

CHAPTER 128

INSURANCE

HOUSE BILL 97-1175

BY REPRESENTATIVES Owen, Gotlieb, Musgrave, Schwarz, Swenson, and T. Williams;
also SENATOR Rizzuto.

AN ACT

CONCERNING INSURANCE SALES BY FINANCIAL INSTITUTIONS, AND, IN CONNECTION THEREWITH,
PROVIDING FOR CONSUMER PROTECTIONS APPLICABLE TO INSURANCE SALES BY FINANCIAL
INSTITUTIONS.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. The introductory portion to 10-2-601 (1) and 10-2-601 (1) (a), (1) (b), (2), (3), (4), and (5), Colorado Revised Statutes, 1994 Repl. Vol., are amended, and the said 10-2-601 (1) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

10-2-601. Financial institutions may sell insurance - where - regulation.

(1) For the purposes of this section ~~PART 6:~~

(a) ~~"Bank" means a state bank, including an industrial bank, or bank and trust company chartered by this state or any national bank.~~

(b) ~~"Bank holding company" means a corporation or other entity which directly or indirectly:~~

~~(I) Owns, controls, or has the power to vote twenty-five percent or more of any class of voting securities of a bank or bank holding company;~~

~~(II) Controls the election of a majority of the directors or trustees of a bank or bank holding company; or~~

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

~~(III) Exercises a controlling influence over the management or policies of a bank or bank holding company.~~

(e) "FINANCIAL INSTITUTION" MEANS A STATE BANK, INCLUDING AN INDUSTRIAL BANK, OR A BANK AND TRUST COMPANY CHARTERED BY A STATE, A TRUST COMPANY, A SAVINGS AND LOAN ASSOCIATION, A CREDIT UNION, A BANK HOLDING COMPANY AS DEFINED BY 12 U.S.C. SEC. 1841, OR A NATIONAL BANK AND THE FINANCIAL INSTITUTION IS LOCATED IN THIS STATE. "FINANCIAL INSTITUTION" INCLUDES FEDERALLY CHARTERED SAVINGS AND LOAN ASSOCIATIONS AND CREDIT UNIONS LOCATED IN THIS STATE.

~~(2) No bank or bank holding company, nor any subsidiary, affiliate, FINANCIAL INSTITUTION or employee thereof shall be licensed or admitted, directly or indirectly, as an insurer or be licensed to sell insurance in this state; except in the manner provided for banks in section 11-6-101(2), C.R.S. except that:~~

(a) A FINANCIAL INSTITUTION OR EMPLOYEE THEREOF MAY ENGAGE IN THE ACTIVITIES OF AN INSURANCE PRODUCER OR AN INSURANCE AGENCY IN THIS STATE AND SHALL BE LICENSED PURSUANT TO THIS ARTICLE. SUCH PRODUCERS AND AGENCIES SHALL BE SUBJECT TO THE PROVISIONS OF THIS TITLE AND RULES PROMULGATED PURSUANT THERETO.

(b) UNLICENSED EMPLOYEES OF FINANCIAL INSTITUTIONS SHALL NOT SELL INSURANCE OR ANNUITIES. SUCH EMPLOYEES MAY DIRECT CUSTOMERS TO LICENSED PERSONS.

~~(a)~~ (c) A ~~bank or bank holding company~~ FINANCIAL INSTITUTION, or any subsidiary, affiliate, or employee thereof, may be licensed to sell INSURANCE, credit insurance, and fixed and variable annuity contracts in accordance with regulations promulgated by the commissioner.

~~(b) A bank holding company or any subsidiary, affiliate, or employee thereof, in a municipality or trade area the population of which does not exceed five thousand as shown by the last preceding federal census, may be licensed to sell insurance in accordance with rules of the commissioner and with federal law;~~

~~(c) Any employee of a bank or bank holding company licensed to sell insurance, or such person's successor in the same or similar position, in connection with the business of said bank or bank holding company on July 1, 1977, may continue to sell insurance of the type sold prior to said date;~~

(d) Any ~~bank or bank holding company~~ FINANCIAL INSTITUTION, or any subsidiary, affiliate, or employee thereof, may be permitted to own an insurance company authorized to sell, and that insurance company's employees may be licensed to sell, insurance to guarantee the payment of any amounts due in connection with any securities or obligations described in section 11-57-101, C.R.S.; except that no ~~bank, bank holding company~~ FINANCIAL INSTITUTION, OR ANY subsidiary or affiliate subject to the supervision of the banking board created in section 11-2-102, C.R.S., shall own such an insurance company without the consent of the banking board, AND NO FINANCIAL INSTITUTION SUBJECT TO THE SUPERVISION OF THE FINANCIAL SERVICES BOARD CREATED IN SECTION 11-44-101.6, C.R.S., SHALL OWN SUCH AN INSURANCE

COMPANY WITHOUT THE CONSENT OF THE FINANCIAL SERVICES BOARD, and no ~~bank~~ FINANCIAL INSTITUTION shall invest more than ten percent of its capital and surplus in such an insurance company. ~~and~~

~~(e) Any bank or bank holding company~~ FINANCIAL INSTITUTION, or any subsidiary or affiliate thereof, may own, directly or indirectly, a captive insurance company operating under article 6 of this title. ~~except that such a captive insurance company may provide insurance only for the purposes specified in paragraph (c) of subsection (3) of this section.~~

(f) ANY TRADE ASSOCIATION ORGANIZED PRIMARILY TO PROMOTE THE COMMON INTERESTS OF FINANCIAL INSTITUTIONS, OR AN AFFILIATE OR SUBSIDIARY OF SUCH ASSOCIATION, MAY HOLD STOCK OR OTHER INTERESTS IN AN INSURANCE COMPANY, OR AN AFFILIATE OR SUBSIDIARY THEREOF.

(3) Notwithstanding any provision of this section to the contrary, this section shall not be construed to prohibit:

~~(a) Any insurance company or any of its licensed insurance producers from conducting business separate and apart from any bank;~~

~~(b) Any bank or bank holding company, or any subsidiary or affiliate thereof, operating an agency which sold insurance in this state on July 1, 1977, from continuing such operation so long as such agency continues to function as it was constituted on said date; or~~

~~(c) Any trade association organized primarily to promote the common interests of banks, or an affiliate or subsidiary of such association, from holding stock or other interests in an insurance company, or an affiliate or subsidiary thereof, for the purpose of, and limited to, obtaining for members of the association, either through the association itself or through its affiliate or subsidiary, directors' and officers' liability insurance, blanket bond insurance, and surety insurance, if such trade association is not an affiliate or subsidiary of any particular bank or bank holding company. For purposes of this paragraph (c), "banks" means banks organized under the "Colorado Banking Code of 1957", articles 1 to 11 and 22 and 23 of title 11, C.R.S., or under chapter 2 of Title 12 of the United States Code, and "affiliate" and "subsidiary" shall have the meanings set forth in section 10-3-801 (1) and (8).~~

~~(4) No person licensed to sell insurance in this state shall be prohibited from serving as an officer, director, or employee of a bank or bank holding company if such person conducts the person's insurance activities free of ownership or control of the bank or bank holding company and the bank or bank holding company does not participate directly or indirectly in the earnings from the person's insurance activities.~~

(5) The commissioner shall promulgate such rules as are necessary to ~~maintain the separation between banks or bank holding companies and the insurance business and to promote fair trade practices~~ IMPLEMENT THIS PART 6.

SECTION 2. 10-2-602, Colorado Revised Statutes, 1994 Repl. Vol., is amended to read:

10-2-602. Sale of annuities and insurance by financial institutions - certain tying arrangements prohibited. (1) IN ADDITION TO THE REQUIREMENTS OF SECTION 10-3-1105, no ~~bank, bank holding company~~ FINANCIAL INSTITUTION, or subsidiary ~~affiliate~~, or employee of a ~~bank, bank holding company~~ FINANCIAL INSTITUTION, shall extend credit, lease or sell property of any kind, furnish any service, or fix or vary the consideration for any such extension of credit, lease, sale, or service on the condition or requirement that the customer shall obtain AN INSURANCE CONTRACT OR AN ANNUITY from such ~~bank, bank holding company~~ FINANCIAL INSTITUTION, OR ANY subsidiary ~~affiliate~~, or employee. ~~a fixed or variable annuity contract.~~

(2) NO FINANCIAL INSTITUTION MAY OFFER A FINANCIAL PRODUCT OR SERVICE, OR FIX OR VARY THE CONDITIONS OF SUCH PRODUCT OR SERVICE, CONDITIONED ON A REQUIREMENT THAT THE CUSTOMER OBTAIN INSURANCE FROM SUCH FINANCIAL INSTITUTION OR ANY SPECIFIC PERSON.

(3) NO PERSON SHALL REQUIRE OR IMPLY THAT THE PURCHASE OF AN INSURANCE PRODUCT, OR OF AN ANNUITY FROM A FINANCIAL INSTITUTION, IS A CONDITION OF THE LENDING OF MONEY OR EXTENSION OF CREDIT, MAINTENANCE OF A TRUST ACCOUNT, ESTABLISHMENT OR MAINTENANCE OF A CHECKING, SAVINGS, DEPOSIT, OR SHARE ACCOUNT, OR THE PROVISION OF PRODUCTS OR SERVICES RELATED TO SUCH ACTIVITIES.

SECTION 3. 10-2-603 (1), Colorado Revised Statutes, 1994 Repl. Vol., is amended to read:

10-2-603. Bank sale of annuities - disclosure requirements. (1) Any ~~bank or bank holding company~~ FINANCIAL INSTITUTION, or any subsidiary ~~affiliate~~, or employee thereof, which sells a fixed or variable annuity contract shall receive written acknowledgment from the purchaser that the annuity which is being purchased ~~involves~~ MAY INVOLVE investment risk and is not insured by the federal deposit insurance corporation OR THE NATIONAL CREDIT UNION SHARE INSURANCE FUND. Such written notice shall be clear and conspicuous and shall be given before or contemporaneously with the purchase of the annuity. THIS SUBSECTION (1) SHALL APPLY TO AN AFFILIATE OR SUBSIDIARY OF A FINANCIAL INSTITUTION IF SUCH AN AFFILIATE OR SUBSIDIARY SELLS INSURANCE ON THE PREMISES OF A FINANCIAL INSTITUTION.

SECTION 4. Part 6 of article 2 of title 10, Colorado Revised Statutes, 1994 Repl. Vol., is amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:

10-2-604. Disclosures. (1) A FINANCIAL INSTITUTION, AND ANY PERSON SELLING INSURANCE WITH A CASH VALUE OR A CASH ACCUMULATION COMPONENT ON BEHALF OF A FINANCIAL INSTITUTION, SHALL DISCLOSE TO THE FINANCIAL INSTITUTION'S CUSTOMERS OR MEMBERS, AND ON ANY ADVERTISEMENTS OR PROMOTIONAL MATERIAL, THAT INSURANCE OFFERED, RECOMMENDED, SPONSORED, OR SOLD BY THE FINANCIAL INSTITUTION, OR ON THE PREMISES OF THE FINANCIAL INSTITUTION:

- (a) IS NOT A DEPOSIT;

(b) IS NOT INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION, THE NATIONAL CREDIT UNION SHARE INSURANCE FUND, OR ANY AGENCY OF THE STATE OF COLORADO OR THE FEDERAL GOVERNMENT;

(c) IS NOT GUARANTEED BY THE FINANCIAL INSTITUTION OR ANY AFFILIATED INSURED DEPOSITORY INSTITUTION;

(d) MAY INVOLVE INVESTMENT RISK, INCLUDING LOSS OF PRINCIPAL; AND

(e) MAY BE PURCHASED FROM AN AGENT OR BROKER OF THE CUSTOMER'S CHOICE AND THAT THE CUSTOMER'S CHOICE OF ANOTHER INSURANCE PROVIDER WILL NOT AFFECT THE CUSTOMER'S RELATIONSHIP WITH THE FINANCIAL INSTITUTION.

10-2-605. Misleading advertising. (1) NO FINANCIAL INSTITUTION, OR ANY SUBSIDIARY, AFFILIATE, OR EMPLOYEE OF A FINANCIAL INSTITUTION, MAY ISSUE ADVERTISING THAT WOULD LEAD A REASONABLE PERSON TO BELIEVE THAT THE STATE OF COLORADO OR THE FEDERAL GOVERNMENT:

(a) IS RESPONSIBLE FOR INSURANCE SALES ACTIVITIES OF THE FINANCIAL INSTITUTION, OR ANY SUBSIDIARY, AFFILIATE, OR EMPLOYEE THEREOF;

(b) GUARANTEES ANY RETURN ON INSURANCE PRODUCTS, OR IS A SOURCE OF PAYMENT OF ANY INSURANCE OBLIGATIONS SOLD BY THE FINANCIAL INSTITUTION, OR ANY SUBSIDIARY, AFFILIATE, OR EMPLOYEE THEREOF.

10-2-606. Discrimination against affiliated agents. (1) NO FINANCIAL INSTITUTION SHALL:

(a) REQUIRE, AS A CONDITION OF PROVIDING OR RENEWING A CONTRACT FOR PROVIDING A PRODUCT OR SERVICE TO ANY CUSTOMER, THAT THE CUSTOMER PURCHASE, FINANCE, OR NEGOTIATE ANY POLICY OR CONTRACT OF INSURANCE THROUGH ANY PARTICULAR PERSON;

(b) IN CONNECTION WITH A LOAN OR EXTENSION OF CREDIT THAT REQUIRES A BORROWER TO OBTAIN INSURANCE, REJECT AN INSURANCE POLICY SOLELY BECAUSE SUCH POLICY HAS BEEN ISSUED OR UNDERWRITTEN BY ANY PERSON WHO IS NOT ASSOCIATED WITH SUCH INSTITUTION;

(c) IMPOSE ANY REQUIREMENT ON ANY INSURANCE AGENT OR BROKER WHO IS NOT ASSOCIATED WITH THE FINANCIAL INSTITUTION THAT IS NOT IMPOSED ON ANY INSURANCE AGENT WHO IS ASSOCIATED WITH SUCH INSTITUTION; OR

(d) UNLESS OTHERWISE AUTHORIZED BY APPLICABLE FEDERAL OR STATE LAW, REQUIRE ANY DEBTOR, INSURER, BROKER, OR AGENT TO PAY A SEPARATE CHARGE IN CONNECTION WITH THE HANDLING OF INSURANCE THAT IS REQUIRED UNDER A CONTRACT.

10-2-607. Location of sales. TO THE EXTENT PRACTICABLE, A FINANCIAL INSTITUTION'S SALE OF INSURANCE SHALL BE IN A LOCATION DISTINCT FROM A TELLER WINDOW OR COMMON TELLER AREA. UNLICENSED EMPLOYEES OF FINANCIAL INSTITUTIONS SHALL NOT SELL INSURANCE OR ANNUITIES. SUCH EMPLOYEES MAY

DIRECT CUSTOMERS TO LICENSED PERSONS.

SECTION 5. 11-6-101 (2), Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended to read:

11-6-101. Branch banks and practices prohibited - facilities defined. (2) ~~Except~~ As authorized under section 10-2-601 (2), C.R.S., ~~no bank shall directly or indirectly engage in trade or commerce; but any bank located and doing business in any community the population of which does not exceed five thousand inhabitants, as shown by the last preceding federal census, may, pursuant to federal law OR under such rules and regulations as may be prescribed by the banking board and subject to regulations promulgated by the commissioner of insurance concerning the sale of insurance by banks~~ FINANCIAL INSTITUTIONS as provided in section 10-2-601, C.R.S., AS SUCH LAWS, RULES, AND REGULATIONS ARE APPLICABLE TO THE BANK, DEPENDING UPON WHETHER SUCH BANK IS A NATIONAL BANK OR A STATE BANK, act as the agent for any fire, life, or other insurance company authorized to do business in this state by soliciting and selling insurance and collecting premiums on policies issued by such company. For services so rendered, such bank may receive such fees or commissions as may be agreed upon between the bank and the insurance company for which it may act as agent. ~~except that no such bank shall in any case assume or guarantee the payment by its principal of any premium on insurance policies issued through its agency; and except that the bank shall not be held responsible for the truth of any statement made by an assured in filing his application for insurance.~~ FOR PURPOSES OF THIS SUBSECTION (2), "BANK" SHALL HAVE THE SAME MEANING AS SET FORTH IN SECTION 11-1-102 (2).

SECTION 6. 11-22-106, Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

11-22-106. Powers - general corporate - loans and investments - rules and regulations of banking board. (6) AS AUTHORIZED PURSUANT TO SECTION 10-2-601 (2), C.R.S., AN INDUSTRIAL BANK MAY, PURSUANT TO FEDERAL LAW OR UNDER SUCH RULES AS MAY BE ADOPTED BY THE BANKING BOARD OR THE COMMISSIONER OF INSURANCE PURSUANT TO SECTION 10-2-601, C.R.S., ACT AS THE AGENT FOR ANY INSURANCE COMPANY AUTHORIZED TO DO BUSINESS IN THIS STATE BY SOLICITING AND SELLING INSURANCE AND COLLECTING PREMIUMS ON POLICIES ISSUED BY SUCH COMPANY. FOR SUCH SERVICES, AN INDUSTRIAL BANK MAY RECEIVE SUCH FEES OR COMMISSIONS AS MAY BE AGREED BETWEEN THE INDUSTRIAL BANK AND THE INSURANCE COMPANY.

SECTION 7. 11-23-103, Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

11-23-103. Powers of trust companies. (3) AS AUTHORIZED PURSUANT TO SECTION 10-2-601 (2), C.R.S., A TRUST COMPANY MAY, PURSUANT TO FEDERAL LAW OR UNDER SUCH RULES AS MAY BE ADOPTED BY THE BOARD OR THE COMMISSIONER OF INSURANCE PURSUANT TO SECTION 10-2-601, C.R.S., ACT AS THE AGENT FOR ANY

INSURANCE COMPANY AUTHORIZED TO DO BUSINESS IN THIS STATE BY SOLICITING AND SELLING INSURANCE AND COLLECTING PREMIUMS ON POLICIES ISSUED BY SUCH COMPANY. FOR SUCH SERVICES, A TRUST COMPANY MAY RECEIVE SUCH FEES OR COMMISSIONS AS MAY BE AGREED BETWEEN THE TRUST COMPANY AND THE INSURANCE COMPANY.

SECTION 8. 11-30-104, Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

11-30-104. Powers. (2) AS AUTHORIZED PURSUANT TO SECTION 10-2-601 (2), C.R.S., A CREDIT UNION MAY, PURSUANT TO FEDERAL LAW OR UNDER SUCH RULES AS MAY BE ADOPTED BY THE FINANCIAL SERVICES BOARD OR THE COMMISSIONER OF INSURANCE PURSUANT TO SECTION 10-2-601, C.R.S., ACT AS THE AGENT, THROUGH THE CREDIT UNION OR ANY CREDIT UNION SERVICE ORGANIZATION, FOR ANY INSURANCE COMPANY AUTHORIZED TO DO BUSINESS IN THIS STATE BY SOLICITING AND SELLING INSURANCE AND COLLECTING PREMIUMS ON POLICIES ISSUED BY SUCH COMPANY. FOR SUCH SERVICES, A CREDIT UNION OR CREDIT UNION SERVICE ORGANIZATION MAY RECEIVE SUCH FEES OR COMMISSIONS AS MAY BE AGREED BETWEEN SUCH ENTITY AND THE INSURANCE COMPANY.

SECTION 9. 11-41-112 (1), Colorado Revised Statutes, 1987 Repl. Vol., is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

11-41-112. Powers of savings and loan associations. (1) Savings and loan associations have the following powers:

(o) PURSUANT TO FEDERAL LAW OR UNDER SUCH RULES AND REGULATIONS AS MAY BE PRESCRIBED BY THE FINANCIAL SERVICES BOARD AND SUBJECT TO REGULATIONS PROMULGATED BY THE COMMISSIONER OF INSURANCE CONCERNING THE SALE OF INSURANCE BY SAVINGS AND LOAN ASSOCIATIONS AS PROVIDED IN SECTION 10-2-601, C.R.S., TO ACT AS THE AGENT, THROUGH THE SAVINGS AND LOAN ASSOCIATION OR ANY SERVICE CORPORATION THEREOF, FOR ANY FIRE, LIFE, OR OTHER INSURANCE COMPANY AUTHORIZED TO DO BUSINESS IN THIS STATE BY SOLICITING AND SELLING INSURANCE AND COLLECTING PREMIUMS ON POLICIES ISSUED BY SUCH COMPANY. FOR SERVICES SO RENDERED, SUCH SAVINGS AND LOAN ASSOCIATION OR SERVICE CORPORATION OF SUCH SAVINGS AND LOAN ASSOCIATION MAY RECEIVE SUCH FEES OR COMMISSIONS AS MAY BE AGREED UPON BETWEEN SUCH ENTITY AND THE INSURANCE COMPANY FOR WHICH IT MAY ACT AS AGENT.

SECTION 10. Effective date - applicability. This act shall take effect upon passage and shall apply to acts committed on or after said date.

SECTION 11. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 24, 1997