

AN ACT
RELATING TO INSURANCE; AUTHORIZING A LENDING INSTITUTION
THAT IS A SUBSIDIARY OR AN AFFILIATE OF A STATE OR FEDERALLY
CHARTERED BANK TO BE LICENSED TO SELL TITLE INSURANCE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 59A-12-10 NMSA 1978 (being Laws 1997, Chapter 48, Section 1, as amended by Laws 1999, Chapter 272, Section 7 and also by Laws 1999, Chapter 289, Section 8) is amended to read:

"59A-12-10. LICENSING OF LENDING INSTITUTION--
DEFINITIONS AND EXCEPTIONS. --

A. As used in this section:

(1) "lending institution" means an institution, including its holding company, subsidiary or insurance agent, solicitor or broker affiliate, whose business includes accepting deposits or lending money in New Mexico, including banks, savings and loan associations and credit unions; "lending institution" does not include insurance companies;

(2) "holding company", "subsidiary" and "affiliate" mean those terms as defined in regulations adopted by the superintendent, except "bank holding company" means that term as defined in Section 2 of the federal Bank Holding Company Act of 1956;

(3) "public utility" means a private

employer subject to the jurisdiction of the commission that is engaged in the business of providing telecommunications, electric, gas, water or steam heat services to the public;

(4) "sell" means to engage in the solicitation, sale and placement of insurance and such other related activities conducted by an agent, solicitor or broker pursuant to the Insurance Code;

(5) "service contract" means a contract issued on consumer products pursuant to which the vendor or manufacturer bears the cost of the repair or replacement of the consumer product;

(6) "insurance premium finance agreement" means an agreement by which an insured or a prospective insured promises to pay to any person engaged in the business of premium financing, the amount advanced or to be advanced under the agreement to an insurer or to an insurance agent or broker in payment of premiums on an insurance contract; and

(7) "loan transaction" and any other reference to lending or extension of credit does not include loans made by broker-dealers registered in accordance with applicable state and federal securities laws that are wholly collateralized by securities.

B. A lending institution:

(1) that is a subsidiary or an affiliate of a state or federally chartered bank may be licensed to sell:

(a) any insurance in accordance with the Insurance Code and to the extent authorized by federal and state lending institution regulators; and

(b) annuities to the extent authorized by law and federal and state lending institution regulators, but nothing in this subparagraph shall affect the rights and obligations of nationally chartered lending institutions; and

(2) other than one described in Paragraph (1) of this subsection, may be licensed to sell:

(a) any insurance except title insurance in accordance with the Insurance Code and to the extent authorized by federal and state lending institution regulators; and

(b) annuities to the extent authorized by law and federal and state lending institution regulators, but nothing in this subparagraph shall affect the rights and obligations of nationally chartered lending institutions.

C. A public utility or its holding company, subsidiary or affiliate shall not be licensed to sell insurance or act as a broker for insurance in New Mexico.

D. As used in Subsections E through Y of this section, "insurance" means all products defined or regulated as insurance under the Insurance Code except:

(1) credit life, credit accident and health, credit involuntary unemployment, credit casualty and

credit property insurance, and when providing insurance coverage to a borrower or co-borrower or both, the following insurance products: accidental death and dismemberment, accidental disability and any other accidental casualty insurance product;

(2) insurance placed by a lending institution on the collateral pledged as security for a loan when the debtor breaches the contractual obligation to provide that insurance;

(3) private mortgage insurance and financial guarantee insurance;

(4) annuities;

(5) service contracts;

(6) insurance premium finance agreements;

and

(7) travel accident or baggage insurance.

E. A lending institution shall not require as a condition precedent to the extension of credit, or any subsequent renewal thereof, or the procurement of other bank services that the customer purchase insurance through a particular insurer, agent, solicitor or broker.

F. A lending institution shall not extend credit, lease or sell property or furnish any other service or fix or vary the consideration for any of the foregoing on the condition or requirement that the customer obtain insurance from that lending institution or from a particular insurer,

agent, solicitor or broker.

G. A lending institution shall not impose a requirement on an insurance agent, solicitor or broker who is not associated with the lending institution that is not imposed on an insurance agent, solicitor or broker who is associated with that institution or, unless otherwise authorized by applicable federal or state law, require a debtor, insurer, agent, solicitor or broker to pay a separate charge in connection with the handling of insurance that is required under a contract.

H. A lending institution, except an institution that does not accept deposits that are federally insured, that sells insurance on its premises shall:

(1) conspicuously post a notice that is clearly visible to anyone who may purchase insurance that insurance is not a deposit account insured by a federal deposit insuring agency;

(2) orally inform a prospective purchaser of insurance that insurance is not a deposit account insured by a federal deposit insuring agency; and

(3) provide a written disclosure to the customer containing the following statements before the sale of insurance is complete:

(a) insurance is not a lending institution deposit account and is not insured by its federal deposit insuring agency;

(b) insurance is not an obligation of or guaranteed by the lending institution;

(c) the customer is not required to obtain insurance from a particular lending institution, agent, solicitor or broker; and

(d) where applicable, insurance involves investment risk, including potential loss of principal.

I. The sale of insurance by a lending institution, except an institution that does not accept deposits that are federally insured, shall be effectuated in such a manner so as to avoid confusion between federally insured deposit products offered by a lending institution and the nonfederally insured insurance sold. Insurance advertisements and other sales material shall be accurate and not misleading or deceptive. Insurance advertising and other sales materials regarding insurance shall include disclosures that contain language that is the same or substantially similar to the following:

(1) insurance is not a lending institution deposit and is not insured by its federal deposit insuring agency;

(2) insurance is not an obligation of or guaranteed by the lending institution; and

(3) where applicable, insurance involves investment risk, including potential loss of principal.

J. Insurance operations may be conducted by the lending institution, its holding company, an affiliate or subsidiary of either or through a separate corporate entity or partnership.

K. A lending institution shall not provide nonpublic customer information to a third party for the purpose of another's sale of insurance without written authorization from the customer. As used in this subsection, "nonpublic customer information" means information regarding a person that has been derived from a record of a financial institution. "Nonpublic customer information" does not include customer names and addresses and telephone numbers or information about an individual that could be obtained from an unaffiliated credit bureau that is subject to the federal Fair Credit Reporting Act by a third party that is not entering into a credit relationship with the individual but has a legitimate need for the information in connection with a business transaction with the individual, except that "nonpublic customer information" includes information concerning insurance premiums, the terms and conditions of insurance coverage, insurance expirations, insurance claims and insurance history of an individual. Notwithstanding any provision in this section to the contrary, compliance with Section 603 of the federal Fair Credit Reporting Act by a lending institution shall be deemed to be full compliance

with this subsection. "Nonpublic customer information" does not include material excluded from the definition of "consumer report" by Section 603(d)(2)(A) of the federal Fair Credit Reporting Act.

L. Records relating to the insurance sales of a lending institution, including files relating to and reflecting customer complaints, shall be kept separate and apart from all records relating to the banking transactions of the lending institution. Records pertaining to insurance activities of the lending institution or copies of those records shall be subject to the inspection and audit by the insurance division. If the division determines to inspect and audit the records relating to the insurance activities of a lending institution, that institution shall make available to the division, at a location in New Mexico the lending institution's records and knowledgeable personnel to assist in the interpretation of the lending institution's records.

M. A lending institution, or officer, director or employee acting on behalf of the institution, who qualifies for issuance of an agent's, solicitor's or broker's license pursuant to the Insurance Code may be issued an agent or broker license authorizing the sale of insurance.

N. A lending institution shall not pay a commission or other valuable consideration to a person for services of an insurance agent, solicitor or broker unless

the person performing the service holds a valid insurance license for the class of insurance for which the service is rendered or performed at the time the service is performed. No person, other than a person properly licensed in accordance with the Insurance Code, shall accept any commission or valuable consideration for those services.

0. A lending institution shall not offer an inducement to a customer to purchase insurance from the institution other than as plainly expressed in the insurance policy. Investment programs, memberships or other programs designed or represented to waive, reduce, pay, produce or provide funds to pay all or part of the cost on insurance are an illegal inducement.

P. A lending institution may not in the same transaction solicit the purchase of insurance from a customer who has applied for a loan from the institution before the time the customer has received a written commitment from the lending institution with respect to that loan, or, in the event that no written commitment has been or will be issued in connection with the loan, a lending institution shall not solicit the purchase of insurance before the time the customer receives notification of approval of the loan by the lending institution and the institution creates a written record of the loan approval. This subsection shall not apply when a lending institution contacts a customer in the course of direct or mass

marketing to a group of persons in a manner that bears no relation to the customer's loan application or credit decision.

Q. The sale of insurance by a lending institution, credit union, sales finance company, insurance company, insurance agent, an institution that grants or arranges consumer credit or an institution that solicits or makes loans in New Mexico may be conducted by a person whose responsibilities include loan transactions or other transactions involving the extension of credit so long as the person who is primarily responsible for making the specific loan or extension of credit is not the same person engaged in the sale of insurance for that same transaction; provided, however, that the provisions of this subsection shall not apply to:

(1) a broker or dealer registered under the federal Securities Exchange Act of 1934; or

(2) a lending institution location that has three or fewer persons with lending authority.

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

S. A loan for premiums on required insurance shall not be included in the primary credit without the written consent of the customer, which may be evidenced by

compliance with the federal Truth in Lending Act.

T. A person who engages in loan transactions at any office of, or on behalf of, a lending institution or any other agent, employee, director or officer of the lending institution may refer a customer who seeks to purchase, or seeks an opinion or advice on any insurance product, to a person, or may give the phone number of a person, who sells or provides opinions or advice on such products only if the customer expressly requests the referral; the person who engages in loan transactions does not solicit the customer request; and the person who engages in the loan transaction does not receive any compensation for the referral.

U. The location for the sale of insurance on the premises of a lending institution, except an institution that does not accept deposits that are federally insured, to the extent practicable shall be:

(1) physically located to be distinct from the lending activities of the institution; and

(2) clearly and conspicuously signed to be easily distinguishable by the public as separate and distinct from the lending activities of the institution.

V. Signs and other informational material concerning the availability of insurance products from the lending institution or third party soliciting the purchase of or selling insurance on the premises of the lending institution shall not be displayed to the extent practicable

in an area where application for loans or other extensions of credit are being taken or closed.

W. Nothing in this section grants a lending institution, including its holding company, subsidiary or affiliate, except those enumerated in this section, the power to sell insurance that was not allowed prior to July 1, 1997.

X. Nothing in this section precludes the superintendent from adopting reasonable rules and regulations for the purposes of the administration of the provisions of this section, including rules and regulations for written disclosures.

Y. If any of the provisions of this section are preempted by federal law, then those preempted provisions shall not apply to any person or lending institution subject to the provisions of this section. "

Section 2. Section 59A-12-16 NMSA 1978 (being Laws 1984, Chapter 127, Section 217, as amended by Laws 1999, Chapter 272, Section 10 and also by Laws 1999, Chapter 289, Section 11) is amended to read:

"59A-12-16. EXAMINATION FOR LICENSE. --

A. Each applicant for license as agent, solicitor or broker shall, prior to issuance of license, personally take and pass an examination authorized by the superintendent to establish the applicant's competence, knowledge and understanding of attendant responsibility and

duties as to the insurance business to be transacted under the license applied for; except, that no such examination shall be required:

(1) for renewal or continuance of an existing license, except as provided in Subsection D of Section 59A-11-10 NMSA 1978;

(2) of an applicant for limited license as provided in Section 59A-12-18 NMSA 1978;

(3) of applicants with respect to life and health, or life or health, insurances who hold the chartered life underwriter (C. L. U.) designation by the American college of life underwriters;

(4) of applicants with respect to property, casualty, surety, marine and transportation, and vehicle insurances, or any of them, who hold the designation of chartered property and casualty underwriter (C. P. C. U.) designation by the American institute of property and casualty underwriters;

(5) of applicants for temporary license as provided for in Section 59A-12-19 NMSA 1978;

(6) of an applicant for a license covering the same kind or kinds of insurance as to which licensed in this state under a similar license within five years preceding date of application for the new license, unless the previous license was suspended, revoked or continuation thereof refused by the superintendent;

