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HOUSE BILL 238

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

MURRAY RYAN

AN ACT

RELATING TO LENDING INSTITUTIONS; EXPANDING THE AUTHORITY OF  
LENDING INSTITUTIONS TO SELL CERTAIN INSURANCE AND ANNUITIES;  
REPEALING AND ENACTING A CERTAIN SECTION OF THE NMSA 1978.

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

Section 1. Section 59A-12-10 NMSA 1978 (being Laws 1984,  
Chapter 127, Section 211, as amended) is repealed and a new  
Section 59A-12-10 NMSA 1978 is enacted to read:

"59A-12-10. NEW MATERIAL 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 affiliate, whose  
business includes accepting deposits or lending money in New  
Mexico, including banks, savings and loan associations and

Underscored material = new  
[bracketed material] = delete

1 credit unions; "lending institution" does not include insurance  
2 companies;

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

8 (3) "public utility" means a private employer  
9 subject to the jurisdiction of the New Mexico public utility  
10 commission or the state corporation commission, or its successor  
11 entity, that is engaged in the business of providing  
12 telecommunications, electric, gas, water or steam heat services  
13 to the public.

14 B. A lending institution may be licensed to sell:

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

18 (2) annuities to the extent authorized by law  
19 and federal and state lending institution regulators, but  
20 nothing in this paragraph shall affect the rights and  
21 obligations of nationally chartered lending institutions.

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

25 D. As used in Subsections E through Y of this

1 section, "insurance" means all products defined or regulated as  
2 insurance under the Insurance Code except:

3 (1) credit life, credit accident and health,  
4 credit involuntary unemployment, credit casualty and credit  
5 property insurance;

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

10 (3) private mortgage insurance and financial  
11 guarantee insurance.

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

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

23 G. A lending institution shall not impose a  
24 requirement on an insurance agent or broker who is not  
25 associated with the lending institution that is not imposed on

1 an insurance agent or broker who is associated with that  
2 institution or, unless otherwise authorized by applicable  
3 federal or state law, require a debtor, insurer, broker or agent  
4 to pay a separate charge in connection with the handling of  
5 insurance that is required under a contract.

6 H. A lending institution that sells insurance on its  
7 premises shall:

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

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

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

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

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

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

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

I. The promotion and sale of insurance by a lending institution 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 promotional material shall be accurate and not misleading or deceptive. Insurance advertising and other promotional 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 use nonpublic information for the purpose of selling or soliciting the purchase of insurance or provide nonpublic customer information

1 to a third party for the purpose of another's sale or  
2 solicitation of the purchase of insurance without written  
3 authorization from the customer. As used in this subsection,  
4 "nonpublic customer information" means information regarding a  
5 person that has been derived from a record of a financial  
6 institution. "Nonpublic customer information" does not include  
7 customer names and addresses and telephone numbers or  
8 information about an individual that could be obtained from an  
9 unaffiliated credit bureau that is subject to the Fair Credit  
10 Reporting Act by a third party that is not entering into a  
11 credit relationship with the individual but has a legitimate  
12 need for the information in connection with a business  
13 transaction with the individual, except that "nonpublic customer  
14 information" includes information concerning insurance premiums,  
15 the terms and conditions of insurance coverage, insurance  
16 expirations, insurance claims and insurance history of an  
17 individual.

18 L. A lending institution selling insurance in New  
19 Mexico shall establish at least one in-state lending office.

20 M. Records relating to the insurance transactions of  
21 a lending institution, including files relating to and  
22 reflecting customer complaints, shall be kept separate and apart  
23 from all records relating to the banking transactions of the  
24 lending institution. Records pertaining to insurance activities  
25 of the lending institution or copies of those records shall be

1 kept in the principal in-state office in the state of the  
2 financial institution and shall be subject to the inspection and  
3 audit by the insurance department. If the department determines  
4 to inspect and audit the records relating to the insurance  
5 activities of a lending institution, that institution shall make  
6 available to the department, at a location of the lending  
7 institution in the state, knowledgeable personnel to assist in  
8 the interpretation of the lending institution's records.

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

14 O. A lending institution shall not pay a commission  
15 or other valuable consideration to a person for services of an  
16 insurance agent unless the person performing the service held a  
17 valid insurance agent license for the class of insurance for  
18 which the service was rendered or performed at the time the  
19 service was performed. No person, other than a person properly  
20 licensed in accordance with the Insurance Code, shall accept any  
21 commission or valuable consideration for those services.

22 P. A lending institution shall not offer an  
23 inducement to a customer to purchase insurance from the  
24 institution other than as plainly expressed in the insurance  
25 policy. Investment programs, memberships or other programs

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[bracketed material] = delete

1 designed or represented to waive, reduce, pay, produce or  
2 provide funds to pay all or part of the cost on insurance are an  
3 illegal inducement.

4 Q. A lending institution may not in the same  
5 transaction solicit the purchase of insurance from a customer  
6 who has applied for a loan from the institution before the time  
7 the customer has received a written commitment from the lending  
8 institution with respect to that loan, or, in the event that no  
9 written commitment has been or will be issued in connection with  
10 the loan, a lending institution shall not solicit the purchase  
11 of insurance before the time the customer receives notification  
12 of approval of the loan by the lending institution, and the  
13 institution creates a written record of the loan approval.

14 R. Solicitation for the purchase of insurance by the  
15 lending institution shall be conducted only by persons whose  
16 responsibilities do not include loan transactions or other  
17 transactions involving the extension of credit, except that at a  
18 lending institution location having three or fewer persons with  
19 lending authority, solicitation for the sale of insurance may be  
20 conducted by a person with responsibilities for loan  
21 transactions involving the extension of credit so long as the  
22 person primarily responsible for making the specific loan or  
23 extension of credit is not the same person engaged in the  
24 solicitation for the purchase or sale of insurance for that same  
25 transaction.

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

4           T. A loan for premiums on required insurance shall  
5 not be included in the primary credit without the written  
6 consent of the customer.

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

18           V. The place of solicitation or sale of insurance by  
19 a lending institution to the extent practicable shall be:

20                   (1) physically located to be distinct from the  
21 banking activities of the institution; and

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

25           W. Signs and other informational material concerning

1 the availability of insurance products from the lending  
2 institution or third party soliciting the purchase of or selling  
3 insurance on the premises of the lending institution shall not  
4 be displayed to the extent practicable in an area where  
5 application for loans or other extensions of credit are being  
6 taken or closed.

7 X. Nothing in this section grants an institution,  
8 including its holding company, subsidiary or affiliate, except  
9 those enumerated in this section, the power to sell insurance  
10 that was not allowed prior to July 1, 1997.

11 Y. Nothing in this section precludes the  
12 superintendent from adopting reasonable rules and regulations  
13 for the purposes of the administration of the provisions of this  
14 section, including rules and regulations for written  
15 disclosures. "

16 Section 2. SEVERABILITY. --If any part or application of  
17 this act is held invalid, the remainder or its application to  
18 other situations or persons shall not be affected.

19 Section 3. EFFECTIVE DATE. --The effective date of the  
20 provisions of this act is July 1, 1997.

**State of New Mexico  
House of Representatives**

FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

January 30, 1997

Mr. Speaker:

Your BUSINESS AND INDUSTRY COMMITTEE, to whom has  
been referred

HOUSE BILL 238

has had it under consideration and reports same with  
recommendation that it DO PASS.

Respectfully submitted,

---

Fred Luna, Chairman

FORTY- THIRD LEGISLATURE  
FIRST SESSION, 1997

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Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_

(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 10 For 0 Against

Yes: 10

Excused: Getty, Hobbs

Absent: Olguin

M \H0238

Underscored material = new  
[bracketed material] = delete

1 FORTY-THIRD LEGISLATURE

2 FIRST SESSION, 1997

HB 238/a

3  
4 March 12, 1997

5  
6  
7 Mr. President:

8 Your CORPORATIONS & TRANSPORTATION COMMITTEE, to  
9 whom has been referred

10  
11 HOUSE BILL 238, as amended

12  
13 has had it under consideration and reports same with  
14 recommendation that it DO PASS, amended as follows:

15 1. On page 1, line 23, after "or" insert "insurance agent,  
16 solicitor or broker".

17  
18 2. On page 2, line 7, strike "and".

19  
20 3. On page 2, line 10, strike "its" and insert in lieu  
21 thereof "a".

22 4. On page 2, line 13, strike the period, insert in lieu  
23 thereof a semicolon and between lines 13 and 14, insert the  
24 following new paragraphs:

25  
"(4) "sell" means to engage in the solicitation,

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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. "

Underscored material = new  
[bracketed material] = delete

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FIRST SESSION, 1997**

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5. On page 3, line 5, before the semicolon insert:

", 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".

6. On page 3, line 9, strike "and".

7. On page 3, line 11, strike the period, insert a semicolon and between lines 11 and 12, insert the following new paragraphs:

"(4) annuities;

(5) service contracts;

(6) insurance premium finance agreements; and

(7) travel accident or baggage insurance."

8. On page 3, line 16, after "agent" insert ", solicitor".

9. On page 3, line 21, after "agent" insert ", solicitor".

10. On page 3, line 24, after "agent" insert ", solicitor".

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11. On page 4, line 1, after "agent" insert ", solicitor".

12. On page 4, line 3, strike "broker or" and after "agent" insert ", solicitor or broker".

13. On page 4, line 6, after "institution" insert ", except an institution that does not accept deposits that are federally insured, ".

14. On page 4, line 24, after "agent" insert ", solicitor".

15. On page 5, line 3, strike "promotion and".

16. On page 5, line 4, after "institution" insert ", except an institution that does not accept deposits that are federally insured, ".

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17. On page 5, line 7, strike "promotional" and insert in lieu thereof "sales".

18. On page 5, line 9, strike "promotional" and insert in lieu thereof "sales".

19. On page 5, line 23, after "not" strike the remainder of the line, strike line 24 and strike line 25 through "or".

20. On page 6, line 1, after "sale" strike the remainder of the line and strike line 2 through "purchase".

21. On page 6, line 17, after the period insert:

"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."

22. On page 6, strike lines 18 and 19.

23. Reletter the succeeding subsections accordingly.

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24. On page 6, line 20, strike "transactions" and insert in lieu thereof "sales".

25. On page 7, line 2, after "institution" insert "or with the institution's resident agent, solicitor or broker".

26. On page 7, line 7, after "state" insert "or in the office of the institution's resident agent, solicitor or broker".

27. On page 7, line 11, strike "agent" and insert in lieu thereof "agent's, solicitor's".

28. On page 7, line 16, after "agent" insert ", solicitor or broker".

29. On page 7, line 16, strike "held" and insert in lieu thereof "holds".

30. On page 7, line 17, strike "agent".

31. On page 7, line 18, strike "was" and insert in lieu thereof "is".

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32. On page 7, line 19, strike "was" and insert in lieu thereof "is".

33. On page 8, line 13, after the period insert:

"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."

34. On page 8, strike lines 14 through 25, and insert in lieu thereof:

"R. The sale of insurance by a lending institution, credit union, sales financing company, insurance institution, independent company, any institution granting or arranging consumer credit or any institution soliciting or making loans in the state of New Mexico, except a broker or dealer registered under the Securities Exchange

Act of 1934, may be conducted by a person whose responsibilities include loan transactions or other transactions involving the

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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. "

35. On page 9, line 6, before the period insert ", which may be evidenced by compliance with the federal Truth in Lending Act".

36. On page 9, line 9, after "the" insert "lending".

37. On page 9, line 18, strike "place of solicitation or" and insert in lieu thereof "location for the".

38. On page 9, line 18, strike "by" and insert in lieu thereof "on the premises of".

39. On page 9, line 19, after "institution" insert ", except an institution that does not accept deposits that are federally insured, ".

40. On page 9, line 21, strike "banking" and insert in lieu thereof "lending".

41. On page 9, line 24, strike "banking" and insert in lieu thereof "lending".

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42. On page 10, line 7, strike "an" and insert in lieu thereof "a lending".

43. On page 10, line 15, strike the closing quotation mark and between lines 15 and 16, insert the following new subsection:

"Z. 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."

Respectfully submitted,

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Roman M. Maes, III, Chairman

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Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
(Chief Clerk) (Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 5 For 2 Against

Yes: 5

No: Kidd, McKibben

Excused: Fidel, Griego, Howes

Absent: None

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