WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1997

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ENROLLED

HOUSE BILL No. 2198

Farris, Johnson, Thompson, Beane,
(Legate S) L. White, H. White and Clements

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Passed ___________________________ March 27, ___________ 1997

In Effect __________________________ Ninety Days From ________ Passage

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AN ACT to amend and reenact section thirteen, article four, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend chapter thirty-three of said code by adding thereto a new article, designated article eleven-a, all relating to providing West Virginia state-chartered banks authority and parity with national banks in the marketing and sale of insurance and annuities and providing for the protection of consumers and the regulation of the business of insurance when combined with the business of lending and the business of financial institutions.

Be it enacted by the Legislature of West Virginia:

That section thirteen, article four, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that chapter thirty-three of said code be amended by adding thereto a new article, designated article eleven-a, all to read as follows:

CHAPTER 31A. BANKS AND BANKING.

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.

§31A-4-13. Powers of state banking institutions generally.
(a) Any state-chartered banking institution shall have and exercise all of the powers necessary for, or incidental to, the business of banking, and without limiting or restricting such general powers, it shall have the right to buy or discount promissory notes and bonds, negotiate drafts, bills of exchange and other evidences of indebtedness, borrow money, receive deposits on such terms and conditions as its officers may prescribe, buy and sell, exchange, bank notes, bullion or coin, loan money on personal or other security, rent safe-deposit boxes and receive on deposit, for safekeeping, jewelry, plate, stocks, bonds and personal property of whatsoever description and provide customer services incidental to the business of banking, including, but not limited to, the issuance and servicing of and lending money by means of credit cards as letters of credit or otherwise. Any state-chartered banking institution may accept, for payment at a future date, not to exceed one year, drafts drawn upon it by its customers. Any state-chartered banking institution may issue letters of credit, with a specified expiration date or for a definite term, authorizing the holders thereof to draw drafts upon it or its correspondents, at sight or on time. Any such banking institution may organize, acquire, own, operate, dispose of, and otherwise manage wholly owned subsidiary corporations for purposes incident to the banking powers and services authorized by this chapter.

(b) Any state-chartered banking institution may acquire, own, hold, use and dispose of real estate, which shall in no case be carried on its books at a value greater than the actual cost: Provided, That such property shall be necessary for the convenient transaction of its business, including any buildings, office space or other facilities to rent as a source of income: Provided, however, That such investment hereafter made shall not exceed sixty-five percent of the amount of its capital stock and surplus, unless the consent in writing of the commissioner of banking is first secured.

(c) Any state-chartered banking institution may acquire, own, hold, use and dispose of real estate, which shall be carried on its books at the lower of fair value or
cost as defined in rules promulgated by the commissioner of banking, subject to the following limitations:

(1) Such as shall be mortgaged to it in good faith as security for debts in its favor;

(2) Such as shall be conveyed to it in satisfaction of debts previously contracted in the course of its business dealings; and

(3) Such as it shall purchase at sales under judgments, decrees, trust deeds or mortgages in its favor, or shall purchase at private sale, to secure and effectuate the payment of debts due to it.

(d) The value at which any real estate is held shall not be increased by the addition thereto of taxes, insurance, interest, ordinary repairs, or other charges which do not materially enhance the value of the property.

(e) Any real estate acquired by any such banking institution under subdivisions two and three of subsection (c) of this section shall be disposed of by the banking institution at the earliest practicable date, but the officers thereof shall have a reasonable discretion in the matter of the time to dispose of such property in order to save the banking institution from unnecessary losses: Provided, That in every case such property shall be disposed of within ten years from the time it is acquired by the banking institution, unless an extension of time is given in writing by the commissioner of banking.

(f) The sale of annuities by state-chartered banking institutions shall be subject to the following:

(1) Any state-chartered banking institution having its main or a branch office in any place the population of which does not exceed five thousand inhabitants, as shown by the last preceding decennial census, through its employees or agents, may, from that place or office, directly or through a controlled subsidiary, act as agent for any fire, life, casualty, liability or other insurance company authorized by the authorities of the state to do business in this state, by soliciting and selling insurance and collecting premiums on policies issued by such
company; and may receive for services so rendered all permissible fees or commissions as may be agreed upon between the bank and the insurance company for which it may act as agent: Provided, That no such bank shall in any case assume or guarantee the payment on insurance policies issued through its agency by its principal: Provided, however, That the bank shall not guarantee the truth of any statement made by an insured in filing his, her or its application for insurance. For purposes of this section, a “controlled subsidiary” is one in which the state-chartered banking institution owns at least eighty percent of all classes of stock. This provision is intended to give state-chartered banking institutions parity with national banks operating in this state with regard to the marketing and sale of insurance notwithstanding the prohibitions and limitations contained in article eight-c or elsewhere in this chapter, and shall be construed consistently with interpretations of 12 U.S.C. §92, the regulations promulgated thereunder, and any successor legislation or regulations.

(g) Any state-chartered banking institution may, through its employees or agents, market and sell, as agent, annuities, either at its main office or at any of its branches. The marketing and sale of annuities may be made by the bank, through its employees or agents, directly, or through a controlled subsidiary, as defined in subsection (f) above. This provision is intended to give state-chartered banks parity with national banks operating in this state with regard to the sale of annuities, notwithstanding the prohibitions and limitations contained in article eight-c or elsewhere in this chapter.

(h) Unless waived in writing by the commissioner, a state-chartered bank may not invest or otherwise expend in excess of ten percent of its capital and surplus, calculated at the end of the previous calendar year on the activities permitted by subsections (f) and (g) on an aggregate basis together with any of its approved financially related products and services. For purposes of this section, approved financially related products and services means those products and services offered by a
(i) The commissioner shall promulgate rules in accordance with chapter twenty-nine-a of this code relating to the sale of insurance or annuities, including, but not limited to, rules requiring notice of the intention to engage in such activities and relating to the policies and procedures state-chartered banking institutions should adopt in connection with such activities.

(j) Any state-chartered banking institution and its employees or agents engaged in the sale of insurance or annuities permitted hereby must also comply with all applicable requirements for the sale of such products imposed by the West Virginia commissioner of insurance and by any state or federal securities regulator.

(k) No state-chartered banking institution shall hereafter invest more than twenty percent of the amount of its capital and surplus in furniture and fixtures, whether the same be installed in a building owned by such banking institution, or in quarters leased by it, unless the consent in writing of the commissioner of banking is first secured.

CHAPTER 33. INSURANCE.

ARTICLE 11A. INSURANCE SALES CONSUMER PROTECTION ACT.


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


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.


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.


(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 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.


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

§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.

§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, however, 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.


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.

§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.

(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.


(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.


(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.

§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.

§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.


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.

§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.


If any provision of this article is for any reason held to be invalid, the remainder of the article shall not be affected thereby.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Randy Schwore
Chairman Senate Committee

Nick Fantaszi
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 14th day of April, 1997.

Governor