

HOUSE BILL NO. 1377

Introduced by

Representatives Wald, Skarphol, Carlson, DeKrey

1 A BILL for an Act relating to insurance sales by financial institutions; and to provide a penalty.

2 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

3 **SECTION 1. Scope.** This Act applies only to a financial institution located in a city with
4 a population of at least five thousand.

5 **SECTION 2. Definitions.** For the purposes of this Act:

- 6 1. "Financial institution" means a bank holding company, as defined in the Bank
7 Holding Company Act of 1956, as amended [12 U.S.C. 1841], a bank, savings
8 bank, savings and loan association, trust company, or any depository institution as
9 defined by the Federal Deposit Insurance Act, as amended [12 U.S.C. 1813(c)(1)],
10 any subsidiary of any of these entities, and any other person authorized to take
11 deposits or make loans in this state. The term does not include an insurance
12 company.
- 13 2. "Insurance" includes every product defined or regulated as insurance in this state
14 except credit life and credit accident and health with a death benefit of one hundred
15 thousand dollars or less or insurance placed by a financial institution in connection
16 with collateral pledged as security for a loan when the debtor breaches the
17 contractual obligation to provide that insurance.
- 18 3. "Insurance company" means a person that possesses a certificate of authority to
19 transact insurance business in this state.

20 **SECTION 3. Licensure requirement.** Solicitation for the purchase or sale of any
21 insurance product by, or on the premises of, any financial institution may be only by persons
22 who have complied with all applicable state insurance licensing and appointment laws and rules
23 and who have been issued an agent's or broker's license pursuant to chapter 26.1-26.

1 **SECTION 4. Sales force.** Solicitation for the purchase or sale of insurance by a
2 financial institution may be only by persons whose responsibilities do not include loan
3 transactions or other transactions involving the extension of credit or the taking of deposits. If a
4 financial institution location has no more than three persons with lending authority, solicitation
5 for the sale of insurance may be conducted by a person with responsibilities for deposit or loan
6 transactions or other transactions involving the extension of credit if the person primarily
7 responsible for handling a specific deposit or making a specific loan or extension of credit is not
8 the person soliciting for the purchase or sale of insurance for the same transaction.

9 **SECTION 5. Referrals by unlicensed persons.**

- 10 1. An officer, director, or employee of a financial institution that is not licensed as an
11 agent or broker may not directly or indirectly receive any compensation or
12 consideration from an agent, broker, insurance agency, insurer, or the financial
13 institution, based upon referral of potential purchasers to or making appointments
14 with a licensed agent or broker.
- 15 2. A person who accepts deposits from the public or engages in loan or credit
16 transactions at any office of, or on behalf of, a financial institution, or any other
17 agent, employee, or officer of such institution, may refer a customer who seeks to
18 purchase any insurance product, or seeks an opinion or advice on any insurance
19 product, to a person, or provide the telephone number of a person, who sells or
20 provides opinions or advice on such product only if:
- 21 a. The customer expressly requests the referral; and
- 22 b. The person who accepts deposits or engages in loan or credit transactions, or
23 any other employee or officer:
- 24 (1) Does not solicit the request;
- 25 (2) Discloses to the customer that such product is not insured by the
26 institution or the federal deposit insurance corporation; and
- 27 (3) Does not receive more than nominal compensation for the referral, and
28 the compensation is not based on the customer's application for or
29 purchase of insurance.

30 **SECTION 6. Antitying provisions.**

1. A financial institution may not offer a banking product or service, or fix or vary the conditions of such offer, on a condition or requirement that the customer obtain insurance from the financial institution, or any particular agent or broker.
2. A person may not require or imply that the purchase of an insurance product from a financial institution by a customer or prospective customer of the institution is required as a condition of, or is in any way related to, the lending of money or extension of credit, the establishment or maintenance of a trust account, the establishment or maintenance of a checking, savings, or deposit account, or the provision of services related to any such activities.
3. A financial institution may not offer an insurance product in combination with banking products unless the insurance products and banking products are available separately from the institution.

SECTION 7. Disclosures.

1. Any person insured by the federal deposit insurance corporation and any person soliciting the purchase of or selling insurance on the property of any person insured by the federal deposit insurance corporation shall disclose prominently in writing in clear and concise language, including in any advertisement or promotional material, and orally during any consumer contact, to customers that insurance offered, recommended, sponsored, or sold;
 - a. Is not a deposit;
 - b. Is not insured by the federal deposit insurance corporation;
 - c. Is not guaranteed by any insured depository institution; and
 - d. Where appropriate, involves investment risk, including potential loss of principal.
2. Any person engaged in the making of loans or other extensions of credit and the sale of insurance shall disclose prominently in writing and clear and concise language to consumers that the product may be purchased from an agent or broker of the customer's choice, and the customer's choice of another insurance provider will not affect the customer's credit relationship with the financial institution. As used in this subsection, loans and extensions of credit do not include financing in connection with the insurance product offered or sold.

3. Before any application for insurance sold by the financial institution, any financial institution or other person required under subsection 1 or 2 to make disclosures to a customer shall obtain on a separate document a written acknowledgment of receipt by the customer of such disclosures, including the date of receipt, and the customer's name, address, and account number.

SECTION 8. Timing of solicitation. A financial institution, directly or indirectly, may not knowingly solicit the purchase of any insurance from a customer who has applied for a loan or extension of credit from the institution before the customer has received a written commitment from the financial institution with respect to the loan or extension of credit or, if no written commitment has or will be issued in connection with the loan or extension of credit, before the customer receives notification of approval of the loan or extension of credit by the financial institution and that entity creates a written record of the loan or extension of credit approval.

SECTION 9. Insurance in connection with a loan.

1. If insurance is required as a condition of obtaining a loan, the credit and insurance transactions must be completed independently and through separate documents.
2. A loan for premiums on required insurance may not be included in the primary credit without the written consent of the customer.

SECTION 10. No discrimination against nonaffiliated agents. A financial institution may not:

1. Require as a condition of providing any product or service to any customer, or any renewal of any contract for providing such product or service, that the customer acquire, finance, or negotiate any policy or contract of insurance through a particular insurer, agent, or broker.
2. In connection with a loan or extension of credit that requires a borrower to obtain insurance, reject an insurance policy because the policy has been issued or underwritten by any person who is not associated with the institution.
3. Impose any requirement on any insurance agent or broker who is not associated with the financial institution which is not imposed on any insurance agent who is associated with the institution.

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

4 **SECTION 11. Customer privacy.**

- 5 1. As used in this section, unless the context requires otherwise:
- 6 a. "Customer" means a person with an investment, security, deposit, trust, or
7 credit relationship with a financial institution.
- 8 b. "Nonpublic customer information" means information regarding a person that
9 has been derived from a record of a financial institution. The term includes
10 information concerning insurance premiums, the terms and conditions of
11 insurance coverage, insurance expirations, insurance claims, and insurance
12 history of an individual. The term does not include customer names,
13 addresses, and telephone numbers.
- 14 2. A person may not use nonpublic customer information for the purpose of selling or
15 soliciting the purchase of insurance or provide nonpublic customer information to a
16 third party for the purpose of another's sale or solicitation of the purchase of
17 insurance, unless it is clearly and conspicuously disclosed that the information may
18 be so used and the customer has provided prior written consent to the use for this
19 purpose, subject to subsection 4.
- 20 3. Consent under subsection 2 must be obtained in a separate document, distinct
21 from any other transaction, and may not be required as a condition for performance
22 of other services for the customer.
- 23 4. A financial institution may not solicit insurance by including insurance-related
24 material in any financial transaction mailing to a customer, including a mailing of
25 loan documents, canceled checks, and financial statements.

26 **SECTION 12. Physical location of insurance activities - Signage.**

- 27 1. The place of solicitation or sale of insurance by a financial institution or on the
28 premises of a financial institution must be physically separated and substantially
29 distinct from the banking activities of the institution and clearly and conspicuously
30 signed so as to be easily distinguishable by the public as separate and distinct
31 from the banking activities of the institution.

- 1 2. Signs and other informational material concerning the availability of insurance
2 products from the financial institution may not be displayed in an area where
3 deposits are made, or where applications for loans or other extensions of credit are
4 being taken or closed.
- 5 3. The commissioner of insurance may grant a waiver of subsections 1 and 2 upon a
6 written request by a financial institution demonstrating it is not physically possible
7 to comply, provided other steps are taken to minimize the likelihood of customer
8 confusion and coercion.

9 **SECTION 13. Corporate structure and records.** Corporate books and records
10 relating to the insurance transactions of any person licensed to sell insurance, including all files
11 relating to and reflecting customer complaints, must be kept separate and apart from all records
12 relating to other business transactions of the person licensed to sell insurance, and must be
13 made available to the commissioner of insurance for inspection upon reasonable notice.