Federal Reserve Bank or branch thereof.

(d) For purposes of subdivisions (b) and (c), "available for withdrawal as a matter of right" means the following:

(1) For any item or draft, other than a share draft, when the item or draft has been submitted for collection and payment received.

(2) For any deposited item, the earlier of:

(A) When final settlement has occurred.

(B) Unless written notification has been received from the financial institution to which the deposit was made establishing a longer period, for any item drawn on a state or federal saving and loan association or state or federal savings bank located in a state other than this state, that period established by regulations, issued pursuant to Article 1.8 (commencing with Section 866) of Chapter 7 of Division 1 of the Financial Code by the department having regulatory authority over the financial institution to which the item was deposited, as a reasonable time for permitting customers to draw on the item which was drawn on a financial institution located in a state other than this state, notwithstanding any provision in the regulations limiting their application to items having a face amount less than a stated amount.

(C) Unless written notification has been received from the financial institution to which the deposit was made establishing a longer period, for any item drawn on a state or national bank located in a state other than this state, that period established by regulations, issued pursuant to Article 1.8 (commencing with Section 866) of Chapter 7 of Division 1 of the Financial Code by the department having regulatory authority over the financial institution to which the item was deposited, as a reasonable time for permitting customers to draw on the item which was drawn on a financial institution located in a state other than this state, notwithstanding any provision in the regulations limiting their application to items having a face amount less than a stated amount.

(D) Unless written notification has been received from the financial institution to which the deposit was made establishing a longer period, for any item drawn on any state or federal credit union located in a state other than this state, that period established by regulations, issued pursuant to Article 1.8 (commencing with Section 866) of Chapter 7 of Division 1 of the Financial Code by the department having regulatory authority over the financial institution to which the item was deposited, as a reasonable time for permitting customers to draw on the item which was drawn on a financial institution

located in a state other than this state, notwithstanding any provision in the regulations limiting their application to items having a face amount less than a stated amount.

(E) When the financial institution to which the item has been deposited considers the item available for withdrawal as a matter of right, and when a final settlement will occur, as indicated to the title insurance company, controlled escrow company, or underwritten title company, in writing, by the depository financial institution with respect to that item or type of item.

(e) As used herein, the deposit to an escrow account of an item, or the submission for collection of an item, shall be deemed to have occurred on the date denominated the day of deposit as set forth in the regulations adopted pursuant to Article 1.8 (commencing with Section 866) of Chapter 7 of Division 1 of the Financial Code, applicable to the financial institution to which the item is deposited or submitted for collection by the title insurer, controlled escrow company, or underwritten title company.

(f) For purposes of this section, the term "escrow account" means any depository account with a financial institution to which items or drafts are deposited with respect to any transaction wherein one person, for the purpose of effecting the sale, transfer, encumbering or leasing of real or personal property to another person, delivers any written instrument, money, evidence of title to real or personal property, or other thing of value to a third person to be held by such third person until the happening of a specified event or the performance of a prescribed condition, when it is then to be delivered by such third person to a grantee, grantor, promisee, promisor, obligee, obligor, bailee, bailor, or any agency or employee of the latter.

(g) For purposes of this section, the term "item" means any check (including a cashier's check), negotiable order of withdrawal, share draft, traveler's check, or money order.

(h) For purposes of this section, the term "financial institution" means any financial institution: (1) whose accounts are insured by either the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation or the National Credit Union Administration, or (2) which is subject to the jurisdiction of either the Comptroller of the Currency, the Federal Home Loan Bank Board, or the National Credit Union Administration, or (3) is located in a state other than this state, and does not meet the requirements of paragraph (1) or (2), but is subject to the jurisdiction of the state with which it is located by an agency having authority comparable to that of either the State Department of State Banking, Department of Savings and Loan, or Department of Corporations.

(i) No title insurance company, controlled escrow company, or underwritten title company shall be liable for a violation of this section if the violation was not intentional or resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid that error. Examples of bona fide errors include, but are not limited to clerical, calculation, computer malfunction and programming, and printing errors.

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## REVIEW PROCEDURES

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(j) Nothing in this section shall be deemed to prohibit the recordation of documents prior to the time funds would be available for disbursement with respect to a transaction provided the parties to the transaction consent in writing prior thereto.

(Added by Stats. 1984, c. 1004, § 2. Amended by Stats. 1985, c. 471, § 1; Stats. 1987, c. 1502, § 1.)

#### Historical Note

The 1985 amendment inserted subd. (d)(2)(E), relating to availability for withdrawal and final settlement.

The 1987 amendment, in the first sentence of subd. (c) deleted "or issued by" following

"which is drawn on"; inserted the second and third sentences of subd. (c) defining "item" and "Federal Reserve city"; and made a nonsubstantive change in punctuation.

#### Library References

Words and Phrases (Perm.Ed.)

### § 12413.5. Deposit of escrow funds

All funds received in connection with any escrow conducted by a title insurance company, controlled escrow company, or underwritten title company shall be deposited in a separate depository account in a bank or savings and loan association, and the funds so deposited shall be the property of the person or persons entitled thereto under the provisions of the escrow and segregated escrow by escrow in the records of the title insurance company, controlled escrow company, or underwritten title company. The funds shall not be subject to any debts of the title insurance company, controlled escrow company, or underwritten title company and shall be used only to fulfill the terms of the individual escrow for which the funds were accepted and none of the funds shall be utilized until the conditions of the escrow have been met.

Any interest received on funds deposited in connection with any escrow which are deposited in a bank or savings and loan association shall be paid over by the escrow to the depositing party to the escrow unless the escrow is otherwise instructed by the depositing party, and shall not be transferred to the account of the title insurance company, controlled escrow company, or underwritten title company.

(Added by Stats. 1984, c. 1004, § 3.)

#### Library References

Deposits and Escrows § 13, 14.  
C.J.S. Depositaries §§ 5, 6, 7, 8.

## Article 6.7

### HEARINGS, PROCEDURE, AND JUDICIAL REVIEW

#### Section

12414.13. Request for review; denial; complaint; request for hearing.

12414.14. Notice to correct noncompliance.

12414.15. Public hearing; notice.

STATE OF CALIFORNIA  
DEPARTMENT OF INSURANCE  
100 Van Ness Avenue  
San Francisco, CA 94102

RECEIVED

APR 17 1985

Bulletin No. 85-6  
April 12, 1985

TO: All Title Insurers, Underwritten Title  
Companies, Controlled Escrow Companies  
And Other Interested Persons

SUBJECT: Chapter 1004, Statutes of 1984 - Escrow Float  
Legislation - Amended California Insurance Code  
Section 12389 And New Insurance Code Sections 12413  
and 12413.5



Senate Bill 1550 (Keene), Chapter 1004, Statutes of 1984, which amended Section 12389 of the California Insurance Code and added Sections 12413 and 12413.5 to the California Insurance Code, became effective as law on January 1, 1985. As a result of the new law, all title insurers, underwritten title companies and controlled escrow companies (hereinafter "title entities"), which engage in the business of conducting escrow and subescrow transactions, may be required to substantially alter their business practices relative to the disbursement of escrow funds.

This bulletin's purpose is to address numerous issues with respect to the new law and to emphasize the importance this Department assigns to practices adopted by all title entities relative to achieving strict compliance with the requirements of the law, particularly Sections 12413 and 12413.5. To this end, please be informed that, in the future, audits of title entities conducted by the Department of Insurance will include substantial reviews of title entities' procedures and practices in handling escrow funds for the purpose of determining compliance with the requirements of the law. The intent of Sections 12413 and 12413.5 is to provide maximum assurance to members of the public that their funds will not be placed in jeopardy when entrusted to a title entity in the course of a real estate escrow transaction; we expect that intent to be foremost in the minds of directors, officers and employees of all title entities during the course of any escrow.

Some specific points to bear in mind with respect to the law:

1. The escrow instructions are ultimately controlling and may require all items, regardless of whether they are in-state or out-of-state items, to be available for withdrawal as a matter of right (defined in paragraph No. 4 below) before recordation and any disbursement may be made. "Items" as used in this paragraph and throughout this bulletin is defined in new Section 12413(g) of the California Insurance Code and means "checks (including cashier's checks), negotiable orders of withdrawal, share drafts, traveler's checks, or money orders."

2. The provisions of Sections 12413 and 12413.5 apply to subescrows as well as escrows conducted by title entities.
3. The new law provides that where in-state items are received for a particular escrow account, funds shall not be disbursed from such escrow account until such items have been deposited into such account. Precautions should be taken before disbursing on such deposited items and we recommend that the following procedures be followed to protect yourself as an escrow/subescrow agent:
  - a. A financial institution check should be verified with a responsible officer of the drawee institution to assure that no stop payment has been placed on the check; in addition, a confirmation should be obtained that there will not be a stop payment placed on it.
  - b. A corporate or personal check may not represent "good funds" until it clears. Thus, if you accept such a check, you should wait until funds are collected before disbursements are made; as an alternative, encourage customers to make arrangements to fund escrows with cashier's checks, certified checks or wire transfers.
4. The new law provides that where out-of-state items are deposited into an escrow, no funds shall be disbursed with respect to such items until the proceeds thereof have become available for withdrawal as a matter of right from the financial institution in which the items were deposited. "Available for withdrawal as a matter of right" means the earlier of when final settlement has occurred or when time periods for availability of funds on deposited items have elapsed. Such time periods, which are commonly known as hold periods, are set forth in regulations which have been issued by the Superintendent of Banks and the Savings and Loan Commissioner and generally range from 8 to 10 business days. Title entities should ascertain the exact time of final settlement for items drawn on specific out-of-state institutions from those financial institutions where escrow accounts are maintained. Please be advised that the final settlement on out-of-state items may occur substantially earlier than the hold periods set forth in the regulations of the Superintendent of Banks and the Savings and Loan Commissioner.
5. Questions have arisen with respect to the applicability of the new law, particularly the hold periods, to certain payment systems operated by major out-of-state financial institutions. According to the Superintendent of Banks' interpretation of his regulation, items from such payment systems may be considered available

as a matter of right on the next business day after their deposit under certain limited conditions. According to Mr. John R. Paulus, Deputy Superintendent of Banks, pursuant to Section 10.190406(a)(3) of Chapter 1, Title 10 of the California Administrative Code:

"If an insured thrift or an insured bank located in this state draws its checks on an account it maintains in an out-of-state insured bank, such checks would be considered available on the next business day. However, please note that to the extent such checks exceed the provisions of Section 10.190407(a)(6), they would be subject to the policy of the depository bank."

Section 10.190407(a)(6) reads as follows:

"(a) The hold periods for items deposited by a depositor in a deposit account at a depository bank set forth in Sections 10.190405 and 10.190406 of this Chapter shall not apply in the following cases:

(6) If and to the extent that the items deposited in a deposit account in one business day exceed \$2,500."

Since the amount of a lender's funds received and deposited into an escrow would seldom be less than \$2,500, it would appear that the policy of a title entity's escrow depository bank would be determinative of when the proceeds from items from payment systems of out-of-state financial institutions would be available as a matter of right. A title entity accepting such items should obtain a letter (to be retained for Department of Insurance review during examinations) from its depository bank which clearly states the bank's policy with respect to hold period for such items. Please be advised that the regulations of the Savings and Loan Commissioner do not contain a provision similar to Section 10.190406(a)(3) and, as such, title entities using saving and loan institutions as escrow account depositories should not necessarily be guided by this paragraph.

6. The law requires that prior to any disbursement of funds from an escrow account, there must be sufficient funds received and deposited into the escrow. The practice of closing an escrow and disbursing with funds which are not available as a matter of right (in the case of out-of-state items) is a violation of the law and may be a rebate pursuant to Section 12404 of the California Insurance Code. The practice of closing an escrow and disbursing with funds still to come from a lender (who requires recording information to be supplied prior to actually drawing its check) is a violation of the law and is a rebate. The penalty for such rebates may be as much as five times the amount of money involved.

7. The new law requires that all drafts, whether drawn on a financial institution located within or outside of California, be sent for collection and cleared funds be received into the escrowholder's trust account prior to recording documents and disbursing funds.

This Department is most concerned that title entities comply with the overall intent of the new law and curb their past abuses with respects to escrow trust accounts. As escrow/subescrow agents, you are fiduciaries to the principals of escrows. You owe the highest degree of care and duty to those who entrust you to handle their escrow transactions. By closing an escrow on "insufficient funds", you may be held to have violated this duty, thus, subjecting your companies to adverse regulatory action and substantial monetary fines as well as potential civil liability.



BRUCE BUNNER  
Insurance Commissioner

reporting entity has an agreement, written or otherwise, whereby title orders are traded or otherwise exchanged in order to achieve compliance with this article.

(Added by Stats.1989, c. 344, § 1.)

§ 12397. Intent to compete for title insurance; plans to limit orders from controlled business sources

Any applicant for a license shall indicate the applicant's intent to actively compete in the marketplace for title insurance in each county in which the applicant seeks to or does conduct the business of title insurance. The failure to so indicate shall constitute grounds for denial of the license. Each applicant for a license shall also demonstrate that its plan of operation and intended course of business conduct will not involve reliance for more than 50 percent of its closed title orders from controlled business sources.

(Added by Stats.1989, c. 344, § 1.)

§ 12397.5. Records and reports; competitive activity; source of title orders; measure of competitive behavior; exemptions

(a) Each licensee shall make submissions as are required by the Department of Insurance to enable the department to determine the nature and extent of the licensee's efforts to actively compete in each county in which it transacts its business. The licensee shall maintain records of its title orders sufficient to indicate the source of the title orders.

(b) Competitive behavior shall be measured by the source of closed title orders in each county in which the licensee engages in the title business and by the entity's progress toward meeting the 50 percent objective specified in Section 12397, as indicated in the annual, verified report filed pursuant to subdivision (c).

(c) Within 90 days following the end of each business year, as established by the licensee, each licensee shall file with the commissioner, and any title insurer with which the licensee maintains an underwriting agreement, a verified report executed by the licensee's chief executive officer or his or her designee under penalty of perjury, stating the percent of closed title orders for each county originating from controlled and noncontrolled business sources. Each title insurer that maintains an underwriting agreement with another licensee shall, within 30 days after receipt of this report, file with the commissioner a verified statement, signed by the licensee's chief executive officer or by his or her designee under penalty of perjury, that the report is substantially correct or that insufficient information is contained in the report to enable an opinion to be formed concerning the correctness of the report.

(d) Upon receipt by the department of a verified statement, signed under penalty of perjury, that less than 5 percent of the business a licensee transacts emanates from controlled business sources, the licensee shall be relieved of further reporting under this article, but shall be subject to reporting under subdivision (c) at any time that 5 percent or more of the business which the licensee transacts emanates from controlled business sources.

(Added by Stats.1989, c. 344, § 1.)

§ 12398. Failure to comply with article requirements

The failure of an applicant or licensee to comply with any of the requirements of this article shall be grounds for the denial of an application for a license, the suspension or revocation of an issued license, or other disciplinary action determined by the commissioner, in accordance with procedures prescribed by law therefor.

(Added by Stats.1989, c. 344, § 1.)

§ 12399. Scope of article

Nothing in this article shall limit or preclude the consideration or approval of an application for a license, except as expressly provided in this article.

(Added by Stats.1989, c. 344, § 1.)

ARTICLE 6. REBATES AND COMMISSIONS

Section

12413.1. Disbursements from escrow accounts; time; violations; liability; recordation of documents; construction with other laws. [New]

12413.2. Deposit of items or drafts; time; definition of item.

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§ 12404.1. Preliminary report; charge; waiver

The furnishing of a preliminary report by any title insurer, controlled escrow company or underwritten title company, without charge to any person shall constitute a violation of Section 12404. The charge for a preliminary report shall have a reasonable relation to the cost of production of the report but in no event shall it be less than the rate for a standard owners policy, minimum liability, as set forth in the company's rate schedule. After billing any person for a preliminary report the title insurer, controlled escrow company or underwritten title company shall promptly make a good faith attempt to collect; provided, however, that notwithstanding Section 12404, but without limiting the applicability of that section to other transactions, this charge may be waived or canceled, if the company follows uniform practices as to all customers under like circumstances.

(a) After the issuance of the preliminary report, but before the charge is waived or canceled, the files of the issuing company contain a copy of a bona fide sales or exchange agreement, or loan commitment executed by the party or parties in interest relating to the property described in the report, and the sale, exchange, or loan is not consummated.

(b) When the preliminary report so furnished contains a lien or encumbrance or other title defect which the issuing company has refused to eliminate from its policy of title insurance or to provide insurance against loss by reason thereof, and another title insurance company has eliminated the lien or encumbrance or other title defect from its policy of title insurance or provided insurance against loss resulting therefrom within a reasonable period of time from the date of the issuance of the preliminary report.

The furnishing of the name of the owner of record and the record description of any parcel of real property shall not be deemed to be a violation of Section 12404.

(Amended by Stats.1989, c. 598, § 1.)

Historical Note

1989 Legislation

The 1989 amendment substituted "preliminary report" for "title report" throughout the section, and made nonsubstantive changes.

§ 12413. Repealed by Stats.1989, c. 598, § 2

Historical Note

See, now, § 12413.1.

Notes of Decisions

Validity 1

1. Validity

This section which provided that escrow accounts had to hold checks drawn on out-of-state banks until they cleared.

but could distribute proceeds of checks drawn on in-state banks as soon as they were deposited into escrow account, was on its face discriminatory against interstate commerce; thus, out-of-state provider of fund transfer services was entitled to preliminary injunction against enforcement of this section. Citicorp Services, Inc. v. Gillespie, N.D.Cal.1989, 712 F.Supp. 749.

§ 12413.1. Disbursements from escrow accounts; time; violations; liability; recordation of documents; construction with other laws

No title insurance company, controlled escrow company, or underwritten title company shall disburse funds from an escrow account until the day established by the following:

(a) Except for funds deposited by cash or by electronic payment, deposits accorded next day availability pursuant to Part 229 of Title 12 of the Code of Federal Regulations may not be disbursed until the business day following the business day of deposit.

(b) Except for drafts, deposits not accorded next day availability pursuant to Part 229 of Title 12 of the Code of Federal Regulations shall not be disbursed until the day on which these funds must be made available to depositors under the federal regulation specified in this subdivision.

(c) Funds deposited by cash or by electronic payment may be disbursed following deposit on the same business day as the business day of deposit.

(d) Notwithstanding the provisions of subdivision (b), deposits other than drafts may be disbursed on the business day following the business day of deposit if the financial institution to which the funds have been deposited informs the title insurance company, controlled escrow company, or underwritten title company in writing that final settlement has occurred on the deposited item.

Additions in text are indicated by underline; deletions by asterisks \* \* \*

(e) Where a draft, other than a share draft, has been received and submitted for collection, no title insurance company, controlled escrow company, or underwritten title company shall disburse funds from an escrow account with respect to the draft until the proceeds of the draft have become available for withdrawal from the financial institution to which the draft has been submitted for collection. For purposes of this subdivision, "available for withdrawal" means when the draft has been submitted for collection and payment received. Notwithstanding this subdivision, disbursement of funds represented by share drafts shall be governed by subdivisions (b) and (d), if applicable.

(f) For purposes of this section, "escrow account" means any depository account with a financial institution to which funds are deposited with respect to any transaction wherein one person, for the purpose of effecting the sale, transfer, encumbering or leasing of real or personal property to another person, delivers any written instrument, money, evidence of title to real or personal property, or other thing of value to a third person to be held by that third person until the happening of a specified event or the performance of a prescribed condition, when it is then to be delivered by that third person to a grantee, grantor, promisee, promisor, obligee, obligor, bailee, bailor, or any agency or employee of the latter.

(g) Except as provided in subdivision (h), for purposes of this section, any word or term used herein or relevant to interpretation of this section, including, but not limited to, "available for withdrawal," "check," "electronic payment," and "business day," which is defined in Part 229 of Title 12 of the Code of Federal Regulations on January 1, 1990, shall have the meaning there given as the regulations existed on January 1, 1990.

(h) For purposes of this section, "financial institution" means any financial institution specified in Section 12413.5.

(i) No title insurance company, controlled escrow company, or underwritten title company shall be liable for a violation of this section if the violation was not intentional or resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid that error. Examples of bona fide errors include, but are not limited to, clerical, calculation, computer malfunction and programming, and printing errors.

(j) Nothing in this section shall be deemed to prohibit the recordation of documents prior to the time funds are available for disbursement with respect to a transaction provided the parties to the transaction consent in writing prior thereto.

(k) Nothing in this section is intended to amend, alter, or supersede other sections of this code, or other laws of this state or the United States, regarding an escrow holder's duties and obligations.

(Added by Stats.1989, c. 598, § 3.)

Historical Note

Derivation: Former § 12413, added by Stats.1984, c. 1004, § 2, amended by Stats.1985, c. 471, § 1; Stats.1987, c. 1502, § 1.

§ 12413.2. Deposit of items or drafts; time; definition of item

Any item or draft received by a title insurance company, controlled escrow company, or underwritten title company in connection with any escrow shall be deposited in, or submitted for collection to, a financial institution as defined in Section 12413, no later than the close of the next business day following receipt.

For purposes of this section, "item" means any check, including a cashier's check, negotiable order of withdrawal, share draft, traveler's check, or money order.

(Added by Stats.1988, c. 389, § 1.)

§ 12413.5. Deposit of escrow funds

All funds received in connection with any escrow conducted by a title insurance company, controlled escrow company, or underwritten title company shall be deposited in a separate depository account in a bank or savings and loan association or in an account in an industrial loan company insured by the Federal Deposit Insurance Corporation, and the funds so deposited shall be the property of the person or persons entitled thereto under the provisions of the escrow and segregated escrow by escrow in the records of the title insurance company, controlled escrow company, or underwritten title company. The funds shall not be subject to any debts of the title insurance company, controlled escrow company, or underwritten title company and shall be used only to fulfill the terms of the individual escrow for which the funds were accepted and none of the funds shall be utilized until the conditions of the escrow have been met.

Additions in text are indicated by underline; deletions by asterisks \* \* \*

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- Any interest received on funds deposited in connection with any escrow which are deposited in a bank, savings and loan association, or industrial loan company shall be paid over by the escrow to the depositing party to the escrow unless the escrow is otherwise instructed by the depositing party, and shall not be transferred to the account of the title insurance company, controlled escrow company, or underwritten title company.

(Amended by Stats.1989, c. 328, § 2.)

PART 6.1. HEALTH DISABILITY INSURANCE CONVERSION

Cross References

Long-term care insurance, conversion, see § 10235.12

§ 12692. Continuation benefit coverage; duration; eligible dependents; conditions of availability of coverage

On and after January 1, 1985, every insurer and nonprofit hospital service plan issuing group disability insurance which covers hospital, medical, or surgical expenses shall offer to group policyholders a continuation benefit which, if selected, shall have a duration of at least 90 days and which shall be offered consecutively to any federal requirement for continuation benefits. The terms and conditions shall include continuation benefit coverage for widows, widowers, divorced or legally separated spouses, spouses of covered employees becoming entitled to benefits under Title XVIII of the Social Security Act, and their dependents, including dependent children who cease to be dependent children under the plan, who were covered by the group contract on the date of termination of coverage. However, any existing provisions of law regarding termination of a dependent child status shall not be affected by this section.

The continuation of coverage shall be available only under the following conditions:

(a) Those eligible remain within the State of California, although the departure of a dependent child to another state shall not invalidate the continuation provisions for any other family members.

(b) Those eligible do not marry or remarry, although the marriage of any dependent child shall not invalidate the continuation provisions for other family members.

(c) Those eligible are not eligible for any comparable state, federal, or private group medical plan, although the eligibility of any dependent child shall not invalidate the continuation provisions for other family members.

(d) Those eligible do not find employment with an employer that has a group plan of its own, even if the plan is less substantive, although the entry into such an employee plan by a dependent child shall not invalidate the continuation provisions for other family members.

(e) The group policy is not terminated or the employer's participation in the group policy is not terminated.

(f) Those eligible do not knowingly furnish incorrect information or otherwise improperly obtain the benefits of the plan.

(g) The continuing individual shall pay the premium amount in the manner specified in the group policy for both his or her share of the premium and the group policyholder's share, if any.

(h) Eligible persons under this section shall be notified in the same manner required for conversion notification pursuant to Section 12689. Every insurer shall communicate the availability of such coverage to all group policyholders and to all prospective group policyholders with whom they are negotiating.

(Amended by Stats.1988, c. 960, § 2.)

PART 6.5. CALIFORNIA MAJOR MEDICAL INSURANCE PROGRAM [NEW]

Chapter Section
1. General 12700
2. Definitions 12705
3. Powers and Duties 12710
4. Major Medical Insurance 12715
5. Participating Health Plans 12720

Additions in text are indicated by underline; deletions by asterisks \* \* \*



# First American Title Company

## INTER-OFFICE COMMUNICATION

Date: November 19, 1984  
FROM: Clifford L. Morgan  
Office: Santa Ana - Staff  
TO: CALIFORNIA MANAGERS  
Office: All California  
Subject: SB 1550 CHAPTER 1004 STATUTES 1984 "GOOD FUNDS"  
LEGISLATION

The above mentioned bill has been signed into law by our Governor and becomes effective January 1, 1985. It impacts upon any escrow or subescrow handled by a title insurance company, underwritten title company or controlled escrow company in the State of California.

This bill was sponsored by the California Land Title Association. The Department of Insurance had been scrutinizing our industry's escrow practices very closely and had left us with a very strong impression that if we didn't "clean up our act" they may do it for us.

This bill in pertinent part added Sections 12413 and 12413.5 to our California Insurance Code.

The main thrust of the law is in two areas.

1. Cash, checks, money orders and drafts sufficient to cover all disbursements must be deposited to our escrow depository bank account before we can record.
2. We must have "good funds" before we can disburse.

It is very important that information about this new law is given out to our customers as soon as possible. Attached is a copy of a NOTICE (Form No. 1157) which you can order from the Home Office. This NOTICE should be handed out and attached to every preliminary report and commitment you issue. Don't wait until January 1, 1985 to do this.

Currently we are asked to record documents, advance recording fees and charges, advance tax payments and perform other services requiring us to advance funds and bill our customer. Also, many lenders will not "fund" to our escrow until we have recorded and called them with confirming recording information.

Under the new law we are prohibited from advancing any fees and charges or making any disbursements from an escrow account until we have received and deposited with the bank or savings and loan that has our escrow account, cash, checks, money orders or drafts in an amount sufficient to fund any disbursements [California Insurance Code Section 12413(a)].

This means we can no longer advance tax payments or bill for fees and charges. I am not saying you can't bill for escrow fees and title premiums when you choose to do so. We can no longer record a transaction for a lender or anyone else until the lender or other party has deposited its check or draft into escrow and we have deposited same into our escrow depository bank account. We must have received and deposited cash, checks, etc. in an amount sufficient to pay for any disbursements before we record.

Section 12404 of the California Insurance Code allowing title companies to advance up to 2% of a transaction to facilitate a closing does not apply here.

#### EXPLANATION OF CALIFORNIA INSURANCE CODE SECTION 12404

This section in pertinent part allows us to advance or disburse funds in an amount equal to 2% of the amount of the transaction to facilitate a close if we desire to do so. The new law modifies this substantially. We are now technically allowed to do this only when we have the written consent of all parties to the transaction [California Insurance Code Section 12413(j)] and all necessary deposits of cash, checks or drafts representing a sum equal to all disbursements have been made to our escrow depository bank account. Even though the checks, drafts, etc. have not cleared, technically we could record and pay the recording fees and transfer tax and make other similar advances for the purpose of facilitating a close of escrow, provided such advances do not exceed, in the aggregate, 2% of the amount of the transaction. However, you couldn't make any other disbursements until any drafts have been cleared and funds therefrom collected into your escrow depository bank account and checks, share drafts and money orders drawn on out of state financial institutions have either cleared and been collected into your account or the applicable non-disbursing time period has elapsed, whichever first occurs. These time periods are discussed later in this memo.

This practice shall be known as the "close now and disburse later" procedure. It is not a preferred practice. However, it may be that from time to time the parties to a transaction are insistant that we close even though we can't disburse yet.

When this occurs under California Insurance Code Section 12413(j) all parties to the transaction must consent in writing. Obviously to close without this consent would under usual circumstances

violate escrow instructions anyway. The parties to a transaction would include the buyer, seller and lender. Under certain circumstances it would also include the existing lender which expects to be paid off or has entered into some form of assumption or modification agreement.

When we close under these conditions we will be obligated upon recordation to issue the policy or policies of title insurance required in the escrow instructions.

These types of closings may require making adjustments to your escrow instructions for some if not all of the following:

- (a) prorations
- (b) any tax installments becoming due or delinquent during the "non-disbursement period".
- (c) continuing accrual of interest and late payment penalties on deeds of trust and other liens and encumbrances that are to be paid off when we can disburse.
- (d) a seller may require interest on the net sales proceeds between the date of recording and the date of receipt of our disbursement.

It will be necessary to have the parties to the transaction agree upon the date to use for proration purposes and who it is that will bear the additional costs for the accrual of interest, penalties, delinquency charges, payments and other charges during the "non-disbursement period". An additional sum of money sufficient to cover any additional amounts must be collected into escrow.

Attached is a copy of an "Addendum to Escrow Instructions" which should be used to modify your instructions to allow a "close now and disburse later" procedure.

If you are acting in a subescrow capacity it will be necessary for the company handling the escrow to obtain the requisite written consent from all parties to the transaction when the "close now and disburse later" procedure is to be used. You must have a copy of that portion of the escrow company's instructions which constitutes this written consent to be retained in your file.

As I previously mentioned the "close now and disburse later" procedure, while legal, is not preferred. In most situations it would be better not to close until the funds are available as a matter of law for disbursement as discussed in the following paragraphs.

Existing practice includes the utilization by some lenders of drafts to "fund" a transaction. A draft may identify itself by having the word "draft" on the front or back. However, usually this is not so. A draft usually looks like a check in all respects

except, located above or to the side of the name of the financial institution the draft is drawn on you will see the words "payable through". Drafts can present many problems to an escrow holder. A draft is not an absolute promise to pay but rather a conditional commitment to pay. The conditions being established by the party submitting the draft.

For example:

You have accepted a draft submitted by XYZ Mortgage Company and payable through (drawn on) a bank in New York. You close your escrow by recording a reconveyance, a deed and a new deed of trust. At this point you are disbursing funds from your escrow to pay for recording fees, transfer tax, amounts payable to retire the old deed of trust, broker's commissions and sales proceeds to the seller. The funds being disbursed from your escrow are not from the bank in New York. They are our funds. First American's money is being advanced to close the transaction. Of course you have submitted the draft to your bank for collection. When the New York bank receives the draft several days later, it contacts XYZ Mortgage Company to see if the Mortgage Company wants the draft honored. If the Mortgage Company believes its loan package to be in order, can find no fault with what we have done in closing the transaction and assuming the account upon which the draft was drawn has a sufficient balance to pay the draft, the Mortgage Company will instruct the bank to honor the draft. The New York bank will then send the funds to your escrow account bank. Obviously it takes several days before the draft has been honored and the funds collected in your escrow bank account.

Under the new law, except for being able to advance up to 2% of a transaction to facilitate a closing as provided in California Insurance Code Section 12404, you are prohibited from disbursing funds from your escrow or subescrow account with respect to a draft, other than a share draft, until the proceeds of the draft have actually been collected and deposited into your escrow depository bank account. [California Insurance Code Section 12413(b)]

This is the case regardless of whether the draft is payable through (drawn on) a financial institution located in California or outside the state of California.

The reason for excluding share drafts is, a share draft is drawn on a "checking" account established by a Credit Union for its member. Share drafts, checks, money orders etc., have different rules which apply as discussed in some of the following paragraphs.

How do you distinguish a share draft from other drafts?

Example:

The Santa Ana City Employees Credit Union has share drafts payable through Security Pacific National Bank but on the share draft the Credit Union's name also appears. You will recognize the document as a draft because it contains the term "payable through", and you will recognize it as a share draft because the name of the Credit Union which established the account will appear on the share draft together with the name of the financial institution it is payable through.

Share drafts are honored by the lending institutions they are payable through under the same rules as checks. In the example, Security Pacific National Bank would not check with anyone to see if they should honor the share draft under normal circumstances. If there are funds in the account to pay the share draft it would be paid assuming there is no stop payment.

You must remember there isn't any specific number of days to wait before making disbursements with respect to a draft. The "non-disbursement period" for drafts is however many days it takes for the funds represented by the draft to actually be collected into your escrow depository bank account.

It is possible to cut the number of days substantially by obtaining the written authorization of the borrower to pay for the extra charges and have your escrow depository bank Federal Express the draft to the financial institution it is payable through and request the funds derived from the draft to be wire transferred to your escrow depository bank account. The extra charges for this service will vary depending upon what the collection fee and wire transfer fee is that is charged by each financial institution.

Under existing practice we receipt into escrow checks, including cashier's and certified checks, money orders, share drafts and traveler's checks drawn on or insured by an office of a financial institution which is located in some state other than California. Many times we close our escrow and make disbursements even though these checks have not had time to clear the financial institution it was issued by or drawn on. This means of course, we are again making disbursements of First American's money and not the money from the parties that are supposed to be financing the transaction. As a result of this practice it is not uncommon for us to have an overdraft of our escrow account because of the delay in collecting the out of state financial institution's funds.

Under the new law, except for being able to advance up to 2% of a transaction to facilitate a closing as provided in Insurance Code Section 12404, if the transaction is to be funded through the utilization of any check, (including a cashier's, certified or traveler's check) share draft, or money order (collectively

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"out of state check") drawn on or issued by an office of a financial institution which is located in a state other than California, we are prohibited from disbursing funds from the escrow account with respect to the "out of state check" until after the earlier of (i) the "out of state check" has cleared and the funds have been collected into our escrow depository bank account, or (ii) depending upon what type of financial institution maintains your escrow account and what type of financial institution the "out of state check" was drawn on or issued by the number of business days set forth below has elapsed from the date of deposit of the "out of state check" into your escrow depository bank account:

Financial Institution Maintaining Escrow Account	Financial Institution out of state check is drawn on or issued by	Minimum number of <u>business days</u> to wait before disbursing
City Bank	Bank	8
Non City Bank	Bank	9
City Bank	Savings Bank, Savings and Loan or Credit Union	10
Non City Bank	Savings Bank, Savings and Loan or Credit Union	10
Savings Bank or Savings and Loan	Bank, Savings Bank or Credit Union	10

This number of business days can be extended if your escrow depository bank where the deposit was made gives you written notification prior to the expiration of the applicable time period that a longer period of time will be necessary. However, this should not happen very often. [California Insurance Code Section 12413(c) and (d)]

The number of business days could be substantially reduced if you submitted the "out of state check" for collection to your escrow depository bank and followed the same Federal Express mail and wire transfer of funds procedure as described in the previous paragraphs on drafts.

How do you know if your escrow depository account is with a "city bank"? - by the Federal Reserve routing symbol shown in the upper right hand corner of your escrow checks. You will notice a block of numbers in this area. If your escrow account is with a "city

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bank" you will find the numbers 1210 or 1220 shown as the denominator in this block of numbers.

How do you count the number of business days to wait before disbursing? The day you make the deposit into your escrow depository account is excluded. So, the following day is day one, and you count from there, obviously excluding Saturdays, Sundays and holidays.

If the check, money order, etc. submitted to your escrow is drawn on or issued by a financial institution located outside the United States or is a finance company, thrift and loan, etc. (not a bank, savings bank, savings and loan or credit union) located within the United States but outside the State of California, no disbursements as to these checks, etc. should be made until the funds have been collected from these financial institutions into your escrow depository account.

Checks drawn on the U.S. Treasury are not subject to this new law, therefore there is no "non-disbursement period" which applies to these checks.

Checks, money orders, share drafts (but not other drafts) drawn on or issued by financial institutions located within the state of California are not subject to this new law. Therefore our existing escrow practices as to "in state checks" will be continued.

What is the impact of this new law on First American's inter-office draft system? To the degree the "funds" deposited with the office you will be drafting from are represented by a draft or an "out of state check", the same rules will apply as if the deposit had been made directly to your escrow without the use of the "draft system".

How do you avoid this "non-disbursement period" created by the new law?

1. Use checks, share drafts and money orders drawn on or issued by offices of financial institutions located within the state of California.
2. Where this is not possible or desirable, then utilization of wire transfers from the out of state financial institutions to your escrow depository account will avoid a delay.
3. Avoid using drafts.

QUICK REVIEW:

1. Hand out the attached NOTICE to as many customers as possible, now.
2. Attach a copy of the NOTICE to all preliminary reports and commitments starting immediately.

CALIFORNIA MANAGERS

November 19, 1984

Page Eight

3. When an escrow or title order is opened remind the client about the "non-disbursement period" necessitated by this new law if drafts or "out of state checks" are used. Remind them of ways to avoid the problem.
4. Try to obtain information prior to the anticipated close of escrow about where the financial institutions are located that any check or money order will be drawn on to fund the transaction.
5. Try to determine prior to any anticipated close of escrow if any lender plans on using a draft to fund the loan.
6. Upon receiving anything that looks like a check, share draft, draft or money order, check it closely. If it is determined to be a draft or an "out of state check" immediately notify all parties to the transaction as well as the Real Estate Agents of the fact of a possible delay in the closing and/or disbursements. If handling a subescrow notify the escrow company handling the escrow.
7. If, as a matter of law, it appears the funds will not be available for disbursements at the time of the anticipated close of escrow (recording date), all parties to the transaction must make a decision of whether to extend the time for the date of close so disbursements could be made as of closing or going ahead and closing as planned even though disbursements cannot be made at that time. ("close now and disburse later" procedure)
8. If the "close now and disburse later" procedure is chosen all parties to the transaction must consent in writing prior to the closing (recording). Their consent (amended instructions) must tell us which documents are to be recorded and on what date. They must also indicate if there are to be any changes in prorations and/or adjustments for taxes, assessments, interest, late payment penalties, impound accounts etc. on all existing deeds of trust and other liens.  
  
Remember to collect enough additional money from the appropriate parties to cover any changes.
9. Remember the new law requires all cash, checks, drafts, share drafts, or money orders in a sum sufficient to fund any disbursements to have been deposited into our escrow depository bank account before we can record or make any disbursements.
10. New law prohibits, except as provided in Insurance Code Section 12404, disbursing funds with respect to any draft (other than a share draft) regardless of whether it is drawn on a California or out of state financial institution

CALIFORNIA MANAGERS

November 19, 1984

Page Nine

until after the draft has cleared (been honored) and the funds have been collected into your escrow depository bank account.

11. New law prohibits, except as provided in Insurance Code Section 12404, disbursing funds with respect to any "out of state check" (this includes checks, cashier's, certified and traveler's checks, share drafts and money orders) until after either the "out of state check" has cleared (been honored) and the funds have been collected into your escrow depository account or the applicable "non-disbursement period" has elapsed, whichever first happens.
12. Don't make any disbursements until you are legally entitled to do so under this new law and the conditions of your escrow instructions.

TO KNOWINGLY VIOLATE THIS NEW LAW COULD RESULT IN A FINE OF 5 TIMES THE AMOUNT OF ANY DETERMINED UNLAWFUL REBATE BY THE DEPARTMENT OF INSURANCE.

Attached for further information is a copy of CLTA's "WHAT DOES IT MEAN - Questions & Answers" which is helpful in answering some possible further questions.

If you would like to discuss any questions you have, please contact your Regional or Home Office staff.

CLM:sb

cc:Staff

- All Regional Vice Presidents
- All State Managers
- All Regional Counsel
- California Regional Title Officers
- California Chief Title Officers



## NOTICE

Sections 12413 and 12413.5 of the California Insurance Code become effective on January 1, 1985. This new law requires that any title insurance company, underwritten title company or controlled escrow company handling funds in an escrow or subescrow capacity must have all cash, checks and drafts representing disbursements to be made by it deposited into its escrow depository bank account *before* recording your transaction.

When checks (including cashier's, certified and traveler's checks), share drafts and money orders are drawn on or issued by an office of a financial institution located outside the state of California or when any draft (other than a share draft) is deposited into or submitted for collection to First American Title Company's escrow depository bank account, there may be a substantial delay in the closing of your transaction or the disbursement of funds to be made by First American Title Company.

To avoid any delay necessitated by this new law please consider the following:

1. Use checks, share drafts or money orders drawn on or issued by offices of financial institutions located within the state of California.
2. Require the wire transfer of the funds from the office of the financial institution located outside the state of California to First American's escrow depository bank account.
3. Avoid using drafts.

If you have any questions about the effect of this new law on your escrow please contact your local First American Title Company office.

March 27, 1996

Representative Norman Rokeberg  
Alaska State House of Representatives  
State Capitol  
MS #3101  
Juneau, Alaska 99801-1182

Re: Proposed Addition to A.S. 34, affecting the  
deposits and disbursements of trust funds by  
settlement agents

Dear Representative Rokeberg:

The Alaska State Escrow Association, an association of escrow settlement agents, has reviewed work draft #0-LS0635/E, dated 3/24/97. We are pleased that you are sponsoring this bill; however, we have two concerns.

Re Sec. 34.75.030. Interest on escrow money: This section restricts the payment or collection by a settlement agent of interest on money held in escrow. Sec. 34.75.010 clearly defines that money held in escrow is not the property of the settlement agent. Frequently, real estate transactions close upon the condition that money is held from the seller and/or buyer in an interest bearing escrow trust account for the completion of certain improvements or repairs after closing. These sums can be in excess of eight thousand dollars. In commercial real estate transactions, large earnest money deposits are made with the settlement agent and the settlement agent is asked by the principals to place these monies into an interest bearing trust account for the benefit of the principals. In both situations, the interest accrues to the principal and not to the settlement agent.

It is our recommendation that this section be clarified to read as follows:

Notwithstanding any other provision of law, interest may not be collected or paid by a settlement agent on money held in escrow, unless authorized by the parties to the escrow by written instructions.

Re Sec. 34.75.070. Department supervision: This section as written would allow auditing of escrow accounts to assure compliance with the terms of the provisions of the chapter. This is too broad, and would be too costly for the department. We suggest the audit authority be limited to those matters where a complaint has been received by the department from parties to the escrow. The second sentence of this section should read as follows:

The department may audit settlement agent records and accounts, but only those records and accounts specific to an escrow transaction where a party to that transaction has complained of non-compliance with the provisions of this chapter, in writing, to the department.

If you have any questions, please do not hesitate to contact D.J. Webb, President, or Lynne Hart, Legislative Affairs, at (907) 562-0504.

We look forward to working with you.

Very truly yours,

Alaska State Escrow Association

D.J. Webb  
President

## Fax Transmission

**Date:** Monday, July 28, 1997

**Time:** 1:32:00 PM

1

**Pages**

**To:** Janet  
Rep. Norm Rokerberg's Office

**phone:**

**fax:** 258-2916

**From:** Robin Ward  
Summit Title Insurance Agency

**phone:** 907-562-3770

**fax:** 907-562-1236

**Re:** Sorry that I haven't gotten back on the UCIOA bill. We are having a meeting this week with our attorney and will go over the questions and get back with you as soon as possible.

Are we going to have any hearings on Good Funds Legislation during the interim?

Thanks!!

Robin

07-28-97P01:34 RCVD



**HB**

**276**

4/21/98 - Ann Boyce

① all principal heads of boards +  
Comms  
\$115,800 \$150,800 - all 4 sept

② What's are point?

③

## Evaluation of New Department Staffing Levels

<u>Department</u>	<u>Number of Staff</u>	<u>Number of Deputy Commissioners</u>
Administration	1,413	1
DCED	348	1
DCRA	180	1
Corrections	1,294	1
Education	618	1
DEC	454	1
F&G	1,353	2
H&SS	1,971	1
Labor	603	1
Law	435	2
Military & Vet.	262	1
DNR	895	1
Public Safety	855	1
Revenue	494	2
DOT & PF	3,015	1

- After the merger, there will be 13 fewer employees and 52 employees moving from DCRA to other departments. Therefore, the total employees in the new department will be 463. It will still be the 4th smallest department.
- Only 3 departments have two deputy commissioners. The new department will still have a special assistant which could be changed to be a second deputy commissioner, if it is deemed warranted.

HOUSE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Introduced:

Referred:

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the compensation and terms and conditions of employment  
2 of the heads and deputy heads of principal executive departments of the state."

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 \* Section 1. AS 39.20.080(a) is amended to read:

5 (a) The monthly salary of the head of each principal executive department of  
6 the state is equal to Step E, Range 26 [28] of the salary schedule in AS 39.27.011(a)  
7 for Juneau, Alaska.

8 \* Sec. 2. AS 39.20.080(b) is amended to read:

9 (b) The monthly salary of a deputy head of a principal executive department  
10 of the state is not less than Step A nor more than Step F, Range 26 [28] of the salary  
11 schedule in AS 39.27.011(a) for Juneau, Alaska.

12 \* Sec. 3. AS 39.20.080 is amended by adding a new subsection to read:

13 (d) The head and the deputy head of a principal executive department are not  
14 subject to the state personnel laws or regulations relating to hours of employment.

1 annual leave, sick leave, overtime, compensatory time, or travel allowances. This  
2 subsection does not deprive the head or the deputy head of a principal executive  
3 department of the right to participate in the state retirement system or in state group  
4 insurance plans.

5 \* Sec. 4. This Act applies to a head or deputy head of a principal executive department  
6 who is first hired into that position on or after the effective date of this Act.

**HB**

**298**

Revision Date: \_\_\_\_\_ Dept. Affected: Revenue  
 Title: Renew Liquor License From Bankruptcy Court BRU: Alcoholic Beverage Control Board  
 Component: Alcoholic Beverage Control Board  
 Sponsor: Representative Hodgins  
 Requestor: (H) L&C Component Serial No. 100

Expenditures/Revenues: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES (Loss )	(14.0)	(9.6)	(9.6)	(9.6)	(9.6)	(9.6)
----------------------------	--------	-------	-------	-------	-------	-------

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts	(14.0)	(9.6)	(9.6)	(9.6)	(9.6)	(9.6)
337 GF/Mental Health						
Other						
<b>TOTAL</b>	<b>(14.0)</b>	<b>(9.6)</b>	<b>(9.6)</b>	<b>(9.6)</b>	<b>(9.6)</b>	<b>(9.6)</b>

Estimate of any current year (FY96) cost \$ 0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

HB 298 provides an exception to the existing policy set out in statute and regulation to encourage liquor licensees to operate liquor licenses they own. HB 298 gives licensees who acquired a liquor license from U.S. Bankruptcy court a seven year moratorium from operating requirements, provide a 50% reduction in license fees, and makes the advantage provided to this class of licensee effective retroactive to July 1, 1995. This special treatment to a specific class of licensee is unfair in the very competitive food and beverage industry.

The fiscal analysis involves predicting how many future liquor licenses will be acquired from U.S. Bankruptcy court. this is impossible to determine with any degree of certainty. The following explanation is our best estimate of how much license renewal revenue the State would lose if this bill is enacted.

(Continued on next page)

Prepared by: Douglas Griffin  
 Division: Alcoholic Beverage Control Board  
 Approved by Commissioner: Wilson L. Condon  
 Agency: Department of Revenue

Phone: 907-277-8638  
 Date: April 24, 1998  
 Date: April 24, 1998

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE



Official Business

# Alaska State Legislature

## HOUSE OF REPRESENTATIVES

State Capitol  
Juneau, AK 99801-1182

### SPONSOR STATEMENT

#### **HB 298-"An Act relating to the Denial of Renewal of a Liquor License"**

**This legislation amends AS 04.11.330(a) by adding the provision that a license may be renewed if the applicant has not previously operated the licensed premises and the applicant has acquired the right to apply for the license in United States Bankruptcy Court.**

**This right shall apply for only seven (7) years after the first renewal date and the license renewal fee under this subsection shall equal one-half (1/2) of the applicable biennial license fee.**

**Retroactive to July 1, 1995**

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE HODGINS

TO: HB 298

- 1 Page 2, line 15, following "Court":
- 2       Insert ", the state, or a municipality"

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

130 Seward Street, Suite 409  
Juneau, Alaska 99801-2105

## MEMORANDUM

February 19, 1998

**SUBJECT:** Sectional Summary of HB 298

**TO:** Representative Mark Hodgins  
Attn: Tom

**FROM:** Michael F. Ford *M.F.F.*  
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

**Section 1.** Adds a reference to an exception to the requirement that in order to renew a liquor license, the licensed premises must have been operated for at least 30 days during each of the preceding two calendar years.

**Section 2.** Adds an exception to the requirement contained in AS 04.11.330(a)(3) concerning renewal of a liquor license. A license may be renewed if the applicant acquired the right to apply for the license from a United States Bankruptcy Court and the application for renewal is filed within seven years after the first renewal date of the license following the applicant's acquisition of the right to apply for the license.

**Section 3.** Provision making the Act retroactive to July 1, 1995.

**Section 4.** Effective date.

MFF:pl  
98-035.plm

HB 298

Renew Liquor License From Bankruptcy Court

April 24, 1998

Page 2

This analysis involved review of seven license files that were either purchased as a result of a bankruptcy case or are currently in bankruptcy. Other licenses could potentially be affected by HB 298.

The seven licenses reviewed produced estimated costs to the ABC Board in lost Program Receipts. These receipts are from lost waivers and license fees.

This amount is greater in FY 99 due to the retroactive effective date. The seven cases are a conservative estimate of the numbers of licenses that may be subject to bankruptcy proceeding. There is no way to accurately predict the number of licenses that could be affected.



# Alaska State Legislature

## HOUSE OF REPRESENTATIVES

*received*  
*2/20/98 10:57AM*  
*sh*

Official Business

State Capitol  
Juneau, AK 99801-1182

February 18, 1998

Representative Norman Rokeberg,  
Chairman  
Labor & Commerce Committee

RE: Scheduling HB 298-Liquor Licenses out of Bankruptcy at L&C meeting

Dear Chairman Rokeberg:

I understand that HB298 has been referred to the Labor and Commerce Committee. I respectfully request a hearing on HB 298.

I am looking forward to HB 298 being scheduled in your Labor & Commerce committee.

Thank you for your consideration of this request.

With kindest regards,

Sincerely,

A handwritten signature in cursive script, appearing to read "Mark Hodgins".

Mark Hodgins,  
Representative, District 9

**HB**

**300**

**File 1**



**Blue Cross**  
of Washington and Alaska

An Independent Licensee of the  
Blue Cross and Blue Shield Association



**Blue Cross**  
of Washington and Alaska

An Independent Licensee of the  
Blue Cross and Blue Shield Association

**Choose the program that's best  
for you in four easy steps.**

**Step 1**

Read the general guidelines for:

- BasicOne Programs
- Traditional Programs

**Step 2**

Compare the benefits and cost of  
the programs.

**Step 3**

Select the program and deductible  
option that meets your needs.

**Step 4**

Call your agent or Blue Cross of  
Washington and Alaska at (907) 258-5065  
or 1-800-PLAN-ONE (1-800-752-6663).

---

Represented by:

If you don't have an agent that offers  
Blue Cross coverage, call (907) 258-5065 or  
1-800-PLAN-ONE (1-800-752-6663).  
Our TTY/TTD number for the hearing  
impaired is (206) 670-4022. (Toll free  
1-800-842-5357).

**Health Care  
Coverage  
for Individuals  
and Families**

**Alaska**

*Two programs  
designed especially  
for Alaska residents—  
This guide will  
help you decide  
which is best  
for you.*

\* Registered mark of the Blue Cross and Blue Shield Association  
\*\* Registered mark of Blue Cross of California

# Which program is best for you?

## BasicOne Programs

### ***Our most affordable coverage***

BasicOne program benefits are paid at 80% of the first \$10,000 of covered expenses per enrollee (after satisfying a per enrollee deductible). Benefits are then paid at 100% for the remainder of the calendar year.

BasicOne coverage provides a safety net covering a range of services including hospital inpatient stays, surgeons, anesthesiologists, chemotherapy, emergency and operating room expenses.

*Please note that health care services covered within this program are limited. If you are considering this low-cost, basic service program, be sure to carefully review the Summary of Benefits to make certain your health care needs will be adequately met.*

### ***BasicOne Product Highlights***

To protect yourself and family from the high costs of hospitalization and surgery, BasicOne is excellent coverage. Highlights include:

- Coverage for inpatient hospital stays including inpatient physician visits and rehabilitation care.
- Emergency room and outpatient surgery benefits.
- Skilled nursing facility and home health care coverage.
- Choice of either \$1,000 deductible or \$500 deductible per person per year.
- Participating providers agree to bill Blue Cross directly for you.
- \$1,000,000 lifetime maximum.

## Traditional Programs

### ***Benefits paid at 80%***

Traditional program benefits are paid at 80% of the first \$5,000 of covered expenses per enrollee (after any deductibles have been satisfied) and then at 100% for the remainder of the calendar year.

### ***Participating Provider Network adds value***

The Participating Provider Network in Alaska continues to expand. This network brings you the added value of protection from balance billing when you use participating providers. This means that providers who have contracted with us agree to accept our allowable charge as payment in full. You pay only applicable deductibles and coinsurance, charges for any noncovered services, or amounts beyond your program's maximum benefits.

In addition, there are no claim forms to fill out; participating providers agree to bill Blue Cross directly for you.

### ***Traditional Product Highlights***

Traditional programs provide a wide range of benefits for you and your family.

Highlights include:

- Office Calls.
- Prescription Drugs.
- X-ray and Laboratory services.
- Chiropractic Care up to \$500 per calendar year.

*Look inside for more benefit information on these programs.*

## BasicOne Program Monthly Rates

Coverage Program	\$1000 Deductible		\$500 Deductible		
	Regular Rate	Non-Smoker	Regular Rate	Non-Smoker	
Subscriber	Under 30	\$ 46	\$ 42	\$ 57	\$ 53
	30-34	58	53	69	62
	35-39	65	58	80	72
	40-44	70	65	84	75
	45-49	80	72	97	88
	50-54	95	87	117	106
	55-59	117	105	143	129
60-64	153	137	186	168	
Subscriber & Spouse	Under 30	\$ 99	\$ 89	\$ 121	\$ 109
	30-34	114	103	138	125
	35-39	127	114	155	141
	40-44	135	122	164	147
	45-49	157	141	190	170
	50-54	186	169	225	204
	55-59	223	202	272	245
60-64	300	271	367	330	
Subscriber, Spouse & Child(ren)	Under 30	\$ 169	\$ 159	\$ 206	\$ 194
	30-34	182	172	223	209
	35-39	193	180	237	222
	40-44	204	192	249	231
	45-49	222	207	270	250
	50-54	249	231	304	281
	55-59	286	265	349	321
60-64	372	343	454	415	
Subscriber & Child(ren)	Under 30	\$ 117	\$ 112	\$ 143	\$ 137
	30-34	127	122	155	147
	35-39	133	126	161	152
	40-44	137	133	169	159
	45-49	147	137	177	168
	50-54	159	149	195	184
	55-59	181	170	222	208
60-64	225	209	276	257	

## Traditional Program Monthly Rates

Coverage Program	Age (Younger of Subscriber & Spouse)	\$2500 Deductible		\$1000 Deductible		\$500 Deductible		\$200 Deductible	
		Regular Rate	Non-Smoker	Regular Rate	Non-Smoker	Regular Rate	Non-Smoker	Regular Rate	Non-Smoker
Subscriber	Under 30	\$80	\$69	\$106	\$89	\$135	\$115	\$154	\$130
	30-34	89	75	115	97	151	129	171	145
	35-39	92	78	121	103	158	134	179	152
	40-44	112	96	152	129	195	166	222	188
	45-49	136	117	184	157	239	204	272	231
	50-54	164	140	218	185	283	241	320	272
	55-59	174	148	229	193	297	252	336	286
60-64	184	157	244	206	317	270	361	307	
Subscriber & Spouse	Under 30	\$165	\$141	\$218	\$185	\$273	\$232	\$308	\$262
	30-34	183	156	244	206	303	257	344	293
	35-39	191	163	253	215	316	269	356	303
	40-44	237	200	317	270	393	333	443	377
	45-49	290	246	385	327	480	408	541	460
	50-54	341	291	454	386	565	480	641	545
	55-59	359	307	477	406	595	506	673	572
60-64	386	327	510	433	636	540	719	611	
Subscriber, Spouse & Child(ren)	Under 30	\$227	\$203	\$301	\$268	\$376	\$335	\$424	\$377
	30-34	246	219	325	287	406	360	459	408
	35-39	251	221	333	294	415	368	470	416
	40-44	295	260	395	348	490	431	557	491
	45-49	336	293	444	386	555	483	630	549
	50-54	388	338	516	448	642	557	728	632
	55-59	421	367	559	488	698	609	788	688
60-64	446	389	592	516	740	644	836	728	
Subscriber & Child(ren)	Under 30	\$157	\$145	\$205	\$189	\$257	\$237	\$292	\$268
	30-34	167	153	220	202	274	252	312	286
	35-39	168	154	223	205	279	255	315	288
	40-44	192	176	258	234	322	293	365	332
	45-49	211	190	279	252	351	316	396	355
	50-54	242	217	318	285	398	356	451	403
	55-59	265	239	349	315	440	395	499	449
60-64	280	253	372	334	464	417	525	471	

Payment Options: • Monthly through automatic deduction • Bimonthly billing statements (monthly rate x 2)

Rates are effective January 1, 1997.

## Summary of Benefits\*

	Basic One Programs	Traditional Programs
<b>Calendar Year Deductible</b>  <i>Your calendar year deductible must be satisfied before the following benefits are paid.</i>  The services must be covered under your contract to be applied to the deductible	\$500 deductible per individual, no family maximum or \$1,000 deductible per individual, no family maximum	\$200 deductible per individual, maximum of \$600 per family or \$500 deductible per individual, maximum of \$1,000 per family or \$1,000 deductible per individual, maximum of \$2,000 per family or \$2,500 deductible per individual, maximum of \$5,000 per family
<b>Lifetime Maximum</b>	\$1,000,000	\$1,000,000
<b>Hospital Inpatient**</b> Room and Board (semi-private), Intensive Care Unit, Ancillary Services **All programs require preauthorization for all scheduled hospital admissions	Covered under Major Medical	Covered under Major Medical
<b>Hospital Outpatient:</b> Emergency Room	Covered under Major Medical Treatment for injuries within 2 days of an accident and medical emergencies only Covered under Major Medical	Covered under Major Medical (Additional \$50 deductible per occurrence)  Covered under Major Medical
Minor Surgery, X-ray/Radium Therapy, Chemotherapy, Preadmission Testing	Covered under Major Medical Covered under Major Medical	Covered under Major Medical  Covered under Major Medical
<b>Physician Benefits:</b> Office Calls Surgeon, Assistant Surgeon, Anesthesia, Hospital Physician Calls, X-ray/Radium Therapy, Chemotherapy	Not covered (except covered surgeries)  Covered under Major Medical	Covered under Major Medical  Covered under Major Medical
<b>Rehabilitative Care</b> Inpatient Hospital Treatment (semi-private room following acute care), Outpatient Treatment	Covered under Major Medical (inpatient only) up to \$5,000 per calendar year	Covered under Major Medical up to \$5,000 per calendar year (limit of \$1,000 per calendar year for outpatient treatment)
<b>Skilled Nursing Facility</b>	Covered under Major Medical up to \$2,000 per calendar year (Participating or Medicare-approved in service area or Medicare-approved out of service area)	Covered under Major Medical up to \$5,000 per calendar year (Participating or Medicare-approved in service area or Medicare-approved out of service area)
<b>Home Health Care</b>	Covered under Major Medical up to \$5,000 per calendar year (Medicare-certified as a Home Health Agency or licensed or certified as a Home Health Agency by the state in which it operates)	Covered under Major Medical up to \$10,000 per calendar year (Medicare-certified as a Home Health Agency or licensed or certified as a Home Health Agency by the state in which it operates)
<b>Ambulance</b>	Covered under Major Medical up to \$500 per calendar year (by a licensed ground or air ambulance to the nearest facility equipped to render treatment)	Covered under Major Medical (by a licensed ground or air ambulance to the nearest facility equipped to render treatment)
<b>Prescription Drugs, Medical Equipment, Diagnostic X ray and Lab, and Prosthetic Devices</b>	Not covered	Covered under Major Medical
<b>Hospice Care</b>	Not covered	Not covered
<b>Routine Physical Exams</b> Related diagnostic X-ray and Lab, Well-Baby care and immunizations	Not covered	Not covered
<b>Maternity Benefit</b> Including Prenatal Care for subscriber or covered spouse	Not covered (Complications of pregnancy, as defined by the program contract, are covered as any other illness)	Not covered (Complications of pregnancy, as defined by the program contract, are covered as any other illness)
<b>Acute Nursing</b> Private Duty Nursing	Not covered	Covered under Major Medical up to \$2,500 per calendar year
<b>Psychiatric Care/Chemical Dependency Treatment</b>	Not covered	Not covered
<b>Chiropractic Care</b> Adjustments and X-rays	Not covered	Covered under Major Medical up to \$500 per calendar year
<b>Major Medical</b>	Benefits listed as covered under Major Medical are paid at the following: After the deductible, we pay 80% of the next \$10,000 of covered expenses, then 100% for the remainder of the calendar year.	Benefits listed as covered under Major Medical are paid at the following: After the deductible, we pay 80% of the next \$5,000 of covered expenses, then 100% for the remainder of the calendar year.

\*Blue Cross has established maximum allowances for covered services and supplies charged by health care providers. The vast majority of fees charged fall within these limits. Benefits are not provided for that portion of any fee that exceeds these limits. This summary is only a brief description of coverage; this is not a contract. The contract you receive when you purchase coverage will contain full details.

*You receive quality health care coverage*  
More people individually and in business have come to depend on us for a wide and complete range of benefits. We think you'll agree with what they've found: now more than ever, you need Blue Cross.

We are a leader in innovative programs which provide access to quality, affordable health care coverage to Alaska residents. Look to Blue Cross for your coverage needs.

***Non-smoker discount***

If you and your covered spouse have abstained from using tobacco products for at least one year, you'll earn a discount ranging from 8 to 15 percent.

***Worldwide coverage***

Your coverage is good even if you are traveling around the world. And there's no need to reapply if you relocate anywhere within Alaska.

***Who is eligible?***

All of our programs are available to residents of Alaska. Eligible family members include you and your spouse, if under age 65, and your unmarried children under age 23 who are primarily dependent on you for support.

***When does coverage begin?***

If your application is approved, the effective date is the first day of the month following receipt of your application by Blue Cross, unless you select an alternate date.

***What about preexisting conditions?***

Benefits are not provided for preexisting conditions during the first 12 consecutive months from the effective date of coverage. A preexisting condition is any illness, injury or condition, including complications of pregnancy, whether or not diagnosed, for

# What else do you need to know?

*More important points  
about Traditional  
and BasicOne Programs.*

which you have received treatment, consultation or taken prescribed or recommended medicine during the 12 month period before coverage begins. This includes any illness, injury or condition for which symptoms existed, which would ordinarily cause an individual to seek medical diagnosis or treatment during the 12 months prior to the effective date of coverage.

***Two payment options***

You have a choice of paying monthly through automatic deduction from your checking or savings account or every other month based on a bill we will send you for two months' payment.

If you choose to have your payment deducted from your checking or savings account, please mark the box on the application, and an authorization form will be sent to you. Or, if you already have an authorization form, you may submit it with your application.

***Facts about your coverage***

Contracts are renewed with timely payment. Once you are covered, we will not terminate

your contract due to a change in your health. You may cancel at any time, however, by giving us at least 30 days notice in writing. Blue Cross could retroactively cancel your coverage if you provide false or misleading information on your application or health statement. Blue Cross can cancel your contract if you permanently move your place of residence outside Alaska, or if payment of the appropriate amount is not made by the date due. Blue Cross can modify or withdraw your program, or alter the rates charged for the program following 30 days advance notice to you, but only if done for all subscribers covered by the same program.

***Our promise***

If, after examining your contract, you are not satisfied with it for any reason, you may return it within 10 days and receive a full refund. The statements in this brochure explain the general features of the programs offered. This brochure is not a contract. The full terms and conditions of these coverages are set forth in the actual contract.

***Do I have other options?***

If your health care coverage needs are for a limited period of time, we offer Temporary Health Care, a short term program available for terms from 30 days up to 6 months at very affordable cost.

***Your next step: Call your agent today***

Agents appointed to sell Blue Cross programs are specially trained to answer your questions and assist you in selecting the program best for you. If you don't have an agent that offers Blue Cross Coverage, call our Anchorage District office at (907) 258-5065, and we'll be glad to assist you.

## What is not covered?

Blue Cross of Washington and Alaska does not provide coverage under Traditional or BasicOne contracts for certain items, including the following (a complete list of exclusions and limitations is contained in the contract):

- Dental services; orthodontia; temporomandibular joint dysfunction (TMJ); and myofascial pain dysfunction (MPD); jaw augmentation or reduction procedures.
- Eye exams, glasses and contact lenses; hearing exams or hearing aids; vision analysis or training.
- Routine foot care.
- Treatment for obesity.
- Learning disabilities; marital, sexual, vocational or family counseling; milieu therapy.
- Services and supplies for reproductive and sexual disorders.
- Sterilization or reversal of sterilization.
- Cosmetic, plastic and reconstructive surgery, except as specifically provided for in the contract.
- Hospice care.
- Services supplied by a governmental hospital, except in a medical emergency or as required by law.
- Convalescent care, except as specifically provided for in the contract; care in a rest home, home for the aged, or nursing home; custodial care.
- Hospitalization solely for diagnostic studies or medical evaluation. Routine services except for mammography screening.
- Private room charges.
- Services and supplies: not medically necessary; for which no charge is made or would not have been made if the contract were not in effect; for which you are not legally liable.
- Services and supplies to the extent that benefits are payable under the terms of any automobile medical, personal injury protection (PIP), automobile no-fault, homeowners, commercial liability or similar insurance policy.
- Preexisting conditions during the first 12 months of coverage.
- Organ or bone marrow transplants during the first 12 months of coverage.
- Traditional contracts exclude work-related illness or injury for which you are entitled to receive benefits under state or federal Workers' Compensation; **BasicOne excludes any work-related illness, condition or injury.**
- Injuries or conditions related to semiprofessional or professional athletics.
- Conditions arising out of an act of war, armed invasion or aggression.
- Any stipulated disease, condition or ailment excluded by any rider.
- Deliberate self-inflicted injuries including injuries self-inflicted while under the influence of drugs, alcohol or other chemical.
- Direct complications arising from any condition or service that is non-covered.
- Treatment of a mental, neuropsychiatric or personality disorder, including drugs, and treatment of alcoholism, drug abuse or addiction.
- Treatment of chemical dependency
- Services or supplies related to a confinement which began prior to the effective date of coverage.
- Services or supplies furnished in connection with a non-covered condition, service or supply.
- Chiropractic care or services of a chiropractor (except as specifically covered in the Traditional program).
- Services and supplies related to obstetrical care, pregnancy or childbirth. **Complications of pregnancy, as defined in your contract, are covered as any other illness.**



# The Health Insurance Portability and Accountability Act: Encouraging Health Care Reform

*A new report by the National Academy for State Health Policy finds that the 1996 Health Insurance Portability and Accountability Act has encouraged significant state health insurance reform such as guaranteeing the availability of health coverage.*

**T**he National Academy for State Health Policy, in its September 1997 report, *The Health Insurance Portability and Accountability Act of 1996: A Guide for State Action*, examines the act's impact on states. Specifically, it reveals the measures states have taken to extend access to health insurance and increase the portability of health insurance during job changes or job loss. The report finds that while it may be too soon to judge the success or failure of the act, it has encouraged small group insurance, portability, guaranteed issue and guaranteed renewal reforms.

The authors reveal that "the legislation presented a political opportunity for states to improve access to coverage, and demonstrated the need for states to take their own initiative for significant changes." The report says that act went a long way

to establish national minimum standards where none had previously existed. While the legislation is not as far-reaching as many observers would like, the study says it has created access to insurance for people who were deemed uninsurable. It also guarantees coverage standards not guaranteed prior to passage.

The National Academy for State Health Policy, in an informal survey of insurance commissions and legis-

## Challenges to Future State Health Care Reform

- Preserve or create laws on premium limits;
- Monitor benefit plans;
- Continue long-term care reforms; and
- Monitor quality and availability of health insurance.

*Source: The Health Insurance Portability and Accountability Act of 1996: A Guide for State Action, 1997*

## Fast Facts . . .

The Health Insurance Portability and Accountability Act establishes basic national standards in a number of areas, according to the National Academy for State Health Policy:



**Pre-existing Conditions** — A group health plan, both large and small, may not deny coverage for pre-existing conditions longer than 12 months.



**Guaranteed Issue** — The act guarantees the availability of health coverage in the small group (two to 50 employees) market. Health insurance must be made available to the whole group and to all within the group.



**Portability** — The act guarantees the availability of some level of continued coverage when workers change jobs (or lose a job).

lative leaders, found that 45 states and the District of Columbia had enacted legislation, adopted regulations or taken other administrative action to implement at least some provisions of the act as of August 1997. Three states (Kentucky, Massachusetts and Wisconsin) had not had a legislative session since the act's passage. The remaining states (California, Missouri and Rhode Island) ended their legislative sessions without passing legislation implementing the act. In these states, "the federal government will step in and take responsibility for enforcing some of the act's standards," the report says.

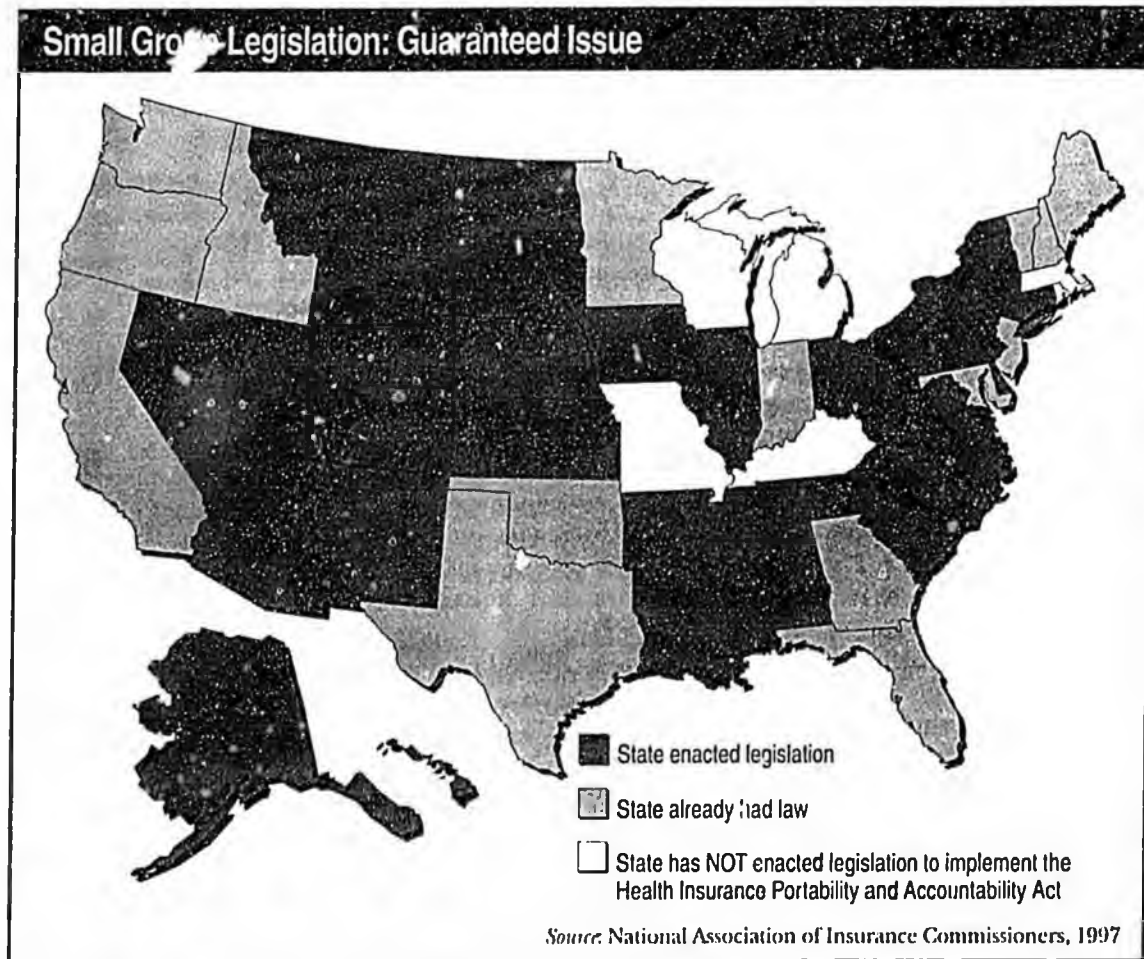
Proponents of the act cite the effect health insurance has on "job lock." According to the study, "Employees sometimes have found that new employers offered more limited benefit plans or excluded coverage for pre-existing conditions. The fear of losing health care coverage discouraged workers from changing jobs." Portable health insurance, authors Elizabeth Mitchell,

Cynthia Pernice and Trish Riley say, would make for a more fluid job market. A recent U.S. General Accounting Office report found that the portability provisions alone could benefit up to 21 million people. Proponents also note that the act allowed the development of federal policy for the electronic transmission of medical information, which should crack down on health care fraud and abuse.

Opponents of the act, though, claim it is a disappointment. They point out that the new law only guarantees better access to health insurance and doesn't address affordability. Skeptics also note that the act does not affect people lacking health insurance, of which there are currently 40 million.

### What the Act Does

Riley, executive director of the National Academy for State Health Policy and co-author of the





*Creating the first national standards for health-care coverage, the 1996 Health Insurance Portability and Accountability Act has sparked insurance reform efforts across the country.*

report, said the public's perception of the act has been clouded by what the legislation doesn't do. "People misunderstood it — the legislation wasn't about making insurance more affordable or more accessible." The act's goal, she said, was to make insurance more portable for those already covered at the workplace.

The issues covered by the act include pre-existing conditions and creditable coverage (time spent covered by a health plan that is counted toward decreasing pre-existing condition exclusion periods). Portability, according to the legislation, "requires carriers to waive any pre-existing condition limitations for covered services if comparable services were previously covered under a policy." Increased portability, the authors note, facilitates more flexibility in the job market. Another important component of the legislation deals with anti-discrimination. The authors also note that it bars states from requiring an individual to pay a premium that is greater than the premiums paid by other "similarly-situated individuals" on the basis of health status.

The report says the act creates a new model of federal and state partnership, which creates equity among states while preserving flexibility

within states. By enacting the legislation, the federal government has followed the lead of the states, basing national reform on state action and state initiatives. The authors say that prior to the passage of the act, "insurance regulation was left entirely to states. For the first time, this act sets forth uniform national standards to ensure at least a minimum level of coverage availability and portability in each state."

#### What's Left to States?

For further reform, the authors say that the states will have to take the lead. They say that Congress will be reluctant to pass rate limits or mandate benefits in the near future. Health insurance reform raises important issues about federal-state relations. The report says, "the portability requirements to allow employees to change jobs and maintain their insurance coverage will not ensure meaningful portability unless there are state laws to protect benefits. The state laws are necessary complements to the federal standards."

The most pressing issues facing states, the authors maintain, deal with affordability, scope and quality of coverage. Since the act doesn't address these issues, nor the problem of how to extend coverage to people currently uninsured, there is much room for states to work.

The report says states will have to preserve or create premium limit laws. "Affordability is the key to access. Because the cost of insurance is the primary barrier to coverage, state-set premium limits would seem to be necessary complements to the act's portability and guaranteed issue requirements."

As of September 1997, 17 states already had adopted such laws. To assure that health insurance remains affordable for everyone, the report

### Fast Facts . . .

In the individual market, guaranteed issue was required for individuals eligible under the act. According to the report:

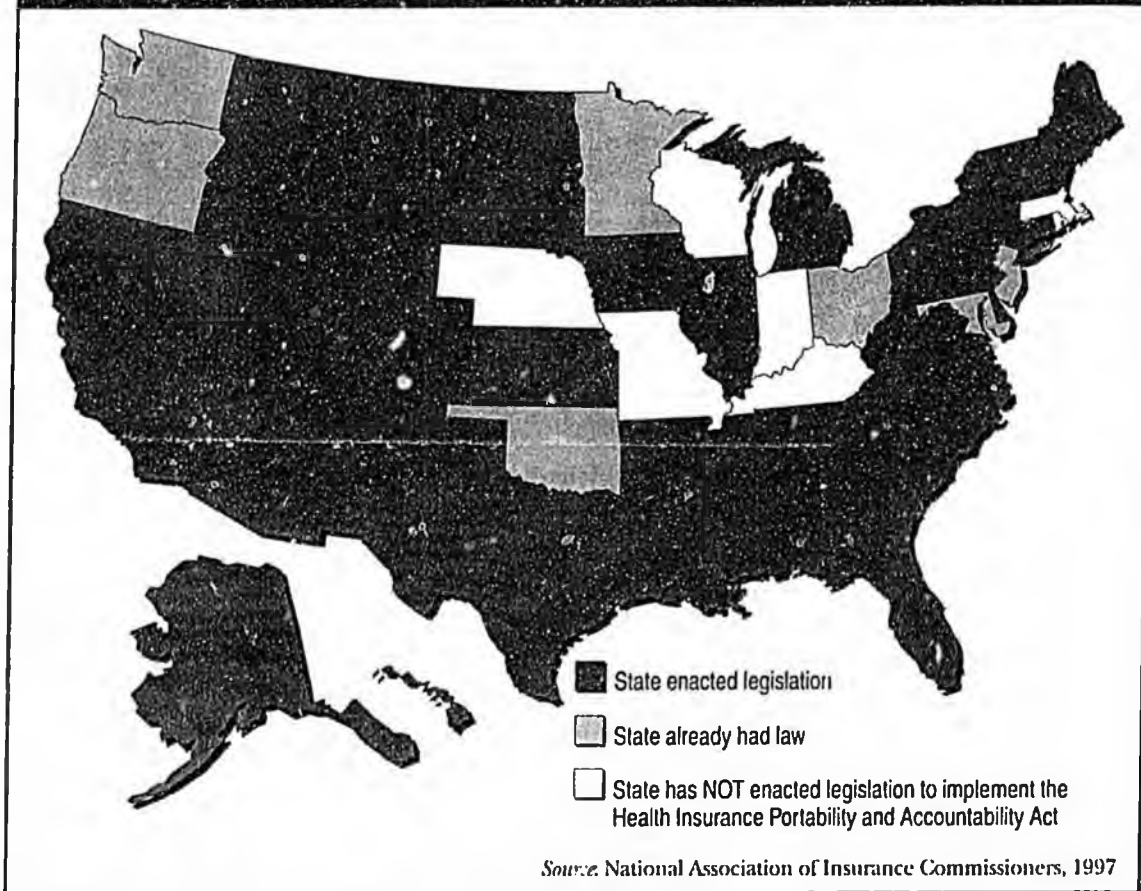


*Forty-three states enacted legislation for guaranteed issue; 15 chose alternate methods and eight have not met this provision.*



*Twenty-eight states enacted legislation requiring health insurance carriers to make all health insurance policies renewable in the individual market, while 11 states already met the requirement.*

## Small Group Legislation: Pre-existing Condition Exclusion



claims that more states will need to pass similar legislation. States also will have to take the lead in monitoring benefit plans and make sure that benefit package designs do not impair portability. "The act includes no prohibitions against restricting the amount or nature of benefits . . . [this] will be left entirely to the states insurers and employers," the authors conclude. Riley says, "When the American public rejected the Clinton health plan, they demonstrated that they are in favor of incrementalism and private-sector solutions to health care problems. The act is incremental; it doesn't address some issues but it is a step in the right direction."

The report also claims that states will continue to be responsible for long-term care reforms, specifically reducing costs, ensuring quality and changing systems to meet the needs of an aging population. "The act contains the possibility of increased private coverage of long-term care services, but does not address quality or access is-

sues and will likely have little impact on the cost of care for states," the report says.

States also will have to define their term for conditions of coverage in the future if reform is to continue. "Because the act required guaranteed issue of all health insurance to small groups, it will be important for states to define their small group markets," the report says. Since the act defines small-group coverage as comprising two to 50 employees, it does not guarantee coverage for larger groups. "States may define small group to include coverage of more employees, extending protections to more people," the report says.

### Quality Assurance

Mitchell, Pernice and Riley say that one of the most important roles for the states during this period of health insurance reform is that of quality control. "Low quality plans could severely undermine the act's goals of access and portability,



## Insuring the Uninsured

More than 40 million people under age 65 have no health insurance. Seventeen million Americans, or more than 6 percent of the total population, said that they have encountered serious consequences in terms of health problems or debt due to lack of medical insurance, according to the U.S. General Accounting Office.

To address this problem, President Bill Clinton signed The Health Insurance Portability and Accountability Act of 1996, more commonly known as the Kassebaum-Kennedy Act. It is the first time that the federal government has established basic standards for insurance regulation with which states must comply. If states do not comply, the federal government will enforce the new standards.

but the legislation itself offers few standards of coverage." They further point out that the flexibility given states could create "significant discrepancies" among the states and it places a greater burden on them to insure that quality, comprehensive coverage is made available.

Riley adds that the overall impact of the legislation on states and the uninsured population is too early to gauge. What is certain, she added, is "The next phase of health care reform will be the issue of affordability. Insurance companies complain that government mandates increase their costs, which in turn leads to higher premiums. Higher premiums impact the public's access to health care." While the act doesn't tackle these issues, Riley says that the legislation has at least generated debate on these

topics, which may lead to future legislation action.

The survey of state legislative leaders conducted by the National Academy for State Health Policy also finds that a state's readiness to comply with the act depended largely on its prior reform efforts. The report concludes that states will continue to be at the forefront of innovation in health care coverage. While many states already had implemented reforms spelled out in the act, "states will undoubtedly continue with their own reform efforts in the coming years."

For a copy of the full report, call the National Academy for State Health Policy, (207) 874-6524.

Matt Grayson is a regional coordinator, The Council of State Governments, (606) 244-8240.

## Fast Facts . . .

The small group market is defined by the act as groups of two to 50. According to the report: Thirty states have amended their laws to conform to the small group size, while 14 state definitions coincided with the act.



*In the small group market, 30 states enacted guaranteed issue, while 15 had met this requirement in previous state insurance reform.*



*Twenty-eight states enacted legislation requiring guaranteed renewability; 18 states had already met this requirement.*



*Pre-existing condition exclusion provisions were enacted in 38 states, while seven had previous laws addressing this provision.*