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[RCWs](#) > [Title 48](#) > [Chapter 48.17](#) > [Section 48.17.480](#)

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RCW 48.17.480

Reporting and accounting for premiums.

(1) An insurance producer, title insurance agent, or any other representative of an insurer involved in the procuring or issuance of an insurance contract shall report to the insurer the exact amount of consideration charged as premium for such contract, and such amount shall likewise be shown in the contract and in the records of the insurance producer, title insurance agent, or other representative. Each willful violation of this provision is a misdemeanor.

(2) All funds representing premiums or return premiums received by an insurance producer or title insurance agent shall be so received in the insurance producer's or title insurance agent's fiduciary capacity, and shall be promptly accounted for and paid to the insured, insurer, title insurance agent, or insurance producer as entitled thereto.

(3) Any person licensed under this chapter who receives funds which belong to or should be paid to another person as a result of or in connection with an insurance transaction is deemed to have received the funds in a fiduciary capacity. The licensee shall promptly account for and pay the funds to the person entitled to the funds.

(4) Any insurance producer, title insurance agent, adjuster, or other person licensed under this chapter who, not being lawfully entitled thereto, diverts or appropriates funds received in a fiduciary capacity or any portion thereof to his or her own use, is guilty of theft under chapter [9A.56](#) RCW.

[2007 c 117 § 26; 2003 c 53 § 269; 1988 c 248 § 12; 1947 c 79 § .17.48; Rem. Supp. 1947 § 45.17.48.]

Notes:

Intent -- Effective date -- 2003 c 53: See notes following RCW [2.48.180](#).



Separate premium account

Washington state law requires insurance producers, title agents and surplus line brokers to promptly account for all funds they receive that represent premiums and return premiums. These licensees must also deposit these funds into a separate account, and maintain those funds in the account, until the funds are paid to the person entitled to them. [See [RCW 48.17.480](#), [RCW 48.17.600](#) and [RCW 48.15.180](#) ([apps.leg.wa.gov](#)).]

Our office has found that some licensees haven't clearly understood these requirements. In some instances, producers and surplus line brokers have treated the funds in the separate premium account as their personal asset rather than holding or maintaining the funds in the account in a fiduciary capacity. This has included borrowing from the account or pledging the account as collateral to secure loans or lines of credit.

Amendments to the rule now make it clear that the separate premium account may not be used as a personal asset by licensed producers, title insurance agents and surplus line brokers. It also clarifies that premium taxes must be deposited into the account and cannot be withdrawn from the account, except for payment to the state or refund of unearned taxes.

These amendments to WAC 284-12-080 go into effect **August 16, 2012**.

Questions

1. [Does the rule also apply to premium taxes?](#)
2. [Can the account be set up in a bank not located in Washington state?](#)
3. [When can I withdraw my commissions out of the account?](#)

Answers

1. Does the rule also apply to premium taxes?

Yes. [RCW 48.18.170](#) ([apps.leg.wa.gov](#)) defines premium; premium tax is included in this definition because it is part of the consideration for the issuance of insurance (other than title insurance). So, producers and brokers must deposit the premium tax into the separate premium account and maintain it there until paid to the party entitled to the funds.

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2. Can the account be set up in a bank not located in Washington state?

Yes. The commissioner did not amend the financial institution requirement. If a trust company is used for the separate premium account, the trust company must be located in the state. That is the sole type of financial institution that must be located in the state of Washington.

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3. When can I withdraw my commissions out of the separate premium account?

No earlier than when the policy is bound or effective. Payment to a person not yet entitled to the funds violates both [RCW 48.17.480](#) ([apps.leg.wa.gov](#)) and [RCW 48.15.180](#) ([apps.leg.wa.gov](#)).

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Questions?

[Email us](#) with questions or request a copy of the Concise Explanatory Statement (CES).

Updated 08/13/2012

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AMENDATORY SECTION (Amending Matter No. R 2010-09, filed 12/22/10, effective 1/22/11)

WAC 284-12-080 Requirements for separate accounts. (1) The purpose of this section is to effectuate RCW 48.15.180, 48.17.600 and 48.17.480 with respect to the separation and accounting of premium funds by insurance producers, title insurance agents and surplus line brokers, collectively referred to in this section as "producers." Pursuant to RCW 48.30.010, the commissioner has found and hereby defines it to be an unfair practice for any producer, except as allowed by statute, to conduct insurance business without complying with the requirements of RCW 48.15.180, 48.17.600 and this section.

(2) All funds representing premiums as defined in RCW 48.18.170, which includes premium taxes and commissions, and return premiums received on Washington business by a producer in his or her fiduciary capacity on or after January 1, 1987, (~~shall~~) must be deposited in one or more identifiable separate accounts which may be interest bearing.

(a) A producer (~~may~~) must not deposit (~~no~~) funds other than premiums as defined in RCW 48.18.170, which includes premium taxes and commissions and return premiums to the separate account except as follows:

- (i) Funds reasonably sufficient to pay bank charges;
- (ii) Funds a producer may deem prudent for advancing premiums, or establishing reserves for the paying of return premiums; (~~and~~)
- (iii) Funds for contingencies as may arise in the business of receiving and transmitting premiums or return premiums; and
- (iv) Fees paid by insureds as permitted under RCW 48.17.270(2).

(b) A producer may commingle Washington premiums as defined in RCW 48.18.170, which includes premium taxes and commissions, and return premiums with those produced in other states, (~~but~~) provided adequate records are maintained to identify the amounts for Washington business. There (~~shall~~) must be no commingling of any funds (~~which would~~) not (~~be~~) permitted by this section.

(3)(a) The separate account funds (~~may~~) must be:

(i) Deposited in a checking account, demand account, or a savings account in a bank, national banking association, savings and loan association, mutual savings bank, stock savings bank, credit union, or trust company located in the state of Washington. (~~Such an~~) The account must be insured by an entity of the federal government; or

(ii) Invested in United States government bonds and treasury certificates or other obligations for which the full faith and credit of the United States government is pledged for payment of principal and interest, and repurchase agreements collateralized by securities issued by the United States government (~~, and bankers~~

acceptances)). Insurers may, of course, restrict investments of separate account funds by their agent.

(b) A nonresident licensee, or a resident producer with affiliated operations under common ownership in two or more states, may utilize comparable accounts in another state provided such accounts otherwise meet the requirements of RCW 48.15.180, 48.17.600, 48.17.480 and this rule, and are accessible to the commissioner for purposes of examination or audit at the expense of the producer.

(4) Disbursements or withdrawals from a separate account (~~shall~~) must only be made for the following purposes (~~only~~), and in the manner stated:

(a) For charges imposed by a bank or other financial institution for operation of the separate account;

(b) For payments of premiums, directly to insurers or other producers entitled thereto;

(c) For payments of return premiums, which includes premium taxes, directly to the insureds or other persons entitled thereto;

(d) For payments of earned commissions and other funds belonging to the separate account's producer, directly to another account maintained by such producer as an operating or business account, but only to the extent that the premium funds for the policy or policies have actually been deposited into the separate premium account; (~~and~~)

(e) For transfer of fiduciary funds, directly to another separate premium account which meets the requirements of this section;

(f) For payment of surplus line premium taxes to the state;
and

(g) For payment of earned producer fees, but only to the extent that the fees were originally deposited in the separate premium account.

(5) (a) (~~The entire premium received (including a surplus lines premium tax if paid by the insured) must be deposited into the separate account. Such~~) The funds (~~shall~~) deposited in the separate premium account must be paid promptly to the insurer or to another producer entitled thereto, in accordance with the terms of any applicable agreement between the parties.

(b) Return premiums received by a producer and the producer's share of any premiums required to be refunded, must be deposited promptly to the separate account. (~~Such~~) The funds (~~shall~~) must be paid promptly to the insured or person entitled thereto.

(6) (a) (~~Where~~) When a producer receives a premium payment in the form of an instrument, such as a check, which is made payable to an insurer, general agent or surplus line broker, the producer may forward (~~such~~) the instrument directly to the payee if that can be done without endorsement or alteration. In (~~such a~~) this case, the producer's separate account is not involved because the producer has not "received" any funds.

(b) If the producer receives a premium payment in the form of cash or an instrument requiring endorsement by the producer, (~~such~~) the premium must be deposited into the producer's separate account, unless the insurer entitled to such funds has established

other procedures by written direction to a producer who is its appointed agent, which procedures:

(i) Recognize that ~~((such agent))~~ the producer is receiving premiums directly on behalf of the insurer; and

(ii) Direct the producer to give adequate receipts on behalf of the insurer; and

(iii) Require deposit of the proceeds into the insurer's own account or elsewhere as permitted by the insurer's direction.

Thus, for example, an insurer may utilize the services of a licensed insurance producer, acting as a "captive agent," in the sale of its insurance and in the operation of its places of business, and directly receive payments intended for it without ~~((such))~~ the payments being deposited into and accounted for through the licensed insurance producer's separate account. In ~~((such))~~ these cases, for purposes of this rule, the insurer, as distinguished from the insurance producer, is actually "receiving" the funds and is immediately responsible therefor.

(c) When a producer receives premiums ~~((in the capacity of))~~ as a surplus line broker, licensed ~~((pursuant to))~~ under chapter 48.15 RCW, after a binder or other written evidence of insurance has been issued to the insured, subject to the express written direction of the insurer involved, ~~((such))~~ the premiums, except premium taxes, may be removed from the separate account.

(7) The commissioner recognizes the practical problems of accounting for the small amounts of interest involved spread over a large number of insurers and insureds. Therefore, absent any agreement between the producer and the insured or insurer to the contrary, interest earned on the deposits held in the separate account may be retained by the producer and used to offset bank charges, establish reserves, pay return premiums, or for any of the purposes listed in subsection (2) of this section, or the interest may be removed to the operating account.

(8) A producer ~~((shall))~~ must establish and maintain records and an appropriate accounting system for all premiums ~~((and))~~ as defined in RCW 48.18.170, which includes premium taxes and commissions, return premiums, and fees received by the producer, and ~~((shall))~~ must make ~~((such))~~ the records available for inspection by the commissioner during regular business hours upon demand during the five years immediately after the date of the transaction.

(9) The accounting system used must effectively isolate the separate account from any operating accounts and segment or indentify all Washington business from that of other states. All recordkeeping systems, whether manual or electronic must provide an audit trail so that details underlying the summary data, such as invoices, checks, and statements, may be identified and made available on request. ~~((Such a))~~ The system must provide the means to trace any transaction back to its original source or forward to final entry, ~~((such))~~ as is accomplished by a conventional double-entry bookkeeping system. When automatic data processing systems are used, a description of the system must be available for review by the commissioner. A balance forward system (as in an ordinary checking account) is not acceptable.

(10)(a) A producer that is a business entity may utilize one separate account for the funds received by its affiliated persons operating under its license, and ~~((such))~~ the affiliated persons may deposit the funds they receive in ~~((such))~~ this capacity directly into the separate account of their firm or corporation.

(b) Funds received by an insurance producer who is employed by and offices with another insurance producer may be deposited into and accounted for through the separate account of the employing insurance producer. This provision does not, however, authorize the insurance producer employee to represent an insurer as to which he or she has no appointment.

(11) Premium taxes deposited to the separate premium account are held in trust for the state and must be maintained in the account until paid to the state.

(12) The separate premium account is a fiduciary account and not the personal asset or account of the producer. A producer must not make withdrawals from the account except as provided in this section. The separate premium account must not be encumbered in any manner nor be pledged as collateral for a loan.

(13) For the purposes of this section, a commission is earned no earlier than when the policy is bound or effective.



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[48.18.160](#) << [48.18.170](#) >> [48.18.180](#)

RCW 48.18.170

"Premium" defined.

"Premium" as used in this code means all sums charged, received, or deposited as consideration for an insurance contract or the continuance thereof. "Premium" does not include a regulatory surcharge imposed by RCW [48.02.190](#), except as otherwise provided in this section. Any assessment, or any "membership," "policy," "survey," "inspection," "service" or similar fee or charge made by the insurer in consideration for an insurance contract is deemed part of the premium.

[2007 c 153 § 1; 1947 c 79 § .18.17; Rem. Supp. 1947 § [45.18.17](#).]

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RCW 2.48.180

Definitions — Unlawful practice a crime — Cause for discipline — Unprofessional conduct — Defense — Injunction — Remedies — Costs — Attorneys' fees — Time limit for action.

(1) As used in this section:

(a) "Legal provider" means an active member in good standing of the state bar, and any other person authorized by the Washington state supreme court to engage in full or limited practice of law;

(b) "Nonlawyer" means a person to whom the Washington supreme court has granted a limited authorization to practice law but who practices law outside that authorization, and a person who is not an active member in good standing of the state bar, including persons who are disbarred or suspended from membership;

(c) "Ownership interest" means the right to control the affairs of a business, or the right to share in the profits of a business, and includes a loan to the business when the interest on the loan is based upon the income of the business or the loan carries more than a commercially reasonable rate of interest.

(2) The following constitutes unlawful practice of law:

(a) A nonlawyer practices law, or holds himself or herself out as entitled to practice law;

(b) A legal provider holds an investment or ownership interest in a business primarily engaged in the practice of law, knowing that a nonlawyer holds an investment or ownership interest in the business;

(c) A nonlawyer knowingly holds an investment or ownership interest in a business primarily engaged in the practice of law;

(d) A legal provider works for a business that is primarily engaged in the practice of law, knowing that a nonlawyer holds an investment or ownership interest in the business; or

(e) A nonlawyer shares legal fees with a legal provider.

(3)(a) Unlawful practice of law is a crime. A single violation of this section is a gross misdemeanor.

(b) Each subsequent violation of this section, whether alleged in the same or in subsequent prosecutions, is a class C felony punishable according to chapter [9A.20](#) RCW.

(4) Nothing contained in this section affects the power of the courts to grant injunctive or other equitable relief or to punish as for contempt.

(5) Whenever a legal provider or a person licensed by the state in a business or profession is convicted, enjoined, or found liable for damages or a civil penalty or other equitable relief under this section, the plaintiff's attorney shall provide written notification of the judgment to the appropriate regulatory or disciplinary body or agency.

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(6) A violation of this section is cause for discipline and constitutes unprofessional conduct that could result in any regulatory penalty provided by law, including refusal, revocation, or suspension of a business or professional license, or right or admission to practice. Conduct that constitutes a violation of this section is unprofessional conduct in violation of RCW 18.130.180.

(7) In a proceeding under this section it is a defense if proven by the defendant by a preponderance of the evidence that, at the time of the offense, the conduct alleged was authorized by the rules of professional conduct or the admission to practice rules, or Washington business and professions licensing statutes or rules.

(8) Independent of authority granted to the attorney general, the prosecuting attorney may petition the superior court for an injunction against a person who has violated this chapter. Remedies in an injunctive action brought by a prosecuting attorney are limited to an order enjoining, restraining, or preventing the doing of any act or practice that constitutes a violation of this chapter and imposing a civil penalty of up to five thousand dollars for each violation. The prevailing party in the action may, in the discretion of the court, recover its reasonable investigative costs and the costs of the action including a reasonable attorney's fee. The degree of proof required in an action brought under this subsection is a preponderance of the evidence. An action under this subsection must be brought within three years after the violation of this chapter occurred.

[2003 c 53 § 2; 2001 c 310 § 2. Prior: 1995 c 285 § 26; 1989 c 117 § 13; 1933 c 94 § 14; RRS § 138-14.]

Notes:

Rules of court: RLD 1.1(h).

Intent -- 2003 c 53: "The legislature intends by this act to reorganize criminal provisions throughout the Revised Code of Washington to clarify and simplify the identification and referencing of crimes. It is not intended that this act effectuate any substantive change to any criminal provision in the Revised Code of Washington." [2003 c 53 § 1.]

Effective date -- 2003 c 53: "This act takes effect July 1, 2004." [2003 c 53 § 423.]

Purpose -- 2001 c 310: "The purpose of this act is to respond to *State v. Thomas*, 103 Wn. App. 800, by reenacting and ranking, without changes, legislation relating to the crime of unlawful practice of law, enacted as sections 26 and 27, chapter 285, Laws of 1995." [2001 c 310 § 1.]

Effective date -- 2001 c 310: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 14, 2001]." [2001 c 310 § 5.]

Effective date -- 1995 c 285: See RCW 48.30A.900.

Severability -- 1989 c 117: See RCW 19.154.901.

Practicing law with disbarred attorney: RCW 2.48.220(9).



RULE-MAKING ORDER

CR-103P (May 2009)
(Implements RCW 34.05.360)

Agency: Office of the Insurance Commissioner

Permanent Rule Only

Effective date of rule:

Permanent Rules

X 31 days after filing.

Other (specify) _____ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

Yes No If Yes, explain:

Purpose: This rule makes clear and beyond question that the separate premium account may not be used as a personal asset by licensed producers and surplus line brokers and that premium taxes must be deposited into the account and cannot be withdrawn from the account, except for payment to the State or refund of unearned taxes.

Insurance Commissioner Matter No. R 2011-31

Citation of existing rules affected by this order:

Repealed:

Amended: WAC 284-12-080

Suspended:

Statutory authority for adoption: RCW 48.02.060 and RCW 48.17.005.

Other authority : RCW 48.15.180, RCW 48.17.480, and RCW 48.17.600.

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 12-11-127 on May 23, 2012.

Describe any changes other than editing from proposed to adopted version: None

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

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CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: July 16, 2012

TIME: 4:17 PM

WSR 12-15-050

Date adopted:

July 16, 2012

NAME (TYPE OR PRINT)

Mike Kreidler

SIGNATURE

TITLE

Insurance Commissioner

(COMPLETE REVERSE SIDE)

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	_____	Amended	_____	Repealed	_____

The number of sections adopted at the request of a nongovernmental entity:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in the agency's own initiative:

New	_____	Amended	<u>1</u>	Repealed	_____
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted using:

Negotiated rule making:	New	_____	Amended	_____	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	_____	Amended	<u>1</u>	Repealed	_____