WEST VIRGINIA CODE CHAPTER 33 ARTICLE 11A

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§33-11A-1. Short title.

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

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§33-11A-2. Purpose.

The purpose of this article is to regulate the business of insurance in West Virginia when engaged in by financial institutions and to protect the interests of consumers.

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§33-11A-3. Definitions.

For the purposes of this article:

(a) "Affiliate" means a person that directly or indirectly or through one or more intermediaries, controls or is controlled by another or is under common control with another.

(b) "Commissioner" means the Insurance Commissioner of West Virginia.

(c) "Financial institution":

(1) Means any bank, savings bank, savings and loan association, trust company, credit union or any other depository institution, which: (i) Accepts federally insured deposits, including, but not limited to, those as defined by the Federal Deposit Insurance Act, as amended, 12 U.S.C. §1813(c)(1); and (ii) makes loans to residents of this state;

(2) Means any employee or agent of a financial institution; and

(3) Means any nondepository affiliate or subsidiary of a financial institution but only in the instances when the nondepository affiliate or subsidiary is soliciting the sale or purchase of insurance recommended or sponsored by, on the premises of, or in connection with a product offering of, the financial institution.

(4) Does not include a credit card bank, as defined in the Bank Holding Company Act of 1956, as amended, 12 U.S.C. §1841(c)(2)(F), an industrial loan company as defined in 12 U.S.C. §1841(c)(2)(H), a specialized savings association serving certain military personnel as defined in 12 U.S.C. §1467a(m)(3)(F), a bank whose ownership is grandfathered under the Competitive Equality Banking Act of 1987 as codified at 12 U.S.C. §1843(f)(1), or an insurance company.

(d) "Insurance" means all products defined or regulated as insurance by the State of West Virginia, except:

(1) Credit life, health and accident, accident, loss of income, or property insurance as described in subsection (b) of section one hundred nine, article three, chapter forty-six-a of the Code of West Virginia;

(2) 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(3) Private mortgage insurance.

(e) "Insurance company" means a company that possesses a certificate under this chapter to transact insurance business in West Virginia.

(f) "Insurance information" means copies of insurance policies, or the information contained

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thereon, binders, rates and expiration dates contained within the information supplied in connection with the loan, which are not otherwise available to the financial institution's affiliated broker or agent.

(g) "Person" means any natural person, partnership, corporation, association, business trust, or other form of business enterprise, as the case demands.

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§33-11A-4. Authorization to implement regulations.

The commissioner shall promulgate rules in accordance with chapter twenty-nine-a of this code to effectuate the provisions of this article.

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§33-11A-5. Licensure requirement for insurance sales.

Solicitation for the purchase or sale of any insurance product by any person, including an employee or agent of a financial institution, shall be conducted only by individuals who have complied with all applicable state insurance licensing and appointment laws and regulations and who have been issued an agent or broker's license pursuant to chapter thirty-three of this code.

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§33-11A-6. Insurance sales separate from loan transaction.

(a) Solicitation for the purchase or sale of insurance by a financial institution shall be conducted only by individuals whose responsibilities do not include loan transactions or other transactions involving the extension of credit: Provided, That for a financial institution location having three or less individuals with lending authority, solicitation for the sale of insurance may be conducted by an individual with responsibilities for loan transactions or other transactions involving the extension of credit, as long as the individual primarily responsible for making the specific loan or extension of credit is not the same individual engaged in the solicitation of the purchase or sale of insurance for that same transaction.

(b) In the event that in any small office, the same individual is the licensed agent or broker and the sole individual with lending authority, the commissioner may grant a waiver of the requirements of this section upon a written request. Such request shall include documentation that, due to the small office staff, compliance is not possible, and include identification of other steps which will be taken to minimize the customer confusion prohibited by this article.

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§33-11A-7. Referrals by unlicensed persons allowed.

(a) A person who is not licensed to sell insurance may refer a customer who seeks to purchase, or seeks an opinion or advice on, any insurance product to a person, or provide the phone number of a person, who sells or provides opinions or advice on such product, only if the person making the referral receives no fee or only a nominal fee for such referral and such fee is not based on the customer's application for or purchase of insurance.

(b) For purposes of this section "nominal fee" means a one-time fee of $100 or less.

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§33-11A-8. Tying of products prohibited.

(a) No person shall require or imply that the purchase of an insurance product from a financial institution by a customer or prospective customer of the institution is required as a condition of the lending of money or extension of credit.

(b) No financial institution may offer an insurance product in combination with its other products, unless all the products are available separately from the financial institution.

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§33-11A-9. Disclosures.

(a) A financial institution soliciting the purchase of or selling insurance, and any person soliciting the purchase of or selling insurance on the premises of, in connection with a product offering of, or using a name identifiable with, a financial institution, shall prominently disclose to customers, in writing, in clear and concise language, including in any advertisement or promotional material, and orally during any customer contact, that insurance offered, recommended, sponsored, or sold:

(1) Is not a deposit;

(2) Is not insured by the federal deposit insurance corporation or, where applicable, the National Credit Union Share Insurance Fund;

(3) Is not guaranteed by any insured depository institution; and

(4) Where appropriate, involves investment risk, including potential loss of principal.

(b) Any financial institution engaged in the making of loans or other extensions of credit and the sale of insurance shall prominently disclose to customers in writing, in clear and concise language, that the insurance product may be purchased from an agent or broker of the customer's choice, and the customer's choice of another insurance provider will not affect the customer's credit relationship with the person. For purposes of this subsection, loans and extensions of credit shall not include financing in connection with the insurance product offered or sold.

(c) Any person required under subsections (a) or (b) of this section to make disclosures to a customer shall obtain a written acknowledgment of receipt by the customer of such disclosures, including the date of receipt and the customer's name, address, and account number, prior to or at the time of any application for insurance sold by the person. Such acknowledgment shall be in a separate document.

(d) The commissioner may grant a waiver of the requirements of this section to any person required to give the disclosures required by this section solely because that person has a name identifiable with a financial institution upon a written request by such person demonstrating that his her or its customers would not reasonably benefit from, or might in fact be confused by, these required disclosures.

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§33-11A-10. Timing of insurance solicitation.

(a) No individual who is an employee or agent of a financial institution, or of a subsidiary or affiliate thereof, may, directly or indirectly, make an insurance-related referral to or solicit the purchase of any insurance from a customer knowing that such customer has applied for a loan or extension of credit from that financial institution before such time as the customer has received a written commitment with respect to such loan or extension of credit, or, in the event that no written commitment has or will be issued in connection with the loan or extension of credit, before such time as the customer receives notification of approval of the loan or extension of credit by the financial institution and the financial institution creates a written record of the loan or extension of credit approval.

(b) This provision shall not prohibit any individual subject to subsection (a) above from:

(1) Informing a customer that insurance is required in connection with a loan; or

(2) Contacting persons in the course of direct or mass mailing to a group of persons in a manner that bears no relation to the person's loan application or credit decision.

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§33-11A-11. Insurance in connection with a loan.

(a) If insurance is required as a condition of obtaining a loan, the credit and insurance transactions shall be completed independently and through separate documents.

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

(c) No title insurance shall be issued until the title insurance company has obtained a title opinion of an attorney licensed to practice law in West Virginia, which attorney is not an employee, agent, or owner of the insured bank or its affiliates. Said attorney shall have conducted or cause to have conducted under the attorney's direct supervision a reasonable examination of the title. In no event shall the authority of a state-chartered bank to sell title insurance exceed the authority of a nationally chartered bank to do so.

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§33-11A-12. Prohibition of discrimination against agents or brokers.

(a) No financial institution may, in connection with a loan or extension of credit that requires a borrower to obtain insurance, reject an insurance policy because such policy has been issued or underwritten by any person who is not affiliated with such financial institution.

(b) No financial institution may impose any requirement on any insurance agent or broker who is not affiliated with the financial institution that is not imposed on any insurance agent or broker who is affiliated with such financial institution.

(c) No financial institution may, unless otherwise authorized by any applicable federal or state law, require any debtor, insurer, broker, or agent to pay a separate charge in connection with the handling of insurance that is required under a contract, if such insurance is sold by an agent or broker not affiliated with the financial institution.

(d) No financial institution may offer, as a package of products any products which are not insurance products in connection with insurance products, on a discounted basis, when compared with the pricing of each of the products when offered separately: Provided, That this prohibition does not apply to:

(1) Annuity products;

(2) The packaging of noninsurance products on a discounted basis; or

(3) The packaging of insurance products on a discounted basis to the extent permitted by the anti-rebating statute contained in section four, article eleven of this chapter.

(e) All of the prohibitions contained in this section shall be subject to other applicable laws, rules and regulations relating to the pricing of insurance products and the products of financial institutions.

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§33-11A-13. Confidentiality of insurance information obtained by financial institutions.

(a) When a financial institution requires a borrower to provide insurance information in connection with the making of a loan or extension of credit, neither such financial institution nor an insurance agent or broker affiliated with such financial institution may later use the information so obtained to solicit or offer insurance to such borrower, unless the consent required in subsection (b) below is first obtained.

(b) A borrower may consent to the financial institution's disclosure of insurance information to an agent or broker affiliated with the financial institution, but any such consent must be in writing and be given at a time subsequent, which shall be no less than two days, to the time of the application for, approval of and making of the loan or extension of credit.

(c) Consent under subsection (b) of this section shall be obtained in a separate document, distinct from any other transaction, and shall not be required as a condition for performance of other services for the customer.

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§33-11A-14. Physical location of insurance sales.

The place of solicitation or sale of insurance by any financial institution or on the premises of any financial institution shall be clearly and conspicuously signed so as to be readily distinguishable by the public as separate and distinct from the financial institution's lending and deposit-taking activities. In the event that a person which would otherwise be subject to the requirements set forth in this provision does not have the physical space to so comply, the commissioner may grant a waiver of the requirements of this section upon a written request by such person demonstrating that, due to its small physical facilities, compliance is not possible, and including identification of other steps which will be taken to minimize customer confusion.

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§33-11A-15. Insurance records to be kept separate.

(a) Books and records relating to the insurance transactions of any person licensed to sell insurance, including all files relating to and reflecting customer complaints, shall be kept separate and apart from all records relating to other business transactions of such person, and shall be made available to the commissioner for inspection upon reasonable notice.

(b) Unless applicable provisions of chapter thirty-three of this code or rules promulgated thereunder expressly require that an original of any insurance record be maintained, any insurance records may be stored in any photographic, photostatic, microphotographic or similar miniature photographic process or by nonerasable optical image disks such as compact disks or by other similar retention technology and such copies, in positive or negative form, may be substituted for the originals thereof. Thereafter, such copy or reproduction in the form of a positive print thereof, shall be deemed for all purposes to be an original counterpart of and shall have the same force and effect as the original thereof and shall be admissible in evidence in all courts and administrative agencies in this state, to the same extent, and for the same purposes as the original thereof, and the original may be destroyed or otherwise disposed of; but every such person shall retain either the originals or such copies or reproductions for as long as required under applicable records retention requirements. (c) All circumstances surrounding the making or issuance of such documents, books, records, correspondence and other instruments, papers or writings, or the photographic, photostatic or microphotographic copies or optical disks or other permissible reproductions thereof, when the same are offered in evidence, may be shown to affect the weight but not the admissibility thereof. (d) Any device used to copy or reproduce such documents and records shall be one which correctly and accurately reproduces the original thereof in all details and any disk or film used therein shall be of durable material.

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§33-11A-16. Severability.

If any provision of this article is for any reason held to be invalid, the remainder of the article shall not be affected thereby.

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