

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 84th General Assembly  
3 Regular Session, 2003

# A Bill

HOUSE BILL 2192

4  
5 By: Representative R. Smith  
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7

## For An Act To Be Entitled

9 AN ACT TO CONFORM INSURANCE TRADE PRACTICE LAWS  
10 APPLICABLE TO INSURERS AND DEPOSITORY CORPORATION  
11 AFFILIATES WITH THE FEDERAL GRAMM-LEACH-BLILEY  
12 ACT; TO AUTHORIZE PAYMENTS OF CERTAIN REFERRAL  
13 FEES TO UNLICENSED ENTITIES IN CONFORMITY WITH  
14 FEDERAL LAW; TO AMEND THE INSURANCE SALES  
15 CONSUMER PROTECTION ACT TO CONFORM TO FEDERAL  
16 LAWS REGARDING BANKING AND INSURANCE; AND FOR  
17 OTHER PURPOSES.

## Subtitle

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20 TO CONFORM INSURANCE TRADE PRACTICE LAWS  
21 APPLICABLE TO INSURERS AND DEPOSITORY  
22 CORPORATION AFFILIATES WITH THE FEDERAL  
23 GRAMM-LEACH-BLILEY ACT AND TO CONFORM  
24 THE INSURANCE SALES CONSUMER PROTECTION  
25 ACT TO FEDERAL LAW.  
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28 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
29

30 SECTION 1. Arkansas Code § 23-66-203, concerning definitions related  
31 to insurance trade practices, is amended to add an additional subsection to  
32 read as follows:

33 (4)(A) "Depository institution" means a bank or savings association.

34 (B) The terms depository institution or depository corporation  
35 do not include an insurance company.  
36



1 SECTION 2. Arkansas Code § 23-66-206(10), concerning prohibited  
 2 insurance rebates, is amended by adding an additional subdivision to read as  
 3 follows:

4 (10) "Rebates" are:

5 (A) Except as otherwise expressly provided by law, defined as  
 6 the act of knowingly permitting or offering to make or making any life,  
 7 health, and annuity insurance contract, or agreement as to the contract,  
 8 other than as plainly expressed in the insurance contract issued thereon; or  
 9 paying or allowing, or giving, or offering to pay, allow, or give, directly  
 10 or indirectly, as inducement to the insurance contract any rebate of premiums  
 11 payable on the contract or any special favor or advantage in the dividends or  
 12 other benefits thereon or any valuable consideration or inducement whatever  
 13 not specified in the contract; or giving, selling, or purchasing or offering  
 14 to give, sell, or purchase as inducement to the insurance contract or in  
 15 connection with the contract any stocks, bonds, or other securities of any  
 16 insurance company or other corporation, association, or partnership, or any  
 17 dividends or profits accrued thereon; or anything of value whatsoever not  
 18 specified in the insurance contract; but

19 (B) Nothing in subdivisions (10)(A) or (14) of this section  
 20 shall be construed as including within the definitions of discrimination or  
 21 rebates any of the following practices:

22 (i) In the case of any contract of life insurance or life  
 23 annuity, the paying of bonuses to policyholders or otherwise abating their  
 24 premiums in whole or in part out of surplus accumulated from nonparticipating  
 25 insurance, provided that those bonuses or abatement of premiums shall be fair  
 26 and equitable for policyholders and for the best interests of the company and  
 27 its policyholders;

28 (ii) In the case of life insurance policies issued on the  
 29 industrial debit plan, making allowance to policyholders who have  
 30 continuously for a specified period made premium payments directly to an  
 31 office of the insurer in an amount which fairly represents the saving in  
 32 collection expenses;

33 (iii) Readjustment of the rate of premium for a group  
 34 insurance policy based on the loss or expense thereunder, at the end of the  
 35 first or any subsequent policy year of insurance thereunder, which may be  
 36 made retroactive only for the policy year; or

1                   (iv) Engaging in an arrangement that does not violate  
2 Section 106 of the Bank Holding Company Act Amendments of 1972, 12 U.S.C. §  
3 1972, as interpreted by the Board of Governors of the Federal Reserve System,  
4 or Section 5(q) of the Home Owners Loan Act, 12 U.S.C. 1464(q);

5  
6           SECTION 3. Arkansas Code § 23-66-206, concerning unfair insurance  
7 trade practices, is amended by adding an additional subsection to read as  
8 follows:

9           (15) “Unfair financial planning practices” include an insurance  
10 producer:

11                   (A)(i) Holding himself or herself out, directly or indirectly,  
12 to the public as a financial planner, investment adviser, consultant,  
13 financial counselor, or any other specialist engaged in the business of  
14 giving financial planning or advice relating to investments, insurance, real  
15 estate, tax matters, or trust and estate matters, if the insurance producer  
16 is in fact engaged only in the sale of policies.

17                   (ii) However, subdivision (A)(i) of this section does not  
18 preclude a person who holds some form of formal recognized financial planning  
19 or consultant certification or designation from using the certification or  
20 designation when the person is only selling insurance.

21                   (iii) Subdivision (A)(i) of this section does not permit  
22 persons to charge an additional fee for services that are customarily  
23 associated with the solicitation, negotiation, or servicing of policies;

24                   (B)(i) Engaging in the business of financial planning without  
25 disclosing to the client, prior to the execution of the agreement provided  
26 for in subdivision (15)(C) of this section, or solicitation of the sale of a  
27 product or service, that:

28                                   (a) He or she is also an insurance salesperson; and

29                                   (b) That a commission for the sale of an insurance  
30 product will be received in addition to a fee for financial planning, if the  
31 sale involves a commission.

32                   (ii) The disclosure requirement under this subsection may  
33 be met by including it in any disclosure required by federal or state  
34 securities law; and

35                   (C)(i)(a) Charging fees other than commissions for financial  
36 planning by an insurance producer, unless the fees are based upon a written

1 agreement that is signed by the party to be charged in advance of the  
2 performance of the services under the agreement.

3 (b) A copy of the agreement under subdivision  
4 (15) (C)(i)(a) of this section must be provided to the party to be charged at  
5 the time the agreement is signed by the party.

6 (c) The services for which the fee is to be charged  
7 must be specifically stated in the agreement.

8 (d) The amount of the fee to be charged or how it  
9 will be determined or calculated must be specifically stated in the  
10 agreement.

11 (e) The agreement must state that the client is  
12 under no obligation to purchase any insurance product through the insurance  
13 producer or financial consultant.

14 (ii) The insurance producer shall retain a copy of the  
15 agreement for not less than three (3) years after completion of services, and  
16 a copy shall be available to the commissioner upon request.

17  
18 SECTION 4. Arkansas Code § 23-66-208 is amended to read as follows:  
19 23-66-208. Power of commissioner to examine and investigate.

20 (a) The Insurance Commissioner shall have power to examine and  
21 investigate the affairs of every person engaged in the business of insurance  
22 in this state in order to determine whether the person has been or is engaged  
23 in any unfair method of competition or in any unfair or deceptive act or  
24 practice prohibited by § 23-66-205.

25 (b)(1) If the person engaged in the business of insurance is a  
26 depository institution, the commissioner shall have the power to examine and  
27 investigate the insurance activities of the depository institution, in order  
28 to determine whether the depository institution has been or is engaged in any  
29 unfair trade practice prohibited by this subchapter.

30 (2) Before beginning an examination or investigation under  
31 subdivision (b)(1) of this section, the commissioner shall notify the  
32 appropriate bank regulatory agency of the commissioner's intent to examine or  
33 investigate the depository institution and shall advise the appropriate  
34 federal banking agency of the suspected violations of state law.

35  
36 SECTION 5. Arkansas Code § 23-66-209, concerning administrative

1 hearings regarding unfair trade practices, is amended to read as follows:

2 (a)(1) Whenever the Insurance Commissioner has reason to believe that  
 3 any person has been engaged or is engaging in this state in any unfair method  
 4 of competition or any unfair or deceptive act or practice, whether or not  
 5 defined in § 23-66-206 or § 23-66-312, and that a proceeding by the  
 6 commissioner in respect thereto would be to the interest of the public, the  
 7 commissioner shall issue and serve upon the person a statement of the charges  
 8 in that respect and a notice of a hearing thereon to be held at a time and  
 9 place fixed in the notice, which shall not be less than ten (10) days after  
 10 the date of the service thereof.

11 (2) If the person in subsection (a)(1) of this section is a  
 12 depository institution, the commissioner shall have the power to require the  
 13 depository institution to produce books, papers, records, correspondence, or  
 14 other documents that the commissioner deems relevant only to an inquiry of  
 15 the insurance activities of the depository institution.

16  
 17 SECTION 6. Arkansas Code § 23-66-210, concerning penalties for  
 18 violations of cease and desist orders issued for insurance trade practice  
 19 violations, is amended to add an additional subsection to read as follows:

20 (d) If the person who has engaged in an unfair method of competition  
 21 or an unfair or deceptive act or practice under subsection (a) of this  
 22 section is a depository institution, the commissioner shall:

23 (1) If practicable, notify the appropriate bank regulatory  
 24 agency before imposing a monetary penalty on the depository institution or  
 25 before suspending or revoking the depository institution's insurer's license;  
 26 and

27 (2) Provide to the appropriate bank regulatory agency a copy of  
 28 the findings.

29  
 30 SECTION 7. Arkansas Code § 23-66-308, concerning prohibited property  
 31 and casualty insurance rebates, is amended by adding an additional subsection  
 32 to read as follows:

33 (d) This section does not include within the definition of rebates, or  
 34 otherwise prohibit, the practice of engaging in an arrangement that would not  
 35 violate Section 106 of the Bank Holding Company Act Amendments of 1972, at 12  
 36 U.S.C. § 1972, as interpreted by the Board of Governors of the Federal

1 Reserve System, or Section 5(q) of the Home Owners Loan Act, 12 U.S.C. §  
2 1464(q).

3  
4 SECTION 8. Arkansas Code § 23-66-310, is amended to read as follows:

5 23-66-310. Illegal dealing in premiums - Excess charges for insurance.

6 (a) No person shall willfully collect any sum as premium or charge for  
7 insurance, which insurance is not then provided or is not in due course to be  
8 provided, subject to acceptance of the risk by the insurer, by an insurance  
9 policy issued by an insurer as authorized by the Arkansas Insurance Code.

10 (b)(1) No person shall willfully collect as premium or charge for  
11 insurance any sum in excess of the premium or charge applicable to such  
12 insurance in accordance with the applicable classifications and rates as  
13 filed and approved if necessary by the Insurance Commissioner, or, in cases  
14 where classifications, premiums, or rates are not required by the Arkansas  
15 Insurance Code to be so filed and approved, the premiums and charges shall  
16 not be in excess of those specified in the policy and as fixed by the  
17 insurer.

18 (2) This provision shall not be deemed to prohibit the charging  
19 and collection, by surplus lines brokers licensed under § 23-65-101 et seq.,  
20 of the amount of applicable state and federal taxes in addition to the  
21 premium and expense of underwriting as required by the insurer on risks  
22 written pursuant to the surplus lines law.

23 (3) Nor shall it be deemed to prohibit the charging and  
24 collection, by a life insurer, of amounts actually to be expended for medical  
25 examination of an applicant for life insurance or for reinstatement of a life  
26 insurance policy.

27 (4) Nor shall it be deemed to prohibit a property and casualty  
28 agent from charging and collecting interest upon premiums and charges which  
29 remain unpaid for a period of thirty (30) days beyond the date that the  
30 original premium was due, subject to the supervision of the commissioner, but  
31 the interest shall not exceed the maximum rate prescribed by the Arkansas  
32 Constitution.

33 (5) Nor shall it be deemed to prohibit the collection of  
34 membership dues by a property and casualty agent when membership of the  
35 applicant in an organization is a prerequisite of the insurer to the issuance  
36 of coverage.

1 (6) Nor shall it be deemed to prohibit the charging of a fee by  
 2 a licensed consultant if the fee is not excessive.

3 ~~(e) Any fee charged by a licensed insurance agent for services which~~  
 4 ~~are not customarily associated with the solicitation, negotiation, or~~  
 5 ~~servicing of an insurance contract shall not be deemed to be a premium or a~~  
 6 ~~charge for insurance, and therefore the charging of the fee shall not be~~  
 7 ~~deemed prohibited by the provisions of subsection (b) of this section if all~~  
 8 ~~the following conditions are met:~~

9 ~~(1) The fee must be based upon a written agreement which is~~  
 10 ~~signed by the party to be charged in advance of the performance of services~~  
 11 ~~under the agreement, and a copy of the agreement must be provided at that~~  
 12 ~~time to the party to be charged;~~

13 ~~(2) The services for which the fee is to be charged must be~~  
 14 ~~specifically stated in the agreement, and services for which the fee is~~  
 15 ~~charged must be other than those which are customarily associated with the~~  
 16 ~~solicitation, negotiation, or servicing of an insurance contract;~~

17 ~~(3) The amount of the fee to be charged must be specifically~~  
 18 ~~stated in the agreement;~~

19 ~~(4) The agreement must contain a statement that if an insurance~~  
 20 ~~product is purchased through the agent, the agent will receive a commission~~  
 21 ~~in connection with the sale, that the fee charged is unrelated to any~~  
 22 ~~compensation received by the agent for the sale of any insurance product, and~~  
 23 ~~that the fee may not be waived under any circumstance; and~~

24 ~~(5) The agent must retain a copy of the agreement for not less~~  
 25 ~~than three (3) years after completion of the services, and the copy shall be~~  
 26 ~~available to the commissioner upon request.~~

27 ~~(d)~~(c) Nothing shall prohibit a duly licensed property or casualty  
 28 agent or broker from charging a fee to the insured in addition to the premium  
 29 properly charged for a policy or contract according to the insurer's rate and  
 30 rule filings with the State Insurance Department provided that:

31 (1) Each such fee is separately disclosed on the invoice or  
 32 billing statement mailed or delivered to the insured; and

33 (2) The aggregate sum of the fees and all producers' commissions  
 34 or other compensation due and owing for that policy or contract does not  
 35 exceed twenty percent (20%) of the total gross premium charged the insured by  
 36 the insurer for that policy or contract.

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SECTION 9. Arkansas Code § 23-66-312 is amended to read as follows:  
23-66-312. Favored agent or insurer - Coercion of debtors.

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

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

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

(B) Subdivision (a)(2)(A) of this section does not apply to charges that would be required if the person or depository institution or affiliate of a depository institution is the licensed producer providing the insurance; or

(3) Use or disclose information resulting from a requirement that a borrower, mortgagor, or purchaser furnish insurance of any kind when that information is to the advantage of the mortgagee, vendor, or lender or is to the detriment of the borrower, mortgagor, purchaser, insurer, or the agent or broker complying with this requirement.

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

(2)(A) For purposes of subdivision (a)(1) of this section, a rejection 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.

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

(3) Subdivision (a)(3) of this section does not restrict or limit the release of insurance information of a customer by a depository



1 institution to any officer, director, employee, agent, or affiliate of the  
 2 depository institution for the purpose of soliciting or selling insurance.

3 (4) The Insurance Commissioner may investigate the affairs of  
 4 any person to whom this subsection applies to determine whether the person  
 5 has violated this subsection. If a violation of this subsection is found, the  
 6 person in violation shall be subject to the same procedures and penalties as  
 7 are applicable to §§ 23-66-203, 23-66-206, 23-66-207, and 23-66-209 - 23-66-  
 8 213 and shall be liable for actual or compensatory damages resulting from an  
 9 unreasonable disapproval of an insurance policy or binder.

10 (5) Once a binder has been issued, the insurer must issue a  
 11 policy within ninety (90) days.

12 (6) All information given on the binder must be without material  
 13 change when the policy is issued.

14 (c) The provisions of this section do not apply to credit related  
 15 insurance, such as credit life or credit accident and health insurance.

16  
 17 SECTION 10. Arkansas Code § 23-66-603, concerning definitions under  
 18 the Insurance Sales Consumer Protection Act, is amended to read as follows:  
 19 23-66-603. Definitions.

20 For the purpose of this subchapter:

21 (1) "Affiliate" means any company that controls, is controlled by, or  
 22 is under common control with another company;

23 (2) "Customer" means a person who obtains, applies for, or is  
 24 solicited to obtain insurance, products primarily for personal, family, and  
 25 household purposes;

26 (3) "Depository institution" means a bank or savings association, and  
 27 does not include an insurance company;

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

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

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

36 (C) Private mortgage insurance;

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

5 (6) "Person" means any natural or artificial entity, including, but  
 6 not limited to, individuals, partnerships, associations, trusts, or  
 7 corporations.

8  
 9 SECTION 11. Arkansas Code § 23-66-605(a), concerning insurance sold by  
 10 a depository institution or an affiliate of a depository affiliate in  
 11 connection with a loan, is amended to read as follows:

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

14 (1)(A) No person, depository institution, or affiliate of a  
 15 depository institution may require as a condition precedent to the lending of  
 16 money or extension of credit, or any renewal thereof, that the person to whom  
 17 such money or credit is extended or whose obligation a creditor is to acquire  
 18 or finance, negotiate any policy or renewal thereof through a particular  
 19 insurer or group of insurers or agent or broker or group of agents or  
 20 brokers.

21 (B) Further, no person, depository institution, or  
 22 affiliate of a depository institution may reject an insurance policy solely  
 23 because the policy has been issued or underwritten by a person who is not  
 24 associated with the depository institution or affiliate when insurance is  
 25 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 through separate documentation; and

28 (3) A loan for premiums on required insurance, other than a loan  
 29 for credit insurance premiums or flood insurance premiums, shall not be  
 30 included in the primary credit without the written consent of the customer.

31  
 32 SECTION 12. Arkansas Code § 23-66-606, concerning disclosures by banks  
 33 or affiliates upon solicitation or sale of insurance, is amended to read as  
 34 follows:

35 23-66-606. Depository institution or affiliates of a depository  
 36 institution sales practices.

1           The following requirements shall apply to insurance sales activities  
 2 conducted by depository institutions, their employees, affiliates of a  
 3 depository institution, and unaffiliated third parties conducting the  
 4 insurance sales activities on behalf of a depository institution or affiliate  
 5 of a depository institution which involves the use of a depository  
 6 institution or affiliate of a depository institution brand name or on  
 7 depository institution or affiliate of a depository institution's premises:

8           (1) Disclosures.

9           (A) The following disclosures are required with respect to the  
 10 solicitation of insurance products or policies and shall be made in writing,  
 11 where practicable, in a clear and conspicuous manner prior to the sale:

12           (i) That the insurance product or policy is not FDIC  
 13 ~~insured~~, or insured by any other federal government agency;

14           (ii) That the insurance product or policy is not a deposit  
 15 or obligation of, or guaranteed by, the lending depository institution or  
 16 affiliate of a depository institution; and

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

20           (B)(i) When an application by a customer for a loan or other  
 21 extension of credit from a depository institution or an affiliate of a  
 22 depository institution is pending, and insurance is offered or sold to the  
 23 customer or is required in connection with the loan or extension of credit by  
 24 the depository institution or affiliate of a depository institution, a  
 25 written disclosure shall be provided to the customer indicating that the  
 26 customer's choice of insurer or producer shall not affect the credit decision  
 27 or credit terms in any way, except that the depository institution or an  
 28 affiliate of a depository institution may impose reasonable requirements  
 29 concerning the credit worthiness of the insurer and the scope of coverage  
 30 chosen.

31           (ii) A rejection of a policy furnished by the customer  
 32 shall not be deemed unreasonable if it is based on reasonable standards,  
 33 uniformly applied, relating to the extent of coverage required and the  
 34 financial soundness and the services of an insurer. Such standards shall not  
 35 discriminate against any particular type of insurer, nor shall such standards  
 36 call for rejection of a policy because it contains coverage in addition to

1 that required in the credit transaction.

2 (C)(i)(a) The person, depository institution, or affiliate of  
 3 the depository institution shall obtain written acknowledgement of the  
 4 receipt of the disclosure required by this subdivision (1) from the customer  
 5 at the time the customer receives the disclosure or at the time of the  
 6 initial purchase of the insurance policy.

7 (b) If the solicitation is conducted by telephone,  
 8 the person, depository institution, or affiliate of the depository  
 9 institution shall obtain an oral acknowledgement of receipt of the  
 10 disclosure, maintain sufficient documentation to show that the acknowledgment  
 11 was given by the customer, and make reasonable efforts to obtain a written  
 12 acknowledgment from the customer.

13 (ii) If a customer affirmatively consents to receiving the  
 14 disclosures electronically and if the disclosures are provided in a format  
 15 that the customer may retain or obtain later, the person, depository  
 16 institution, or affiliate of the depository institution may provide the  
 17 disclosure and obtain acknowledgement of the receipt of the disclosure from  
 18 the customer using electronic media.

19 (D)(i) An affiliate of a depository institution is subject to  
 20 the disclosure requirements of subdivision (1) of this section if it sells,  
 21 solicits, advertises, or offers insurance products or annuities at an office  
 22 of a depository institution or on behalf of a depository institution.

23 (ii) The disclosure requirements of subdivision (1) of  
 24 this section apply only to a depository institution when an individual  
 25 purchases, applies to purchase, or is solicited to purchase insurance  
 26 products or annuities primarily for personal, family or household purposes,  
 27 and only to the extent that the disclosure would be accurate.

28 (E) For the purposes of subdivision (1) of this section, a  
 29 person sells, solicits, advertises, or offers insurance on behalf of a  
 30 depository institution, whether at an office of the depository institution or  
 31 another location, if at least one (1) of the following occurs:

32 (i) The person represents to the customer that the sale,  
 33 solicitation, advertisement, or offer of the insurance is by or on behalf of  
 34 a depository institution;

35 (ii) A depository institution refers a customer to the  
 36 person who sells insurance and the depository institution has a contractual

1 arrangement to receive commissions or fees derived from the sale of insurance  
2 resulting from the referral; or

3 (iii) Documents evidencing the sale, solicitation,  
4 advertisement, or offer of insurance identify or refer to a depository  
5 institution; and

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

10 (A) Conducting the activities to the extent practicable in a  
11 location separate and distinct from the area where retail ~~deposit occurs; and~~  
12 deposits routinely occur; and

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

18  
19 SECTION 13. Arkansas Code Title 23, Chapter 66, Subchapter 6 is  
20 amended to add additional sections to read as follows:

21 23-66-609. Prohibited activities.

22 No person, depository institution, or affiliate of a depository  
23 institution, who lends money or extends credit may:

24 (1) Use an advertisement or other insurance promotional material that  
25 would cause a reasonable person to mistakenly believe that the federal  
26 government or the state is responsible for the insurance sales activity of,  
27 or stands behind the credit of, the person, depository institution, or its  
28 affiliate;

29 (2) Use an advertisement or other insurance promotional material that  
30 would cause a reasonable person to mistakenly believe that the federal  
31 government or the state guarantees any return on an insurance product or is a  
32 source of payment on any insurance obligation of or sold by the person,  
33 depository institution, or its affiliate;

34 (3) Solicit or sell insurance unless it maintains separate books and  
35 records relating to the insurance transactions, including all files relating  
36 to and reflecting consumer complaints; or

1           (4)(A) Pay or receive any commission, brokerage fee or other  
 2 compensation as a producer, unless the person holds a valid producer's  
 3 license for the applicable class of insurance.

4           (B) However, an unlicensed person may make a referral to a  
 5 licensed producer provided that the person does not:

6                   (i) Sell, solicit, or negotiate insurance;

7                   (ii) Discuss specific insurance policy terms and  
 8 conditions; or

9                   (iii) Make recommendations or offer advice concerning  
 10 insurance policies or coverages.

11           (C)(i) The unlicensed person may be compensation for the  
 12 referral.

13                   (ii) However, in the case of a referral of a customer, the  
 14 unlicensed person may be compensated only if the compensation is a fixed  
 15 dollar amount for each referral that does not depend on whether the customer  
 16 purchases the insurance product from the licensed producer.

17           (D) Any person who accepts deposits from the public in an area  
 18 where such transactions are routinely conducted in the depository institution  
 19 may receive for each customer referral no more than a single, nominal fee of  
 20 a fixed dollar amount, for each referral that does not depend on whether the  
 21 referral results in a transaction.

22  
 23           23-66-610. Commissioner's powers - Administrative proceedings.

24           (a) The Insurance Commissioner shall have the power to examine and  
 25 investigate the insurance activities of depository institutions, in order to  
 26 determine whether a depository institution has been or is engaged in any  
 27 unfair trade practice prohibited by this subchapter.

28           (b) The commissioner shall notify the appropriate bank regulatory  
 29 agency of the commissioner's intent to examine or investigate a depository  
 30 institution and advise the appropriate bank regulatory agency of the  
 31 suspected violations of state law prior to commencing the examination or  
 32 investigation.

33           (c) Administrative proceedings for persons not in compliance with this  
 34 subchapter shall be held in accord with the procedures of §§ 23-66-209  
 35 through § 23-66-213, subject to the following limitations or conditions:

36                   (1)(A) If the person being investigated by the commissioner

1 under subsection (a) of this section is a depository institution, the  
2 commissioner's authority to call a hearing for suspected violations of this  
3 subchapter is limited to the depository institution's insurance underwriting,  
4 sales, solicitation, and cross marketing activities;

5 (B) The commissioner shall provide a copy of the notice of  
6 hearing to the appropriate bank regulatory agency when a depository  
7 institution is involved;

8 (2) If the person being investigated by the commissioner under  
9 subsection (a) of this section is a depository institution, the commissioner  
10 shall have the power to require the depository institution to produce books,  
11 papers, records, correspondence, or other documents that the commissioner  
12 deems relevant only to the inquiry regarding the insurance activities of the  
13 depository institution; and

14 (3) The commissioner shall, if practicable, notify the  
15 appropriate bank regulatory agency before imposing a monetary penalty on a  
16 depository institution or suspending or revoking the depository institution's  
17 insurance license, and shall provide to the appropriate bank regulatory  
18 agency a copy of the findings.

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