



**Sub. S.B. 129\***

124th General Assembly

(As Reported by S. Insurance, Commerce & Labor)

Sen.     Nein

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**BILL SUMMARY**

- Revises the Insurance Agents Law (Chapter 3905. of the Revised Code), based on the National Association of Insurance Commissioners' "Producer Licensing Model Act," and makes other organizational changes in the Insurance Agents Law.
- Amends the insurance law to prohibit certain unfair trade practices by persons that lend money or extend credit.

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\* This analysis was prepared before the report of the Senate Insurance, Commerce & Labor Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

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## CONTENT AND OPERATION

### AGENT LICENSING

#### Background

Currently, insurance agents must meet the licensing requirements of each state in which they do business, including separate applications, education standards, and examinations. Under the Financial Services Modernization Act of 1999<sup>1</sup> ("Gramm-Leach-Bliley"), states are required to establish (1) uniform laws governing the licensure of individuals and entities authorized to sell and solicit the purchase of insurance within the state *or* (2) a system of reciprocity governing the licensure of nonresident individuals and entities. If a majority of the states do not adopt the required uniformity or reciprocity by November 12, 2002, the Act provides for the establishment of the National Association of Registered Agents and Brokers (NARAB). NARAB would be a nonprofit corporation, subject to oversight by the National Association of Insurance Commissioners (NAIC). Its stated purpose is

to provide a mechanism through which uniform licensing, appointment, continuing education, and other insurance producer sales qualification requirements and conditions can be adopted and applied on a multistate basis, while preserving the right of States to license, supervise, and discipline insurance producers and to prescribe and enforce laws and regulations with regard to insurance-related consumer protections and unfair trade practices. (15 U.S.C.A. § 6753.)

Generally, the Act would preempt state laws governing producer licensing by prohibiting their application to any member of NARAB.

In response to the NARAB provisions of Gramm-Leach-Bliley, the NAIC created the Producer Licensing Model Act. Under the NAIC model act, producers holding a resident license in a state could obtain a nonresident license in another state by (1) providing evidence of the license in good standing in the resident state, (2) completing the uniform application, (3) paying the appropriate state fee, and (4) satisfying the continuing education requirements of the resident state. As long as the resident state awards nonresident licenses on the same basis, no additional licensing requirements can be imposed. (Sections 8 and 16.)

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<sup>1</sup> *Pub. L. No. 106-102, November 12, 1999.*

In addition, the National Insurance Producer Registry, a nonprofit affiliate of the NAIC, created the Producer Database and the Electronic Appointments/Terminations network for state regulators and insurance companies to use to verify the good standing of producers and to report violations.

### **The bill**

Generally, the bill proposes changes to the Insurance Agents Law (Chapter 3905. of the Revised Code), based on the NAIC Producer Licensing Model Act. The revisions made by the bill include (1) substantive changes with respect to the licensing of resident and nonresident insurance agents by the Department of Insurance, (2) a reorganization of the current Insurance Agents Law, and (3) conforming changes throughout the Revised Code.

The following is a section-by-section summary of this portion of the bill. The summary is divided into three parts: first, the licensing provisions of Chapter 3905. that are proposed by the bill; second, the current provisions of Chapter 3905. that are relocated by the bill outside that chapter; and third, the conforming changes made by the bill.

### **Licensing provisions**

#### **Sec. 3905.01: Definitions**

--Provides definitions for purposes of Chapter 3905., including the following:

(1) "**Insurance agent**" means any person that, "in order to sell, solicit, or negotiate insurance," is required to be licensed under Ohio law, including limited lines agents and surplus line brokers (sec. 3905.01(D)).

(2) "**License**" means the authority issued by the Superintendent of Insurance to a person to act as an insurance agent for the lines of authority specified, but that does not create any actual, apparent, or inherent authority in the person to represent or commit an insurer (sec. 3905.01(F)).

(3) "**Negotiate**" means to confer directly with, or offer advice directly to, a purchaser or prospective purchaser of a particular contract of insurance with respect to the substantive benefits, terms, or conditions of the contract, provided the person that is conferring or offering advice either sells insurance or obtains insurance from insurers for purchasers (sec. 3905.01(L)).

(4) "**Sell**" means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurer (sec. 3905.01(N)).

(5) "**Solicit**" means to attempt to sell insurance, or to ask or urge a person to apply for a particular kind of insurance from a particular insurer (sec. 3905.01(O)).

**Sec. 3905.02: License required**

--Prohibits any person from selling, soliciting, or negotiating insurance in Ohio unless the person is licensed for that line of authority in accordance with the bill.

**Sec. 3905.03: Exceptions to licensing requirement**

--Specifies the persons and activities that are not subject to the licensing requirement of section 3905.02, including the following:

(1) Any insurer;

(2) Any officer, director, or employee of an insurer or of an insurance agent, provided the officer, director, or employee does not receive any commission on policies written or sold to insure risks residing, located, or to be performed in Ohio *and* (a) the activities of the officer, director, or employee are executive, administrative, managerial, or clerical and are only indirectly related to the sale, solicitation, or negotiation of insurance, (b) the function of the officer, director, or employee relates to underwriting, loss control, inspection, or the processing, adjusting, investigation, or settling of a claim on a contract of insurance, *or* (c) the officer, director, or employee is acting in the capacity of a special agent or agency supervisor, provided the activities of the officer, director, or employee are limited to providing technical advice and assistance to licensed insurance agents and do not include the sale, solicitation, or negotiation of insurance.

(3) Any person who secures and furnishes information for purposes of group life insurance, group property and casualty insurance, group annuities, or group or blanket accident and health insurance, or for purposes of enrolling individuals under plans, issuing certificates under plans, or otherwise assisting in administering plans, or who performs administrative services related to mass marketed property and casualty insurance, provided that no commission is paid to the person for any of those services;

(4) Any employer or association, any officer, director, or employee of an employer or association, or any trustee of an employee trust plan, to the extent that any such person is engaged in the administration or operation of an employee benefits program for the employer's or association's own employees or for the employees of its subsidiaries or affiliates, if (a) the employee benefits program involves the use of insurance contracts issued by an insurer *and* (b) the employer,

association, officer, director, employee, or trustee is not in any manner compensated, either directly or indirectly, by the insurer issuing the insurance contracts;

(5) Any employee of an insurer or of an organization employed by an insurer, if the employee is engaged in the inspection, rating, or classification of risks or in the supervision of the training of insurance agents, and is not individually engaged in the sale, solicitation, or negotiation of insurance;

(6) Any person whose activities in Ohio are limited to advertising through communications in printed publications or in the electronic mass media, the distribution of which is not limited to Ohio residents, if the person does not sell, solicit, or negotiate insurance covering risks residing, located, or to be performed in Ohio;

(7) Any person who is not an Ohio resident and who sells, solicits, or negotiates a contract of insurance covering commercial property and casualty risks located in more than one state, if the person is licensed as an insurance agent to sell, solicit, or negotiate that insurance contract in the state where the insured maintains its principal place of business and the contract insures risks located in that state;

(8) Any salaried full-time employee who counsels or advises the employee's employer with respect to the insurance interests of the employer or of the employer's subsidiaries or business affiliates, if the employee does not sell or solicit insurance or receive a commission;

(9) Any employee of an insurer or of an insurance agent who, at the direction of the insurer or agent, performs any of the following activities: (a) the acceptance of premiums other than the initial premium, (b) the gathering of information, such as names, addresses, expiration dates of current insurance, and names of current insurers, (c) the setting of appointments for insurance agents, provided that the individual setting the appointment does not communicate any information about insurance, (d) the servicing of existing insurance policies issued by or through the employee's employer, provided the servicing is not part of a solicitation, or (e) the performance of clerical or ministerial duties.

(10) Any employee of a creditor with respect to limited line credit insurance products, as long as the employee of the creditor is not paid by, and does not receive a fee, commission, or any other form of compensation from, an insurance agent or insurance company.

--Permits the Superintendent to adopt rules in accordance with the Administrative Procedure Act to set forth the specific acts the performance of which either require or do not require licensure as an insurance agent.

**Sec. 3905.04: Examination and pre-licensing education requirement**

--Requires each resident individual applying for an insurance agent license for any of the specified lines of authority to take a written examination;

--Prohibits an individual from being permitted to take the examination unless the individual (1) has earned a bachelor's or associate's degree in insurance from an accredited institution or (2) has completed, for each line of authority for which the individual has applied, 20 hours of study in a program of insurance education approved by the Superintendent in consultation with the Insurance Agent Education Advisory Council. The requirement specified in (2), above, does not apply with respect to title insurance or any other line of authority designated by the Superintendent.

**Sec. 3905.041: Exceptions to examination and pre-licensing education requirement**

--Specifies the persons who are not required to complete a program of insurance education or to pass a written examination, including any individual who, within 90 days after establishing a principal place of residence or principal place of business in Ohio, applies for a resident agent license and (1) is currently licensed in another state and is in good standing for the line or lines of authority requested or (2) was previously licensed in another state, the individual's application is received within 90 days after the cancellation of the individual's previous license, and, at the time of license cancellation, the individual was in good standing for the line or lines of authority requested.

**Sec. 3905.05: Application for a resident license**

--Sets forth the procedures by which a natural person or business entity can apply for a resident insurance agent license.

**Sec. 3905.06: Issuance of a resident license**

--Requires the Superintendent to issue a resident insurance agent license to an individual whose home state is Ohio or to a business entity that is domiciled in Ohio or maintains its principal place of business in Ohio, if the Superintendent determines the applicant meets specified criteria;

--Lists the lines of authority for which a licensee may be qualified;

--States that a resident insurance agent license is perpetual unless surrendered by the licensee or suspended or revoked by the Superintendent.

**Sec. 3905.061: Notice of changes of address or home state**

--Requires a person licensed as a resident insurance agent to notify the Superintendent of a change (1) in the person's Ohio address or (2) in the person's state of residence.

**Sec. 3905.07: Issuance of a nonresident license**

--Requires the Superintendent to issue a nonresident insurance agent license to a nonresident person if all of the following apply:

(1) The applicant is currently licensed as a resident and is in good standing in the applicant's home state;

(2) The applicant has submitted the request for licensure prescribed by the Superintendent;

(3) The applicant has submitted or has had transmitted to the Superintendent the application for licensure that the applicant submitted to the applicant's home state or a completed uniform application or uniform business entity application, as applicable. (For purposes of the bill, "**uniform application**" means the NAIC uniform application for resident and nonresident agent licensing, and "**uniform business entity application**" means the NAIC uniform business entity application for resident and nonresident business entities (sec. 3905.01(R) and (S)).

(4) The applicant has not committed any act that is a ground for the denial, suspension, or revocation of a license under section 3905.14 of the Revised Code;

(5) The applicant is of good reputation and character, is honest and trustworthy, and is otherwise suitable to be licensed;

(6) The applicant's home state issues nonresident insurance agent licenses to Ohio residents on the same basis as set forth in (1) to (5), above.

--Permits the Superintendent to verify the agent's licensure and standing status through the producer database maintained by the NAIC or its affiliates or subsidiaries;

--States that a nonresident insurance agent license is perpetual unless surrendered by the licensee or suspended or revoked by the Superintendent.

**Sec. 3905.071: Notice of change of home state**

--Requires a nonresident person licensed as a nonresident insurance agent to notify the Superintendent of a change (1) in the person's address within the person's state of residence or (2) in the person's state of residence or in the state in which the person's principal place of business is located.

**Sec. 3905.072: Other nonresident licenses**

--Authorizes the Superintendent to issue nonresident limited lines insurance agent licenses.

**Sec. 3905.08: Reciprocity**

--Requires the Superintendent to waive all licensing requirements under Chapter 3905., except the requirements set forth in sections 3905.07 to 3905.072, for every nonresident applicant that is currently licensed as a resident agent and is in good standing in the applicant's home state, if the applicant's home state awards nonresident agent licenses to residents of this state on the same basis;

--States that a nonresident insurance agent's satisfaction of the continuing education requirements for insurance agents of the agent's home state constitutes satisfaction of the continuing education requirements for Ohio insurance agents.

**Sec. 3905.081: Waiver of licensing requirements**

--Permits the Superintendent to waive any licensing requirement for nonresident persons that the Superintendent determines is in violation of the reciprocity requirements set forth in the Financial Services Modernization Act of 1999.

**Sec. 3905.09: Temporary licenses**

--Permits the Superintendent to issue a temporary insurance agent license to specified persons, if the Superintendent determines the license is necessary for the servicing of insurance business.

**Sec. 3905.10 (currently sec. 3905.03): Solicitors**

--Permits any property, casualty, personal, or title agent qualified and licensed under the bill, and appointed to represent one or more insurers, to appoint solicitors to represent the agent;

--States that a solicitor is eligible for appointment only if the solicitor is qualified and licensed as a property, casualty, personal, or title agent and is

familiar with the policies and contracts of insurance the solicitor proposes to solicit.

**Sec. 3905.11: Notice of an assumed name**

--Requires an insurance agent that intends to do business in Ohio under any name other than the agent's legal name to notify the Superintendent prior to using the assumed name.

**Sec. 3905.12: Rule-making and contracting authority of Superintendent**

--Authorizes the Superintendent to adopt rules to establish procedures for the issuance and renewal of insurance agent licenses and for the issuance of limited authority licenses;

--Authorizes the Superintendent to contract with any nongovernmental entity, including the NAIC and its affiliates or subsidiaries, to perform any ministerial function related to insurance agent licensing.

**Sec. 3905.14 (currently sec. 3905.49): Disciplinary actions**

--Amends the current statute with respect to the grounds for (1) suspending, revoking, or refusing to issue or renew any insurance agent license, (2) assessing a civil penalty, or (3) imposing other sanctions;

--Includes as a ground for disciplinary action, the "principal purpose" provisions set forth in current section 3905.04 (the "controlled business" statute). (See sec. 3905.14(B)(32) and (33).)

**Sec. 3905.15 (currently sec. 3905.491): Modification of administrative actions**

--Amends the current statute authorizing the modification of administrative actions imposing the denial, suspension, revocation, or surrender of a license.

**Sec. 3905.16 (currently sec. 3905.012): Surrender of license; inactive status**

--Modifies the current statute permitting the surrender of agent licenses and the granting of inactive status.

**Secs. 3905.18 and 3905.181: Commissions**

--Prohibits, under certain circumstances, the payment or acceptance of a commission or other type of consideration for selling, soliciting, or negotiating insurance in Ohio.

**Sec. 3905.182 (currently sec. 3905.181): Sale of life insurance company stock**

--Renumbers this section.

**Sec. 3905.20: Appointments**

--Prohibits an insurance agent from acting as an agent of an insurer unless the agent is appointed by an insurer;

--Specifies the procedures for appointing an insurance agent.

**Sec. 3905.201: Program of instruction for limited line credit insurance agents**

--Requires each insurer that sells any form of limited line credit insurance to provide a program of instruction to agents whose duties will include selling, soliciting, or negotiating limited line credit insurance. The instruction must be provided prior to the agent's appointment by the insurer.

**Secs. 3905.21, 3905.211, and 3905.212: Termination of agents**

--Requires notice and other documentation when an insurer terminates the appointment, employment, contract, or other insurance business relationship with an insurance agent;

--Provides immunity from civil liability for certain persons in relation to statements made regarding the termination of an insurance agent, if the statements were made or provided "in the absence of actual malice";

--Authorizes the Superintendent to suspend or revoke the certificate of authority or license of any person that fails to comply with these termination provisions.

**Sec. 3905.22: Notice of administrative actions or criminal prosecutions**

--Requires an insurance agent to notify the Superintendent of (1) any administrative action taken against the agent in another jurisdiction or by another governmental agency having professional, occupational, or financial licensing authority or (2) any criminal prosecution of the agent by any jurisdiction, other than misdemeanor traffic citations.

**Sec. 3905.24 (currently sec. 3905.492): Confidentiality**

--Renumbers this section.

**Sec. 3905.26: Centralized producer registry**

--Authorizes the Superintendent to participate with the NAIC or any of its affiliates or subsidiaries, in a centralized agent license registry in which insurance agent licenses and appointments are centrally or simultaneously established for all states that require an insurance agent license and that participate in the registry.

**Sec. 3905.28: Rule-making authority**

--Authorizes the Superintendent to adopt rules to carry out the purposes of sections 3905.01 to 3905.28.

**Sec. 3905.29 (currently sec. 3905.06): Mutual protective associations exempted**

--Renumbers this section.

**Secs. 3905.30 and 3905.31: Surplus line broker's license**

--Amends the current statute to permit the Superintendent to issue a surplus line broker's license to any natural person who is a resident of Ohio or any other state, or a business entity that is organized under the laws of Ohio or any other state, if the person has both a property license and a casualty license.

**Sec. 3905.34: Filing of account**

--Requires surplus line brokers, on or before January 31, to file with the Superintendent the portion of their accounts that details business done during the preceding calendar year. (Current law requires the filing "within 30 days after the end of each quarter.")

--Specifies that this new filing period begins January 1, 2003, and concludes December 31, 2003. Consequently, the last quarterly filing period is to conclude December 31, 2002. (Section 4.)

**Sec. 3905.36: Tax on firms dealing with unauthorized foreign insurers**

--Amends the current statute, including the date the annual filing is required. (The filing is currently required on or before July 1. The bill changes that date to January 31.)

--Specifies that the new filing period begins January 1, 2003, and concludes December 31, 2003. Consequently, the annual filing period that concludes July 1, 2002, is to be extended for six months and is to conclude December 31, 2002. (Section 4.)

**Sec. 3905.482: Failure to comply with continuing education requirements**

--Amends this statute, as follows:

(1) Specifies that a license suspension for failure to meet the continuing education requirements of current law is to become effective upon 60 days' written notice. During this 60-day period, the person may provide proof of compliance with the continuing education requirements. If the person fails to do so, the Superintendent is to suspend the person's license.

(2) Permits the Superintendent to revoke the license if the person fails to demonstrate compliance within one year;

(3) Authorizes the Superintendent to adopt rules relative to the manner and form of demonstrating compliance with the continuing education requirements that is acceptable to the Superintendent for purposes of this section.

**Sec. 3905.72: License to act as a managing general agent**

--Amends this statute to provide for the issuance of a license to act as a managing general agent to a resident of another state or a business entity organized under the laws of another state.

**Sec. 3957.14: Agents and dealers in home service contracts**

--Removes the requirement that, in order to procure, receive, or forward applications for home service contracts, the person be an Ohio resident;

--Requires that an agent be licensed for "casualty, property, or personal lines."

**Sec. 3960.03: Foreign risk retention groups**

--Changes the date by which risk retention groups that are not chartered in Ohio must pay the required tax to the Treasurer of State. (Under current law, that date is "on or before July 1." Under the bill, the date is "on or before January 31.")

--Changes the date by which risk retention groups that are not chartered in Ohio must file the required statement with the Superintendent. (Under current law, that date is "within 30 days after the end of each quarter." Under the bill, the date is "on or before January 31.")

--Specifies that these new filing periods begin January 1, 2003, and conclude December 31, 2003. Consequently, the last quarterly filing period is to

conclude December 31, 2002. The annual filing period that concludes July 1, 2002, is to be extended for six months and is to conclude December 31, 2002. (Section 4.)

### **Relocated sections**

The bill relocates to Chapter 3901. of the Insurance Code certain sections that are currently contained in the Insurance Agents Law. These sections are renumbered as follows:

- 3901.74 (currently sec. 3905.24);
- 3901.75 (currently sec. 3905.25);
- 3901.76 (currently sec. 3905.28);
- 3901.77 (currently sec. 3905.29);
- 3901.78 (currently sec. 3905.09);
- 3901.781 (currently sec. 3905.11);
- 3901.782 (currently sec. 3905.12);
- 3901.783 (currently sec. 3905.13);
- 3901.784 (currently sec. 3905.14);
- 3901.86 (currently sec. 3905.41).

### **Conforming changes**

The bill makes conforming changes in sections 1751.38 (extends the new licensing provisions to agents of health insuring corporations), 3901.021, 3901.51, 3901.62, 3903.81, 3905.40 (currently sec. 3905.26), 3905.401 (currently sec. 3905.52), 3905.41 (currently sec. 3905.27), 3905.483, 3905.484, 3905.486, 3905.49 (currently sec. 3905.47), 3905.50, 3905.85, 3905.861, 3905.89, 3905.94, 3905.99, 3907.19, 3909.06, 3911.011, 3923.121, 3929.30, 3931.101, 3931.11, 3953.21, 3953.23, and 3960.11.

## **UNFAIR TRADE PRACTICES**

### **Background**

In addition to addressing insurance agent licensure issues, the Financial Services Modernization Act of 1999 ("Gramm-Leach-Bliley") permitted affiliation



between banks and insurance companies. The Act generally preempts state laws regarding the sale of insurance products by financial institutions and their affiliates. It does, however, provide 13 areas or "safe harbors" in which states may regulate the insurance activity of depository institutions and affiliates. Those areas include privacy, disclosure, sales practices, records, commissions, and compensation for sales.

In 2001, the National Association of Insurance Commissioners (NAIC) amended their Unfair Trade Practices Model Act to "regulate trade practices in the business of insurance in accordance with the intent of Congress as expressed in ... the Gramm-Leach-Bliley Act...."

### **The bill**

Generally, the bill proposes changes to the insurance Unfair and Deceptive Practices Act (secs. 3901.19 to 3901.26 of the Revised Code), based upon the "safe harbors" of Gramm-Leach-Bliley and the NAIC Unfair Trade Practices Model Act.

### **Definitions**

(sec. 3901.19(E) to (G))

For purposes of the Unfair and Deceptive Practices Act, the bill defines "**depository institution**" to mean any bank, savings bank, savings and loan association, or credit union that is subject to regulation or supervision by the United States or any state. The term does *not* include an insurer.

"**Affiliate**" is defined to mean any entity that controls, is controlled by, or is under common control with, another entity. "**Customer**" is defined by the bill as an individual who purchases, applies to purchase, or is solicited to obtain insurance products primarily for personal, family, or household purposes.

### **Prohibited activities**

(sec. 3901.211(A))

The bill prohibits any person that lends money or extends credit from doing any of the following:

(1) Unreasonably rejecting an insurance policy required in connection with a loan or extension of credit. A rejection is to be considered unreasonable if the rejection (a) is based solely on the fact that the policy was issued or underwritten by a person not associated with the person making the loan or extending the credit or an affiliate of that person, or (b) is not based on reasonable and uniformly

applied standards relating to the extent of coverage required and the financial soundness and services of an insurer, which standards do not discriminate against any particular type of insurer or require the disapproval of a policy because it contains coverage in addition to that required in connection with the credit transaction.

(2) Requiring a debtor, insurer, insurance agent, or surplus line broker to pay a separate charge in connection with the handling of insurance required in connection with a loan, extension of credit, or other banking product, unless the charge is also required when the person lending the money or extending the credit, or an affiliate of that person, is the licensed insurance agent or surplus line broker. This provision does not apply to the interest that may be charged on policy loans or advancements in accordance with the terms of the insurance policy.

(3) Using any advertisement or other insurance promotional material that would cause a reasonable person to mistakenly believe that the federal or state government (a) is responsible for the insurance sales activities of, or stands behind the credit of, the person making the loan or extending the credit or that person's affiliate, or (b) guarantees any returns on insurance products or is a source of payment on any insurance obligation of, or sold by, the person making the loan or extending the credit or that person's affiliate.

(4) Paying or receiving commissions or other valuable consideration except in accordance with the Insurance Agents Law. However, the bill does not prohibit the payment of compensation to a person not licensed under that law for the referral of a customer, if (a) the compensation is not based on the purchase of insurance by the customer, (b) the compensation is a one-time, nominal fee of a fixed dollar amount for each referral, *and* (c) the referral does not include a discussion of specific insurance policy terms and conditions.

(5) As a condition of lending money, extending credit, offering any product or service equivalent to an extension of credit, leasing or selling property of any kind, or furnishing any service in connection with or fixing or varying the consideration for any such activity, requiring that the customer obtain insurance from a particular company, insurance agent, depository institution, solicitor, broker, or any other person. However, the bill does not prohibit the person or the person's affiliate from doing either of the following:

(a) Informing a customer that insurance is required in order to obtain a loan or credit approval, that the loan or credit approval is contingent upon the procurement by the customer of acceptable insurance, or that insurance is available from a particular company, insurance agent, depository institution, solicitor, broker, or other person;

(b) If the person is a depository institution or an affiliate of a depository institution, engaging in any activity that does not violate section 106 of the Bank Holding Company Act Amendments of 1970 (relative to tying arrangements), as interpreted by the Board of Governors of the Federal Reserve System.

(6) If an application for a loan or extension of credit is pending, offering, selling, or requiring insurance in connection with the loan or extension of credit, unless (a) a written disclosure is given to the customer indicating that the customer's choice of an insurer or agent will not affect the credit decision or credit terms in any way, except that reasonable standards concerning the creditworthiness of the insurer and the scope of coverage chosen may apply, *and* (b) a written acknowledgment of that disclosure is obtained from the customer at or prior to the time of the initial purchase of the insurance policy. This provision does not apply to the offering or sale of limited line credit insurance as defined in the Insurance Agents Law.

(7) If the person is a depository institution, selling an insurance policy in connection with a loan or extension of credit, unless:

(a) A clear and conspicuous disclosure is given in writing, where practicable, to the customer prior to the sale, which disclosure states the following: (i) that the policy is not a deposit, (ii) that it is not insured by the Federal Deposit Insurance Corporation or any other federal government agency, (iii) that it is not guaranteed by the depository institution or, if appropriate, by its affiliate or any person soliciting or selling insurance on its premises, and, (iv) if appropriate, that it involves investment risk, including the potential loss of principal; *and*

(b) A written acknowledgment of that disclosure is obtained from the customer at or prior to the time of the initial purchase of the insurance policy.

(8) Failing to complete credit and insurance transactions through separate documents when the customer purchases insurance from the person making the loan or extending the credit, from an affiliate of that person, or from any person soliciting the purchase of or selling insurance on the premises of the person making the loan or extending the credit. This provision does not apply to the purchase or sale of credit or flood insurance.

(9) Including the expense of insurance premiums, other than credit insurance premiums, title insurance premiums, or flood insurance premiums, in the primary credit transaction without the express written consent of the customer;

(10) If the person is a depository institution, soliciting or selling insurance unless the person's insurance sales activities are, to the extent practicable, physically segregated from areas in which retail deposits are routinely accepted.

### *Disclosures and acknowledgments*

(sec. 3901.211(B))

The written disclosures and acknowledgements required by this portion of the bill may, upon consent of the customer, be provided electronically. If provided electronically, the disclosures must be made in a format that enables the customer to retain and reproduce it.

In the event a purchase of insurance is made by telephone, the required disclosures and acknowledgements may be given orally *if* (1) the disclosures are mailed, or provided in electronic form, to the customer within three business days after the sale of the policy, (2) sufficient documentation showing that oral acknowledgement was given by the customer is maintained, *and* (3) a reasonable effort is made to obtain written acknowledgment from the customer.

### *Violations*

(secs. 3901.211(C) and (D) and 3901.22)

The bill provides that a violation of the above-described prohibition is an "**unfair and deceptive act or practice in the business of insurance**," thereby triggering the procedures required by, and the remedies and penalties available under, the Unfair and Deceptive Practices Act. Any person subject to the prohibition must, upon reasonable notice, make all books and records relating to insurance transactions available to the Superintendent.

The bill also states that, except as specifically provided in this provision, it does not prevent or restrict a depository institution or its affiliate from engaging directly or indirectly, either by itself or in conjunction with an affiliate or any other person, in any activity authorized under state or federal law.

(Relatedly, the bill amends section 3933.04, the current prohibition against requiring, in connection with a loan or mortgage, the purchase of insurance from a particular insurer, agent, solicitor, or broker. Because the bill prohibits that activity by persons that lend money or extend credit, section 3933.04 is modified to apply only to persons engaged in selling real or personal property.)

### **EFFECTIVE DATE**

The bill states that it is to take effect six months after the bill's effective date (Section 3).



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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	06-12-01	p. 646
Reported, S. Insurance, Commerce & Labor	---	---

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