

SENATE BILL 1250
By Cooper

AN ACT to amend Tennessee Code Annotated, Title 45,
Chapter 2; Title 47, Chapter 23, and Title 56,
relative to the sale of insurance.

WHEREAS, the United States Supreme Court, in *Barnett Bank of Marion County, NA v. Tom Gallagher, Florida Insurance Commissioner*, 517 US 25 (1996), held that federal laws allowing national banks to offer insurance agency services preempt a Florida statute (the “anti affiliation statute”) which limits the ability of banks in that state to offer general insurance agency services to their customers.

WHEREAS, the Gramm-Leach-Bliley Act, Public Law 106-102, removed the barriers separating various financial services providers, including banks, insurance companies and securities, to permit cross-ownership and sales of products in the financial area by all providers.

WHEREAS, Tennessee law has an “anti affiliation statute” (TCA, Title 56, Chapter 6, Part 2), as well as other statutory provisions, which similarly limit the ability of banks in Tennessee owned by bank holding companies to provide insurance agency services to their customers that would be subject to preemption.

WHEREAS, it is important to Tennessee citizens that Tennessee-chartered banks maintain at least a competitive equality to these other financial institutions.

WHEREAS, it is in the best interest of Tennessee consumers of insurance products that insurance agents, whether operating independently or whether having an affiliation with an

insurance company or financial institution, operate under the same rules and regulations to protect the consumer in the insurance purchasing process. Now therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

Section 1. Tennessee Code Annotated, Title 56, Chapter 6, Part 2, is amended by deleting the part in its entirety and by substituting instead the following:

Section 56-6-201(a). This part shall be known and may be cited as the Insurance Agent Financial Institution Affiliation Act of 2001.

(b) It is the intent of this Act to permit insurance agents to have and maintain affiliations with financial institutions and other lenders and to provide a comprehensive framework for such affiliations which provides nondiscriminatory licensing and regulation for insurance agents and their affiliated entities in a manner which provides adequate consumer protections.

Section 56-6-202. Definitions. As used in this act, unless the context otherwise requires:

1) “Financial institution” means a bank, bank holding company as defined in the Bank Holding Company Act of 1956, as amended (12 USC, Section 1841), a savings bank, savings and loan association, trust company, credit union, or any depository institution as defined by the Federal Deposit Insurance Act in 12 USC, Section 1813(c)(1), and any other individual, corporation, partnership, or association authorized to take federally insured deposits and any affiliate, subsidiary, agent, or broker of any of the above.

2) “Insurance” means all lines of insurance defined and regulated as insurance under this Code, but for the purposes of this Part, “insurance” shall not include the following lines of insurance, provided that this paragraph shall not be deemed to preclude or otherwise

limit regulation of the following lines of insurance pursuant to and to the extent otherwise provided by any other insurance laws of this State:

(1) credit insurance, including, but not limited to, credit life, credit accident and health, credit involuntary unemployment, credit casualty and credit property insurance;

(2) extended service contracts and warranty agreements;

(3) insurance obtained by the debtor to provide payment for the difference between the remaining balance on a loan or other extension of credit and the amount of insurance coverage on the collateral securing the loan or other extension of credit;

(4) insurance placed by a financial institution on collateral used in connection with a loan or other extension of credit when a debtor breaches the contractual obligation to provide that insurance;

(5) debt cancellation contracts;

(6) annuities;

(7) private mortgage insurance and financial guarantee insurance; and

(8) accidental death and dismemberment coverage.

3) “Lender” means any person or entity, including a financial institution, who is authorized, licensed, or engages in the business of lending money, extending credit, brokering loans, or closing loans in the State of Tennessee

Section 56-6-203. (a) Notwithstanding any other law to the contrary, every insurance agent or broker licensed under the provisions of this Chapter may affiliate with a financial institution, or lender, as employee, agent, broker, joint venture, or otherwise, provided such agent and such affiliated financial institution or lender shall be subject to

the provisions of this Title. Such financial institution or lender may receive such compensation or temporary or permanent assignment of rights, commissions, or fees as may be agreed upon amongst the financial institution or lender, insurance agent, and the insurance company.

(b) In addition to such other powers permitted to banks, a bank may employ licensed agents, own, operate, or manage an agency for the sale or solicitation of all types of insurance or annuities. Such activities by a bank shall be deemed by the State of Tennessee as incidental to the business of banking.

(c) No financial institution or lender shall directly or indirectly through any affiliate, subsidiary, broker, or agent negotiate any policy of insurance unless such negotiation is conducted by an insurance agent licensed by the Commissioner.

(d) Any insurance agent, financial institution, or lender, and the employees or agents thereof engaged in an activity that subjects them to licensure and/or regulation under Title 56 shall be subject to licensure and/or regulation by the Commissioner on a basis that does not discriminate against them relative to other persons or entities which act as insurance agents or agencies and which are not affiliated insurance agents, financial institutions, or lenders, or employees or agents thereof.

(e) No financial institution or lender may impose any unreasonable requirement on any insurance agent or broker who is not associated with the financial institution or lender that is not imposed on any insurance agent who is associated with such financial institution or lender.

Section 56-6-204. Tying: prohibited. (a) No financial institution, lender, or insurance agent shall in any manner extend credit, lease or sell property of any kind, or furnish any service,

or fix or vary the consideration for any of the foregoing, on the condition or requirement that the customer shall obtain insurance through a particular insurer, group of insurers, or agent or broker, or group of agents or brokers. In accordance with the foregoing, the financial institution, lender, or insurance agent shall not represent that the purchase of an insurance product from a financial institution or lender by a customer or prospective customer of the institution is required as a condition of, or is 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.

(b) A financial institution, lender, or insurance agent that offers banking products or services in conformity with the provisions of Section 106 of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1972) shall be deemed to be in compliance with the provisions of subsection (a) of this section.

(c) No financial institution, lender, or insurance agent shall offer an insurance product in combination with any loan or extension of credit unless the insurance product and other products are available separately from the providers.

(d) The following activities conducted in accordance with the provisions of this Chapter shall not violate the provisions of this section.

(1) A financial institution, lender, or insurance agent may cross-sell or cross-market products and services by informing customers that insurance or other products are available.

(2) A financial institution, lender, or insurance agent that requires a customer to obtain insurance coverage in connection with a loan or other extension of credit may provide the insurance.

Section 56-6-205. Disclosure; required. (a) At the time a written application for insurance is made, if other than in connection with a loan or extension of credit, a financial institution, or insurance agent, shall disclose or cause to be disclosed in a separate written statement, in clear and concise language, signed by the customer, that any insurance offered or sold:

- a) is not a deposit;
- b) is not insured by the Federal Deposit Insurance Corporation;
- c) is not guaranteed by the financial institution; and
- d) the customer is not required to purchase the insurance through the financial institution or through a particular insurance company, agent, or broker.

(b) The solicitation or sale of insurance in connection with a loan or extension of credit by a financial institution, lender, or insurance agent shall be governed by the provisions of Tennessee Code Annotated, 56-8-106.

(c) Any advertisement, sales literature, or other material which relates to the marketing of insurance sold through a financial institution or insurance agent if it contains the name, logo, or recommendation of the financial institution, shall include a written disclosure in clear and concise language that any insurance:

- a) is not a deposit;
- b) is not insured by the Federal Deposit Insurance Corporation;
- c) is not guaranteed by the financial institution; and,
- d) where appropriate, involves investment risk, including potential loss of principal.

(d) Compliance with the disclosure and advertising provisions of the Interagency Guidelines on the Sale of Non-deposit Products (February, 1994) as issued or revised jointly by the Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, Federal Reserve Board and Office of Thrift Supervision shall meet the requirements of this section.

Section 56-6-206. (a) If insurance is required as a condition of obtaining a loan from any financial institution or lender, the credit and insurance transactions shall be completed using separate documents.

(b)(1) A loan for insurance premiums on any insurance required by a financial institution or lender shall not be included in the primary credit without the written consent of the customer.

(2) This subsection shall not apply to a premium finance loan that is not made in connection with another loan or extension of credit.

(c) Books and records relating to the insurance transactions of any financial institution, lender, or insurance agent, including all files relating to and reflecting customer complaints, shall be kept separate and apart from all records relating to other business transactions of such person, and shall be made available to the Department of Insurance for inspection upon reasonable notice.

Section 56-6-207. (a) No financial institution or insurance agent shall pay, directly or indirectly, any commission, service fee, brokerage, or other valuable consideration to any person for services as an insurance agent in violation of TCA 56-6-149 unless such person is licensed by the Commissioner.

(b) This section shall not prevent the payment or receipt of :

1) renewal or other deferred commissions to or by any persons entitled thereto;

2) fees to or by a financial institution or any other person for services that do not require licensure as an insurance agent;

3) compensation to an unlicensed employee of a financial institution for the referral of a customer or potential customer to a licensed insurance agent provided the payment of compensation is not contingent on the purchase of an insurance product by the customer.

4) consideration paid to a financial institution by an insurance agent or insurance company pursuant to any lease agreement.

5) payments to a subsidiary, affiliate, or joint venture partner for services relating to the sale of insurance.

Section 56-6-208. Prohibited defenses. A violation of any provision of this Act shall not be used as a defense by any person in any action by a financial institution or lender to recover the amount owing on any loan or extension of credit.

Section 2. Tennessee Code Annotated, Section 56-8-106(a)(1) is amended by adding to the end of the sentence the words” or otherwise tie the credit to negotiation or renewal through a particular insurer or group of insurers or agent or broker or group of agents or brokers.”

Section 3. Tennessee Code Annotated, Section 56-8-106(a)(2) is amended by adding to the beginning of the sentence the words “Without the prior written disclosure as provided in subsection (b),” and changing “Solicit” to “solicit.”

Section 4. Tennessee Code Annotated, Section 56-8-106(a)(5) is amended by deleting the words “at a time other than the making of the loan or extension of credit.”

Section 5. Tennessee Code Annotated, Section 56-8-106(a) is amended by adding a new subsection (a)(9) and a concluding sentence as follows:

(9) Negotiate an insurance policy unless such person has adopted written policies and procedures to insure compliance with applicable law and regulations and in a manner consistent with this chapter.

Section 6. Tennessee Code Annotated, Section 56-8-106(b) is amended by deleting it and substituting instead the following:

(b)(1) Every person who lends money or extends credit and who solicits insurance required in connection with such loan or extension of credit on real and personal property must provide to the borrower a typed or printed notice which shall read as follows:

Notice: Any insurance you purchase may be purchased from an insurer or agent of your choice, subject only to the lender's right in connection with an extension of credit to reject a given insurer or agent, based upon reasonable standards uniformly applied, relating to the extent of coverage required and the financial soundness and the services of an insurer, as provided in Tennessee Code Annotated, Section 56-8-106(a)(3). Your choice of insurance provider will not affect the credit decision or your credit terms. Insurance policies are not insured by the Federal Deposit Insurance Corporation or other applicable deposit insurance.

(2) This subsection shall not apply when a financial institution or lender is contacting a customer in the course of direct or mass marketing to a group of persons in a manner that bears no relation to the customer's loan application or credit decision.

(3) Compliance with disclosures as to insurance required by the Federal Real Estate Settlement Procedures Act and Federal Truth-in-Lending laws or comparable state laws shall be deemed compliant with the requirements of this subsection.

(4) Such notice may, at the lender's option, be combined with any notice regarding insurance required by the federal Real Estate Settlement Procedures Act or Truth-in-Lending Act, but shall be a separate document from the loan application and loan agreements.

Section 7. Tennessee Code Annotated, Section 47-23-101(a) is amended by adding as a new subsection (4) the following:

(4) The provision of this subsection (a) shall not apply to a financial institution, lender, or insurance agent who complies with the notice provisions of Tennessee Code Annotated, Title 56, Chapter 6, Part 2.

Section 8. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

Section 9. This act shall take effect upon becoming a law, the public welfare requiring it.