

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 83rd General Assembly
3 Regular Session, 2001
4

As Engrossed: H3/27/01

A Bill

HOUSE BILL 2601

5 By: Representative R. Smith
6
7

For An Act To Be Entitled

9 AN ACT TO AMEND TITLE 23, CHAPTER 66, SUBCHAPTER
10 3, CONCERNING "MISCELLANEOUS PROHIBITED
11 PRACTICES", AND SUBCHAPTER 6, THE "INSURANCE
12 SALES CONSUMER PROTECTION ACT"; AND FOR OTHER
13 PURPOSES.
14

Subtitle

15 TO AMEND CERTAIN "MISCELLANEOUS
16 PROHIBITED PRACTICES" PROVISIONS AND THE
17 "INSURANCE SALES CONSUMER PROTECTION
18 ACT."
19
20
21

22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
23

24 SECTION 1. Arkansas Code 23-66-312 is amended to read as follows:
25 23-66-312. Favored agent or insurer - Coercion of debtors.

26 (a) No person, including, but not limited to, depository institutions
27 and affiliates of depository institutions, primary and secondary mortgagees,
28 vendors, or lenders may:

29 (1) Unreasonably disapprove the insurance policy or binder
30 provided by a borrower for the protection of the property securing the credit
31 or lien;

32 (2) Require, directly or indirectly, that any borrower,
33 mortgagor, purchaser, insurer, broker, or agent pay a separate charge in
34 connection with the handling of any insurance policy or binder required as
35 security for a loan on real estate or pay a separate charge to substitute the
36 insurance policy or binder of one (1) insurer for that of another; or

1 (3) Use or disclose information resulting from a requirement
 2 that a borrower, mortgagor, or purchaser furnish insurance of any kind ~~on~~
 3 ~~real property being conveyed or used as collateral security to a loan~~, when
 4 that information is to the advantage of the mortgagee, vendor, or lender or
 5 is to the detriment of the borrower, mortgagor, purchaser, insurer, or the
 6 agent or broker complying with this requirement.

7 (b)(1) Subdivision (a)(2) of this section does not include the
 8 interest which may be charged on premium loans or premium advancements in
 9 accordance with the security instrument.

10 (2)(A) ~~For purposes of subdivision (a)(1) of this section, the~~
 11 ~~disapproval shall be deemed unreasonable if it is not based solely on~~
 12 ~~reasonable standards, uniformly applied, which relate to the extent of~~
 13 ~~coverage required, or the financial soundness, or services of an insurer.~~
 14 ~~These standards shall not discriminate against any particular type of~~
 15 ~~insurer, nor shall the standards call for the disapproval of an insurance~~
 16 ~~policy or binder because the policy or binder contains coverage in addition~~
 17 ~~to that required~~ a rejection shall not be deemed unreasonable if it is based
 18 on reasonable standards, uniformly applied, relating to the extent of
 19 coverage required and the financial soundness and the services of an insurer.

20 (B) The standards shall not discriminate against any
 21 particular type of insurer, nor shall the standards call for rejection of a
 22 policy because it contains coverage in addition to that required in the
 23 credit transaction.

24 (3) Subdivision (a)(3) of this section does not restrict or
 25 limit the release of insurance information of a customer by a depository
 26 institution to any officer, director, employee, agent or affiliate of the
 27 depository institution for the purpose of soliciting or selling insurance.

28 ~~(3)(4)~~ (4) *The Insurance Commissioner may investigate the affairs of*
 29 *any person to whom this subsection applies to determine whether the person*
 30 *has violated this subsection. If a violation of this subsection is found, the*
 31 *person in violation shall be subject to the same procedures and penalties as*
 32 *are applicable to §§ 23-66-203, 23-66-206, 23-66-207, and 23-66-209 - 23-66-*
 33 *213 and shall be liable for actual or compensatory damages resulting from an*
 34 *unreasonable disapproval of an insurance policy or binder;*

35 ~~(4)(5)~~ (5) *Once a binder has been issued, the insurer must issue a*
 36 *policy within ninety (90) days.*

1 ~~(5)~~(6) All information given on the binder must be without
2 material change when the policy is issued.

3
4 SECTION 2. Arkansas Code 23-66-315 is amended to read as follows:

5 23-66-315. Confidential information.

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

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

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

24 (b) These prohibitions do not apply to disclosure of insurance
25 information of a customer to any officer, director, employee, agent or
26 affiliate of the depository institution for the purpose of soliciting or
27 selling insurance or when the depository institution, an affiliate of a
28 depository institution, lender, mortgagee, assignee, or creditor has been
29 advised in writing by the insurer or its agent that the insurance on the
30 property will be cancelled or will not be renewed.

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

36

1 SECTION 3. Arkansas Code Title 23, Chapter 66, Subchapter 6 is amended
2 to read as follows:

3 Subchapter 6. Insurance Sales Consumer Protection Act.

4 23-66-601. Short title.

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

7
8 23-66-602. Purpose.

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

11
12 23-66-603. Definitions.

13 For the purpose of this subchapter:

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

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

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

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

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

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

30 (C) Private mortgage insurance;

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

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

1 or corporations.

2
3 23-66-604. Exemption.

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

8
9 23-66-605. Insurance in connection with a loan.

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

12 (1) ~~Solicitation for the purchase or sale of insurance shall be~~
13 ~~conducted only by individuals who are not primarily responsible for making a~~
14 ~~loan or extension of credit when the insurance solicitation is in connection~~
15 ~~with the specific loan or extension of credit~~ No person or depository
16 institution, or affiliate of a depository institution may require as a
17 condition precedent to the lending of money or extension of credit, or any
18 renewal thereof, that the person to whom such money or credit is extended or
19 whose obligation a creditor is to acquire or finance, negotiate any policy or
20 renewal thereof through a particular insurer or group of insurers or agent or
21 broker or group of agents or brokers. Further, no person or depository
22 institution, or affiliate of a depository institution, may reject an
23 insurance policy solely because the policy has been issued or underwritten by
24 a person who is not associated with the depository institution or affiliate
25 when insurance is required in connection with a loan or extension of credit;

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

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

31 (b)(1) As a condition for extending credit or offering any product or
32 service that is equivalent to an extension of credit, no person or depository
33 institution, or affiliate of a depository institution may require that a
34 customer obtain insurance from a depository institution or an affiliate of a
35 depository institution, or a particular insurer or producer. Nothing in this
36 subchapter or § 23-60-101 et seq., shall be construed to prohibit ~~lending~~

1 depository institution or affiliate of a depository institution personnel
 2 from informing customers that insurance is required in order to obtain a loan
 3 or extension of credit or that loan or extension of credit approval is
 4 contingent upon the customers' obtaining acceptable insurance.

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

10
 11 23-66-606. ~~Lending~~ Depository institution or affiliates of a
 12 depository institution sales practices.

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

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

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

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

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

33 ~~(B) For related credit and insurance transactions, the following~~
 34 ~~disclosures shall be made in writing and signed by the customer, at or prior~~
 35 ~~to the closing of the insurance sale, acknowledging that the customer has~~
 36 ~~received, has read, and understands that:~~

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

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

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

23 (C) The person, depository institution, or affiliate of the
24 depository institution shall obtain written acknowledgement of the receipt of
25 the disclosure required by this subsection from the customer at the time the
26 customer receives the disclosure or at the time of the initial purchase of
27 the insurance policy. If the solicitation is conducted by telephone, the
28 person, depository institution or affiliate of the depository institution
29 shall obtain an oral acknowledgement of receipt of the disclosure, maintain
30 sufficient documentation to show that the acknowledgment was given by the
31 customer, and make reasonable efforts to obtain a written acknowledgment from
32 the customer. If a customer affirmatively consents to receiving the
33 disclosures electronically and if the disclosures are provided in a format
34 that the customer may retain or obtain later, the person, depository
35 institution, or affiliate of the depository institution may provide the
36 disclosure and obtain acknowledgement of the receipt of the disclosure from

1 the customer using electronic media.

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

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

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

14

15 23-66-607. Customer privacy.

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

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

34 (2) ~~Provided, however, when the disclosure is made to an individual,~~
35 ~~the individual must also be instructed how and given the opportunity to~~
36 ~~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.

(c) For purposes of this section, "person" includes any individual, corporation, association, partnership, or other legal entity.

/s/ R. Smith