

HB 2198

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STATE OF WEST VIRGINIA

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1997



ENROLLED

HOUSE BILL No. 2198

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



Passed March 27, 1997

In Effect Ninety Days From Passage

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SENATE

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COMMITTEE SUBSTITUTE

FOR

H. B. 2198

(BY DELEGATES FARRIS, JOHNSON, THOMPSON, BEANE, L. WHITE,
H. WHITE AND CLEMENTS)

[Passed March 27, 1997; in effect ninety days from passage.]

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.

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

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

38 (c) Any state-chartered banking institution may
39 acquire, own, hold, use and dispose of real estate, which
40 shall be carried on its books at the lower of fair value or

41 cost as defined in rules promulgated by the commissioner
42 of banking, subject to the following limitations:

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

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

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

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

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

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

69 (1) Any state-chartered banking institution having
70 its main or a branch office in any place the population of
71 which does not exceed five thousand inhabitants, as shown
72 by the last preceding decennial census, through its
73 employees or agents, may, from that place or office,
74 directly or through a controlled subsidiary, act as agent
75 for any fire, life, casualty, liability or other insurance
76 company authorized by the authorities of the state to do
77 business in this state, by soliciting and selling insurance
78 and collecting premiums on policies issued by such

79 company; and may receive for services so rendered all
80 permissible fees or commissions as may be agreed upon
81 between the bank and the insurance company for which it
82 may act as agent: *Provided*, That no such bank shall in
83 any case assume or guarantee the payment on insurance
84 policies issued through its agency by its principal:
85 *Provided, however*, That the bank shall not guarantee the
86 truth of any statement made by an insured in filing his,
87 her or its application for insurance. For purposes of this
88 section, a "controlled subsidiary" is one in which the
89 state-chartered banking institution owns at least eighty
90 percent of all classes of stock. This provision is intended
91 to give state-chartered banking institutions parity with
92 national banks operating in this state with regard to the
93 marketing and sale of insurance notwithstanding the
94 prohibitions and limitations contained in article eight-c or
95 elsewhere in this chapter, and shall be construed
96 consistently with interpretations of 12 U.S.C. §92, the
97 regulations promulgated thereunder, and any successor
98 legislation or regulations.

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

110 (h) Unless waived in writing by the commissioner, a
111 state-chartered bank may not invest or otherwise expend
112 in excess of ten percent of its capital and surplus
113 calculated at the end of the previous calendar year on the
114 activities permitted by subsections (f) and (g) on an
115 aggregate basis together with any of its approved
116 financially related products and services. For purposes of
117 this section, approved financially related products and
118 services means those products and services offered by a

119 state-chartered bank pursuant to an approved application
120 submitted under article eight-c of this chapter.

121 (i) The commissioner shall promulgate rules in
122 accordance with chapter twenty-nine-a of this code
123 relating to the sale of insurance or annuities, including, but
124 not limited to, rules requiring notice of the intention to
125 engage in such activities and relating to the policies and
126 procedures state-chartered banking institutions should
127 adopt in connection with such activities.

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

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

CHAPTER 33. INSURANCE.

ARTICLE 11A. INSURANCE SALES CONSUMER PROTECTION ACT.

§33-11A-1. Short title.

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

§33-11A-2. Purpose.

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

§33-11A-3. Definitions.

1 For the purposes of this article:

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

6 (b) "Commissioner" means the insurance commis-
7 sioner of West Virginia.

8 (c) "Financial institution":

9 (1) Means any bank, savings bank, savings and loan
10 association, trust company, credit union or any other
11 depository institution, which: (i) Accepts federally insured
12 deposits, including, but not limited to, those as defined by
13 the Federal Deposit Insurance Act, as amended, 12 U.S.C.
14 §1813(c)(1); and (ii) makes loans to residents of this state;

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

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

23 (4) Does not include a credit card bank, as defined in
24 the Bank Holding Company Act of 1956, as amended, 12
25 U.S.C. §1841(c)(2)(F), an industrial loan company as
26 defined in 12 U.S.C. §1841(c)(2)(H), a specialized savings
27 association serving certain military personnel as defined in
28 12 U.S.C. §1467a(m)(3)(F), a bank whose ownership is
29 grandfathered under the Competitive Equality Banking
30 Act of 1987 as codified at 12 U.S.C. §1843(f)(1), or an
31 insurance company.

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

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

39 (2) Insurance placed by a financial institution in
40 connection with collateral pledged as security for a loan
41 when the debtor breaches the contractual obligation to
42 provide that insurance; and

43 (3) Private mortgage insurance.

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

47 (f) "Insurance information" means copies of insur-
48 ance policies, or the information contained thereon,
49 binders, rates and expiration dates contained within the
50 information supplied in connection with the loan, which
51 are not otherwise available to the financial institution's
52 affiliated broker or agent.

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

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

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

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

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

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

1 (a) Solicitation for the purchase or sale of insurance
2 by a financial institution shall be conducted only by
3 individuals whose responsibilities do not include loan
4 transactions or other transactions involving the extension
5 of credit: *Provided, however,* for a financial institution
6 location having three or less individuals with lending

7 authority, solicitation for the sale of insurance may be
8 conducted by an individual with responsibilities for loan
9 transactions or other transactions involving the extension
10 of credit, as long as the individual primarily responsible
11 for making the specific loan or extension of credit is not
12 the same individual engaged in the solicitation of the
13 purchase or sale of insurance for that same transaction.

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

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

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

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

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

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

§33-11A-9. Disclosures.

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

10 (1) Is not a deposit;

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

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

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

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

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

37 (d) The commissioner may grant a waiver of the
38 requirements of this section to any person required to give

39 the disclosures required by this section solely because that
40 person has a name identifiable with a financial institution
41 upon a written request by such person demonstrating that
42 his, her or its customers would not reasonably benefit
43 from, or might in fact be confused by, these required
44 disclosures.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (1) Annuity products;

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

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

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

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

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

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

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

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

1 The place of solicitation or sale of insurance by any
2 financial institution or on the premises of any financial
3 institution shall be clearly and conspicuously signed so as
4 to be readily distinguishable by the public as separate and
5 distinct from the financial institution's lending and

6 deposit-taking activities. In the event that a person which
7 would otherwise be subject to the requirements set forth in
8 this provision does not have the physical space to so
9 comply, the commissioner may grant a waiver of the
10 requirements of this section upon a written request by
11 such person demonstrating that, due to its small physical
12 facilities, compliance is not possible, and including
13 identification of other steps which will be taken to
14 minimize customer confusion.

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

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

8 (b) Unless applicable provisions of chapter thirty-
9 three of this code or rules promulgated thereunder
10 expressly require that an original of any insurance record
11 be maintained, any insurance records may be stored in
12 any photographic, photostatic, microphotographic or
13 similar miniature photographic process or by nonerasable
14 optical image disks such as compact disks or by other
15 similar retention technology and such copies, in positive
16 or negative form, may be substituted for the originals
17 thereof. Thereafter, such copy or reproduction in the form
18 of a positive print thereof, shall be deemed for all
19 purposes to be an original counterpart of and shall have
20 the same force and effect as the original thereof and shall
21 be admissible in evidence in all courts and administrative
22 agencies in this state, to the same extent, and for the same
23 purposes as the original thereof, and the original may be
24 destroyed or otherwise disposed of; but every such person
25 shall retain either the originals or such copies or
26 reproductions for as long as required under applicable
27 records retention requirements.

28 (c) All circumstances surrounding the making or
29 issuance of such documents, books, records,
30 correspondence and other instruments, papers or writings,

31 or the photographic, photostatic or microphotographic
32 copies or optical disks or other permissible reproductions
33 thereof, when the same are offered in evidence, may be
34 shown to affect the weight but not the admissibility
35 thereof.

36 (d) Any device used to copy or reproduce such
37 documents and records shall be one which correctly and
38 accurately reproduces the original thereof in all details
39 and any disk or film used therein shall be of durable
40 material.

§33-11A-16. Severability.

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

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Kandy Schomover
Chairman Senate Committee

Neil Fantasia
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Harrell Williams
Clerk of the Senate

Bugoy M. Bina
Clerk of the House of Delegates

Earl Ray Imboden
President of the Senate

[Signature]
Speaker of the House of Delegates

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

[Signature]
Governor

PRESENTED TO THE

GOVERNOR

Date 4/8/97

Time 3:10 pm