

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
4

As Engrossed: H3/13/03 S4/10/03

A Bill

HOUSE BILL 2192

5 By: Representative R. Smith
6
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

18
19
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.
26
27

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

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

17 (b) However, subdivision (15)(A)(i)(a) of this
18 section does not preclude a person who holds some form of formal recognized
19 financial planning or consultant certification or designation from using the
20 certification or designation when the person is only selling insurance.

21 (c) Subdivision (15)(A)(i)(a) of this section does
22 not permit persons to charge an additional fee for services that are
23 customarily associated with the solicitation, negotiation, or servicing of
24 policies;

25 (ii)(a) Engaging in the business of financial planning
26 without disclosing in writing to the client, prior to the execution of the
27 agreement provided for in subdivision (15)(A)(iii) of this section, or
28 solicitation of the sale of a product or service, that:

29 (1) He or she is also an insurance
30 salesperson; and

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

34 (b) The disclosure requirement under this
35 subdivision (15)(A)(ii) may be met by including it in any written disclosure
36 required by federal or state securities law; and

1 (iii)(a)(1) Charging fees other than commissions for
 2 financial planning by an insurance producer, unless the fees are based upon a
 3 written agreement that is signed by the party to be charged in advance of the
 4 performance of the services under the agreement.

5 (2) A copy of the agreement under subdivision
 6 (15)(A)(iii)(a)(1) of this section must be provided to the party to be
 7 charged at the time the agreement is signed by the party.

8 (3) The services for which the fee is to be
 9 charged must be specifically stated in the agreement.

10 (4) The amount of the fee to be charged or how
 11 it will be determined or calculated must be specifically stated in the
 12 agreement.

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

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

19 (B) "Unfair financial planning practices" do not include funeral
 20 expense insurance and prepaid funeral benefits contracts;

21
 22 SECTION 4. Arkansas Code § 23-66-208 is amended to read as follows:

23 23-66-208. Power of commissioner to examine and investigate.

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

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

34 (2) Before beginning an examination or investigation under
 35 subdivision (b)(1) of this section, the commissioner shall notify the
 36 appropriate bank regulatory agency of the commissioner's intent to examine or

1 investigate the depository institution and shall advise the appropriate
2 federal banking agency of the suspected violations of state law.

3
4 SECTION 5. Arkansas Code § 23-66-209(a), concerning administrative
5 hearings regarding unfair trade practices, is amended to read as follows:

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

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

20
21 SECTION 6. Arkansas Code § 23-66-210, concerning penalties for
22 violations of cease and desist orders issued for insurance trade practice
23 violations, is amended to add an additional subsection to read as follows:

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

27 (1) If practicable, notify the appropriate bank regulatory
28 agency before imposing a monetary penalty on the depository institution or
29 before suspending or revoking the depository institution's insurer's license;
30 and

31 (2) Provide to the appropriate bank regulatory agency a copy of
32 the findings.

33
34 SECTION 7. Arkansas Code § 23-66-308, concerning prohibited property
35 and casualty insurance rebates, is amended by adding an additional subsection
36 to read as follows:

1 (d) This section does not include within the definition of rebates, or
2 otherwise prohibit, the practice of engaging in an arrangement that would not
3 violate Section 106 of the Bank Holding Company Act Amendments of 1972, at 12
4 U.S.C. § 1972, as interpreted by the Board of Governors of the Federal
5 Reserve System, or Section 5(q) of the Home Owners Loan Act, 12 U.S.C. §
6 1464(q).

7
8 SECTION 8. Arkansas Code § 23-66-310, is amended to read as follows:

9 23-66-310. Illegal dealing in premiums - Excess charges for insurance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5
6 SECTION 9. Arkansas Code § 23-66-312 is amended to read as follows:

7 23-66-312. Favored agent or insurer - Coercion of debtors.

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

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

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

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

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

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

31 (2)(A) For purposes of subdivision (a)(1) of this section, a
32 rejection shall not be deemed unreasonable if it is based on reasonable
33 standards, uniformly applied, relating to the extent of coverage required and
34 the financial soundness and the services of an insurer.

35 (B) The standards shall not discriminate against any
36 particular type of insurer, nor shall the standards call for rejection of a

1 policy because it contains coverage in addition to that required in the
2 credit transaction.

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

7 (4) The Insurance Commissioner may investigate the affairs of
8 any person to whom this subsection applies to determine whether the person
9 has violated this subsection. If a violation of this subsection is found, the
10 person in violation shall be subject to the same procedures and penalties as
11 are applicable to §§ 23-66-203, 23-66-206, 23-66-207, and 23-66-209 - 23-66-
12 213 and shall be liable for actual or compensatory damages resulting from an
13 unreasonable disapproval of an insurance policy or binder.

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

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

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

20

21 SECTION 10. Arkansas Code § 23-66-603, concerning definitions under
22 the Insurance Sales Consumer Protection Act, is amended to read as follows:

23 23-66-603. Definitions.

24 For the purpose of this subchapter:

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

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

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

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

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

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

4 (C) Private mortgage insurance;

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

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

12
13 SECTION 11. Arkansas Code § 23-66-605(a), concerning insurance sold by
14 a depository institution or an affiliate of a depository affiliate in
15 connection with a loan, is amended to read as follows:

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

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

25 (B) Further, no person, depository institution, or
26 affiliate of a depository institution may reject an insurance policy solely
27 because the policy has been issued or underwritten by a person who is not
28 associated with the depository institution or affiliate when insurance is
29 required in connection with a loan or extension of credit;

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

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

35
36 SECTION 12. Arkansas Code § 23-66-606, concerning disclosures by banks

1 or affiliates upon solicitation or sale of insurance, is amended to read as
2 follows:

3 23-66-606. Depository institution or affiliates of a depository
4 institution sales practices.

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

12 (1) Disclosures.

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

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

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

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

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

35 (ii) A rejection of a policy furnished by the customer
36 shall not be deemed unreasonable if it is based on reasonable standards,

1 uniformly applied, relating to the extent of coverage required and the
2 financial soundness and the services of an insurer. Such standards shall not
3 discriminate against any particular type of insurer, nor shall such standards
4 call for rejection of a policy because it contains coverage in addition to
5 that required in the credit transaction.

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

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

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

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

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

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

36 (i) The person represents to the customer that the sale,

1 solicitation, advertisement, or offer of the insurance is by or on behalf of
 2 a depository institution;

3 (ii) A depository institution refers a customer to the
 4 person who sells insurance and the depository institution has a contractual
 5 arrangement to receive commissions or fees derived from the sale of insurance
 6 resulting from the referral; or

7 (iii) Documents evidencing the sale, solicitation,
 8 advertisement, or offer of insurance identify or refer to a depository
 9 institution; and

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

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

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

22
 23 SECTION 13. Arkansas Code Title 23, Chapter 66, Subchapter 6 is
 24 amended to add additional sections to read as follows:

25 23-66-609. Prohibited activities.

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

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

33 (2) Use an advertisement or other insurance promotional material that
 34 would cause a reasonable person to mistakenly believe that the federal
 35 government or the state guarantees any return on an insurance product or is a
 36 source of payment on any insurance obligation of or sold by the person,

1 depository institution, or its affiliate;

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

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

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

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

11 (ii) Discuss specific insurance policy terms and
12 conditions; or

13 (iii) Make recommendations or offer advice concerning
14 insurance policies or coverages.

15 (C)(i) The unlicensed person may be compensated for the
16 referral.

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

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

26
27 23-66-610. Commissioner's powers - Administrative proceedings.

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

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

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

4 (1)(A) If the person being investigated by the commissioner
5 under subsection (a) of this section is a depository institution, the
6 commissioner's authority to call a hearing for suspected violations of this
7 subchapter is limited to the depository institution's insurance underwriting,
8 sales, solicitation, and cross marketing activities;

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

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

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

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24 */s/ R. Smith*
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