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INSURANCE CODE - INS

DIVISION 1. GENERAL RULES GOVERNING INSURANCE [100 - 1879.8] (*Division 1 enacted by Stats. 1935, Ch. 145.*)

PART 2. THE BUSINESS OF INSURANCE [680 - 1879.8] (*Part 2 enacted by Stats. 1935, Ch. 145.*)

CHAPTER 1. General Regulations [680 - 1113] (*Chapter 1 enacted by Stats. 1935, Ch. 145.*)

ARTICLE 5.2. Consumer Protection in Sales of Insurance by or Through Depository Institutions [759 - 765] (*Article 5.2 added by Stats. 2002, Ch. 203, Sec. 2.*)

759. This article establishes consumer protections in connection with retail sales practices, solicitations, advertising, or offers of any insurance product or annuity to a consumer by either of the following:

- (a) Any depository institution, as defined in subdivision (b) of Section 760.
- (b) Any person who is engaged in those activities at an office of a depository institution or on behalf of a depository institution.

(*Added by Stats. 2002, Ch. 203, Sec. 2. Effective January 1, 2003.*)

760. As used in this article, the following terms have the following meanings:

- (a) "Affiliate" has the same meaning as defined in Section 1215.
- (b) "Depository institution" means any of the following:
 - (1) National banks, operating subsidiaries of a national bank, and federal branches or agencies of a foreign bank, as defined in Section 1 of the International Banking Act of 1978 (12 U.S.C. Sec. 3101 et seq.), in the case of institutions supervised by the Office of the Comptroller of the Currency.

- (2) State member banks in the case of the Board of Governors of the Federal Reserve System.

- (3) State nonmember banks in the case of the Federal Deposit Insurance Corporation (FDIC).

- (4) Savings associations and operating subsidiaries of savings associations, in the case of the Office of the Comptroller of the Currency.

- (c) "Company" means any corporation, partnership, business trust, association, or similar organization, or any other trust, other than a trust that by its terms must terminate within 25 years or not later than 21 years and 10 months after the death of individuals living on the effective date of the trust. "Company" does not include any corporation the majority of the shares of which are owned by the United States or by any state, or a qualified family partnership, as defined in paragraph (10) of subsection (o) of Section 2 of the federal Bank Holding Company Act of 1956, as amended (12 U.S.C. Sec. 1841(o)(10)).

- (d) "Consumer" means an individual who purchases, applies to purchase, or is solicited to purchase from a covered person insurance products or annuities primarily for personal, family, or household purposes.

- (e) "Control" has the same meaning as defined in Section 1215.

- (f) (1) "Covered person" means either of the following:

- (A) A depository institution.

- (B) Another person only when the person sells, solicits, advertises, or offers an insurance product or annuity to a consumer at an office of a depository institution, or on behalf of a depository institution.

- (2) For purposes of this definition, activities on behalf of a depository institution include activities pursuant to which a person, whether at an office of the depository institution or at another location, sells, solicits, advertises, or offers an insurance product or

annuity and where at least one of the following applies:

- (A) The person represents to a consumer that the sale, solicitation, advertisement, or offer of any insurance product or annuity is by or on behalf of the depository institution.
- (B) The depository institution refers a consumer to a seller of insurance products or annuities and the institution has a contractual arrangement to receive commissions or fees derived from a sale of an insurance product or annuity resulting from that referral.
- (C) Documents evidencing the sale, solicitation, advertising, or offer of an insurance product or annuity identify or refer to the depository institution.

(g) "Electronic media" includes any means for transmitting messages electronically between a covered person and a consumer in a format that allows visual text to be displayed on equipment such as a personal computer monitor.

(h) "Office" means the premises of a depository institution where retail deposits are accepted from the public.

(i) "Subsidiary" has the same meaning as defined in Section 1215.

(Amended by Stats. 2019, Ch. 143, Sec. 69. (SB 251) Effective January 1, 2020.)

761. (a) A covered person shall not engage in any practice that would lead a consumer to believe that an extension of credit, in violation of subsection (b) of Section 106 of the federal Bank Holding Company Act Amendments of 1970 (12 U.S.C. Sec. 1972), is conditional upon either of the following:

- (1) The purchase of an insurance product or annuity from the depository institution or any of its affiliates.
- (2) An agreement by the consumer not to obtain, or a prohibition on the consumer from obtaining, an insurance product or annuity from an affiliated entity.

(b) A covered person shall not engage in any practice or use any advertisement at any office of, or on behalf of, the depository institution or a subsidiary of the depository institution that could mislead any person or otherwise cause a reasonable person to reach an erroneous belief with respect to any of the following:

- (1) The fact that any insurance product or annuity sold or offered for sale by a covered person or any subsidiary of the depository institution is not backed by the federal government or the depository institution, or the fact that the insurance product or annuity is not insured by the Federal Deposit Insurance Corporation.
- (2) In the case of an insurance product or annuity that involves investment risk, the fact that there is an investment risk, including the potential that principal may be lost and that the product may decline in value.
- (3) In the case of a depository institution or subsidiary of the depository institution at which insurance products or annuities are sold or offered for sale, the fact that:

(A) The approval of an extension of credit to the consumer by the depository institution or subsidiary may not be conditioned on the purchase of an insurance product or annuity by the consumer from the depository institution or a subsidiary of the depository institution.

(B) The consumer is free to purchase the insurance product or annuity from another source.

(Added by Stats. 2002, Ch. 203, Sec. 2. Effective January 1, 2003.)

762. (a) In connection with the initial purchase of an insurance product or annuity by a consumer from a covered person, a covered person shall disclose to the consumer, except to the extent the disclosure would not be accurate, all of the following:

- (1) That the insurance product or annuity is not a deposit or other obligation of, or guaranteed by, the depository institution or an affiliate of the depository institution.
- (2) That the insurance product or annuity is not insured by the Federal Deposit Insurance Corporation or any other agency of the United States, the depository institution, or, if applicable, an affiliate of the depository institution.
- (3) In the case of an insurance product or annuity that involves an investment risk, that there is investment risk associated with the product, including the possible loss of value.

(b) In the case of an application for credit in connection with which an insurance product or annuity is solicited, offered, or sold, a covered person shall disclose that the depository institution may not condition an extension of credit on either of the following:

- (1) The consumer's purchase of an insurance product or annuity from the depository institution or any of its affiliates.
- (2) The consumer's agreement not to obtain, or a prohibition on the consumer from obtaining, an insurance product or annuity from an unaffiliated entity.

(c) (1) The disclosures required by subdivision (a) shall be provided orally and in writing during any solicitation of an insurance product or annuity to a consumer. The disclosures required by subdivision (b) shall also be made orally and in writing at the time the consumer applies for an extension of credit in connection with which an insurance product or annuity will be solicited, offered, or sold.

(2) If a sale of an insurance product or annuity is conducted by mail, a covered person is not required to make the oral disclosures required by subdivision (a). If a covered person takes an application for credit by mail, the covered person is not required to make the oral disclosures required by subdivision (b).

(3) If the sale of an insurance product or annuity is conducted by telephone, a covered person shall provide the written disclosure required by subdivision (a) by mail within three business days, beginning on the first business day after the sale, but excluding Sundays and the legal public holidays specified in subsection (a) of Section 6103 of Title 5 of the United States Code.

(4) Subject to the requirements of subsection (c) of Section 101 of the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. Sec. 7001(c)), a covered person may provide the written disclosures required by subdivisions (a) and (b) through electronic media instead of paper, if the consumer affirmatively consents to receiving the disclosures electronically and if the disclosures are provided in a format that the consumer may retain or obtain later, for example, through printing or storing electronically by downloading. Any disclosures required by subdivision (a) or (b) that are provided by electronic media are not required to be provided orally.

(5) The disclosures provided shall be conspicuous, simple, direct, readily understandable, and designed to call attention to the nature and significance of the information provided. For example, a covered person may use the following disclosures in visual media, including television, broadcasting, ATM screens, billboards, signs, posters, and written advertisements and promotional materials, as appropriate and consistent with subdivisions (a) and (b):

- (A) "NOT A DEPOSIT."
- (B) "NOT FDIC-INSURED."
- (C) "NOT INSURED BY ANY FEDERAL GOVERNMENT AGENCY."
- (D) "NOT GUARANTEED BY THE BANK (OR SAVINGS ASSOCIATION)."
- (E) "MAY GO DOWN IN VALUE."

(6) (A) A covered person shall provide the disclosures required by subdivisions (a) and (b) in a meaningful form. Examples of the types of methods that could call attention to the nature and significance of the information provided include all of the following:

- (i) A plain language heading to call attention to the disclosure.
- (ii) A typeface and type size that are easy to read.
- (iii) Wide margins and ample line spacing.
- (iv) Boldface or italics for key words.
- (v) Distinctive type style, and graphic devices, such as shading or sidebars, when the disclosures are combined with other information.

The disclosures required by subdivisions (a) and (b) shall be in the same language as principally used in any oral solicitation leading to the execution of the purchase by the consumer of the insurance product or annuity.

(B) A covered person has not provided the disclosures in a meaningful form if the covered person merely states to the consumer that the required disclosures are available in printed material, but does not provide the printed material when required and does not orally disclose the information to the consumer when required.

(C) With respect to disclosures made through electronic media for which paper or oral disclosures are not required, the disclosures are not meaningfully provided if the consumer may bypass the visual text of the disclosures before purchasing an insurance product or annuity.

(7) A covered person shall obtain from the consumer, at the time the consumer receives the disclosures required by subdivisions (a) and (b), or at the time of initial purchase by the consumer of the insurance product or annuity, a written acknowledgment by the consumer that the consumer received the disclosures. A covered person may permit a consumer to acknowledge receipt of the disclosures electronically or in paper form. If the disclosures required under subdivisions (a) and (b) are provided in connection with a transaction that is conducted by telephone, a covered person shall do the following:

(A) Obtain an oral acknowledgment of receipt of the disclosures and maintain sufficient documentation to show that the acknowledgment was given.

(B) Make reasonable efforts to obtain a written acknowledgment from the consumer.

(d) The disclosures described in subdivision (a) are required in advertisements and promotional material for insurance products or annuities unless the advertisements or promotional material are of a general nature describing or listing the services or products offered by the depository institution.

(Added by Stats. 2002, Ch. 203, Sec. 2. Effective January 1, 2003.)

763. (a) A depository institution shall, to the extent practicable, keep the area where the depository institution conducts transactions involving insurance products or annuities physically segregated from areas where retail deposits are routinely accepted from the general public, identify the areas where insurance products or annuity sales activities occur, and clearly delineate and distinguish, with appropriate signage, those areas from the areas where the depository institution's retail deposit-taking activities occur.

(b) Any person who accepts deposits from the public in an area where those transactions are routinely conducted in the depository institution may refer a customer who seeks to purchase an insurance product or an annuity to a qualified person who sells that product only if the person making the referral receives no more than a one-time nominal fee of a fixed dollar amount for each referral that does not depend on whether the referral results in a transaction.

(Added by Stats. 2002, Ch. 203, Sec. 2. Effective January 1, 2003.)

764. A depository institution may not permit any person to sell or offer for sale any insurance product or annuity in any part of its office or on its behalf, unless the person is at all times appropriately qualified and licensed as required by this code with regard to the specific products being sold or recommended.

(Added by Stats. 2002, Ch. 203, Sec. 2. Effective January 1, 2003.)

765. The commissioner may adopt reasonable regulations necessary to administer this article.

(Added by Stats. 2002, Ch. 203, Sec. 2. Effective January 1, 2003.)