

Hall of the House of Representatives
83rd General Assembly - Regular Session, 2001
Amendment Form

Subtitle of House Bill No. 2601

"TO AMEND CERTAIN "MISCELLANEOUS PROHIBITED PRACTICES" PROVISIONS
AND THE "INSURANCE SALES CONSUMER PROTECTION ACT.""

Amendment No. 1 to House Bill No. 2601.

Amend House Bill No. 2601 as originally introduced:

Insert additional sections immediately following Section 1 to read as follows:

"SECTION 2. Arkansas Code 23-66-315 is amended to read as follows:
23-66-315. Confidential information.

(a)(1) When a borrower is required to ~~keep real estate insured~~ maintain insurance and to furnish evidence of the insurance to a depository institution, an affiliate of a depository institution, creditor, mortgagee, assignee, or lender as a condition for obtaining or keeping the loan, the lender, mortgagee, assignee, or creditor is prohibited from disclosing to other persons or parties, directly or indirectly, information with respect to the expiration dates of the insurance or other insurance policy information so as to enable any person or party to solicit the insurance or any renewal thereof, without first obtaining the written consent of the policyholder for such disclosure to be made.

(2) Nor shall any other person or party request the disclosure of the information, so as to facilitate solicitations of the insurance or any renewal thereof, without first obtaining the written consent of the policyholder.

(3) Nor shall any lender, mortgagee, assignee, or creditor use any of the information contained in a policy of insurance for the purpose of soliciting insurance business with respect to the insured real property from the borrower.

(b) These prohibitions do not apply when the depository institution, an affiliate of a depository institution, lender, mortgagee, assignee, or creditor has been advised in writing by the insurer or its agent that the insurance on the property will be cancelled or will not be renewed.

(c) Willful violation of this section by any depository institution, an affiliate of a depository institution, lender, mortgagee, assignee, or creditor or by any other person or party who may request the disclosure of the information from the lender, mortgagee, assignee, or creditor shall be punishable as a Class C misdemeanor.

SECTION 2. Arkansas Code Title 23, Chapter 66, Subchapter 6 is amended to read as follows:

Subchapter 6. Insurance Sales Consumer Protection Act.

23-66-601. Short title.

This subchapter may be cited as the "Insurance Sales Consumer Protection Act".

23-66-602. Purpose.

The purpose of this subchapter is to regulate the business of insurance and protect the interests of insurance consumers.

23-66-603. Definitions.

For the purpose of this subchapter:

(1) ~~The terms "lending institution", "subsidiary", and "affiliate" shall have the meanings ascribed to them in § 23-64-202(b)(4)~~ term "affiliate" means any company that controls, is controlled by, or is under common control with another company;

(2) The term "customer" means a person who obtains, applies for, or is solicited to obtain insurance;

(3) The term "depository institution" means a bank or savings association;

(4) "Insurance" means all policies or products defined or regulated as insurance pursuant to § 23-60-101 et seq., except:

(A) Credit life, credit accident and health credit property, credit casualty, credit involuntary unemployment, mortgagor's decreasing term life, and mortgagor's accident and health and sickness insurance;

(B) Insurance placed by a financial institution in connection with collateral pledged as security for a loan when the debtor breaches the contractual obligation to provide that insurance; and

(C) Private mortgage insurance;

(5) The term "insurance information" means information concerning the premiums, terms, and conditions of insurance coverage, including expiration dates and rates, and insurance claims of a customer contained in the records of a depository institution or an affiliate of a depository institution; and

(6) The term "person" means any natural or artificial entity, including but not limited to, individuals, partnerships, associations, trusts or corporations.

23-66-604. Exemption.

The provisions of § 23-66-606 shall not apply to or affect in any way a broker-dealer licensed by the State of Arkansas when such broker-dealer is conducting insurance sales activities on premises other than ~~lending depository institution or an affiliate of a depository institution~~ premi ses.

23-66-605. Insurance in connection with a loan.

(a) The following shall apply when insurance is required as a condition of obtaining a loan or extension of credit:

(1) ~~Solicitation for the purchase or sale of insurance shall be conducted only by individuals who are not primarily responsible for making a loan or extension of credit when the insurance solicitation is in connection with the specific loan or extension of credit~~ No person or depository institution, or affiliate of a depository institution may require as a

condition precedent to the lending of money or extension of credit, or any renewal thereof, that the person to whom such money or credit is extended or whose obligation a creditor is to acquire or finance, negotiate any policy or renewal thereof through a particular insurer or group of insurers or agent or broker or group of agents or brokers. Further, no person or depository institution, or affiliate of a depository institution, may reject an insurance policy solely because the policy has been issued or underwritten by a person who is not associated with the depository institution or affiliate when insurance is required in connection with a loan or extension of credit;

(2) The loan or extension of credit and related insurance transactions shall be completed ~~independently and~~ through separate documentation; and

(3) A loan for premiums on required insurance shall not be included in the primary credit without the written consent of the customer.

(b)(1) As a condition for extending credit or offering any product or service that is equivalent to an extension of credit, require that a customer obtain insurance from a depository institution or an affiliate of a depository institution, or a particular insurer or producer. Nothing in this subchapter or § 23-60-101 et seq., shall be construed to prohibit ~~Lending depository institution or affiliate of a depository institution~~ personnel from informing customers that insurance is required in order to obtain a loan or extension of credit or that loan or extension of credit approval is contingent upon the customers' obtaining acceptable insurance.

(2) ~~Lending~~ Depository institution or affiliate of a depository institution personnel may also inform customers that insurance is available from the ~~Lending depository institution, its subsidiary,~~ an affiliate of a depository institution, or particular unaffiliated third parties, and indicate how to obtain additional information.

23-66-606. Lending Depository institution or affiliates of a depository institution sales practices.

The following requirements shall apply to insurance sales activities conducted by ~~Lending depository institutions, their employees, subsidiaries,~~ affiliates of a depository institution, and unaffiliated third parties conducting the insurance sales activities on behalf of a ~~Lending depository institution or affiliate of a depository institution~~ which involves the use of a ~~Lending depository institution or affiliate of a depository institution~~ brand name or on ~~Lending depository institution or affiliate of a depository institution's~~ premises:

(1)(A) Disclosures. The following disclosures are required with respect to the solicitation of ~~Life insurance products or policies and annuities~~ and shall be made in writing, where practicable, during the initial customer contact, including communication by telephone or other electronic means in a clear and conspicuous manner prior to the sale:

(i) That ~~an~~ the insurance product or policy is not FDIC insured;

(ii) That ~~an~~ the insurance product or policy is not a deposit or obligation of, or guaranteed by, the Lending depository institution or affiliate of a depository institution; and

(iii) Where appropriate, that certain insurance products involve investment risks, including the possible loss of principal.

~~(B) For related credit and insurance transactions, the following~~

~~disclosures shall be made in writing and signed by the customer, at or prior to the closing of the insurance sale, acknowledging that the customer has received, has read, and understands that:~~

~~(i) The customer need not purchase insurance from the lending institution, its subsidiary, an affiliate, or any particular unaffiliated third party; and~~

~~(ii) The insurance is available through other licensed brokers or agents; and~~

(B) When an application by a customer for a loan or other extension of credit from a depository institution or an affiliate of a depository institution is pending, and insurance is offered or sold to the customer or is required in connection with the loan or extension of credit by the depository institution or affiliate of a depository institution, a written disclosure shall be provided to the customer indicating that the customer's choice of insurer or producer shall not affect the credit decision or credit terms in any way, except that the depository institution or an affiliate of a depository institution may impose reasonable requirements concerning the credit worthiness of the insurer and the scope of coverage chosen. A rejection of a policy furnished by the customer shall not be deemed unreasonable if it is based on reasonable standards, uniformly applied, relating to the extent of coverage required and the financial soundness and the services of an insurer. Such standards shall not discriminate against any particular type of insurer, nor shall such standards call for rejection of a policy because it contains coverage in addition to that required in the credit transaction; and

(C) The person, depository institution, or affiliate of the depository institution shall obtain written acknowledgement of the receipt of the disclosure required by this subsection from the customer at the time the customer receives the disclosure or at the time of the initial purchase of the insurance policy. If the solicitation is conducted by telephone, the person, depository institution or affiliate of the depository institution shall obtain an oral acknowledgement of receipt of the disclosure, maintain sufficient documentation to show that the acknowledgment was given by the customer, and make reasonable efforts to obtain a written acknowledgment from the customer. If a customer affirmatively consents to receiving the disclosures electronically and if the disclosures are provided in a format that the customer may retain or obtain later, the person, depository institution, or affiliate of the depository institution may provide the disclosure and obtain acknowledgement of the receipt of the disclosure from the customer using electronic media.

(2) Physical location of insurance activities. Insurance sales activities on ~~lending~~ depository institution or affiliate of a depository institution premises shall be conducted in a manner so as to minimize customer confusion by:

(A) Conducting the activities to the extent practicable in a location separate and distinct from the area where retail deposit, ~~loan making, or extension of credit~~ activities occurs; and

(B) ~~Identifying~~ Where practicable, identifying the area where insurance activities are conducted with appropriate signage as to be easily distinguishable by the public as separate and distinct from deposit ~~and~~ lending activities of the ~~lending~~ depository institution or affiliate of a depository institution.

23-66-607. Customer privacy.

~~(a)(1) No person, or depository institution, or affiliate of a depository institution, who lends money or extends credit may release, without the express consent of the customer, borrower, mortgagor or purchaser: shall utilize nonpublic customer information in connection with the solicitation or sale of insurance products to individuals unless it is clearly disclosed to the individual that the nonpublic customer information may be so utilized.~~

~~(1) Insurance information of a customer relative to a policy which is required by the credit transaction, for the purpose of soliciting, selling or replacing such insurance. This provision does not apply in case of a transfer of insurance information to an unaffiliated insurer in connection with transferring insurance in force on an existing customer of the depository institution, or an affiliate thereof, or in connection with a merger with or acquisition of an unaffiliated insurer, or the release of information as otherwise authorized by state or federal law. Further, this provision does not apply to use or disclosure of insurance information to an officer, director, employee, agent, or affiliate of a depository institution; or~~

~~(2) Provided, however, when the disclosure is made to an individual, the individual must also be instructed how and given the opportunity to indicate that he or she does not want the nonpublic customer information disclosed or utilized for the marketing of insurance.~~

~~(b)(1) For purposes of this subsection, "nonpublic customer information" means information regarding an individual that has been derived from the record of a lending institution relating to its operation other than insurance activities.~~

~~(2) Provided, however, that "nonpublic customer information" shall not include information regarding an individual that may be obtained by lending institutions or shared with their affiliates or unaffiliated third parties subject to the provisions of the Fair Credit Reporting Act. Health information obtained from the insurance records of a customer for any purpose other than for its activities as a licensed producer.~~

23-66-608. Authorization to promulgate regulations.

The ~~Insurance Commissioner~~ commissioner may promulgate regulations to effectuate the purposes of ~~§ 23-66-601 et seq~~ this subchapter.

SECTION 4. Arkansas Code 23-101-112(a) regarding commission allowed to appropriately licensed depository institution, or an affiliate of a depository institution, is amended to read as follows:

(a)(1) The entire amount of the premium due from a creditor shall be remitted to the insurer or its producer in accordance with the insurer's requirements.

(2) No commissions may be paid to, or retained by, a person or entity not licensed and appointed in accordance with § 23-64-201 et seq. nor to a ~~lender or any subsidiary or affiliate of a lender~~ depository institution, or an affiliate of a depository institution unless appropriately licensed under Chapter 64 of Title 23."

The Amendment was read _____
By: Representative R. Smith
LH/RRS - 032220011100 _____
RRS753 Chief Clerk