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1996 Survey of Rhode Island Law: Legislation: Insurance Law. An Act Relating To Financial Institutions - Sale Of Insurance

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Insurance Law. *An Act Relating To Financial Institutions—Sale Of Insurance.* Provides for repeal of the historical statutory separation between banks and insurance sales. The bill is controversial since numerous issues of federal preemption exist.¹ The act allows financial institutions to sell insurance, as agents, within certain parameters. It also provides certain consumer protections and disclosures. Effective, August 7, 1996. 1996 R.I. Pub. Laws ch. 325.

This legislation (the Act) appears to be in response to the United States Supreme Court decision in *Barnett Bank v. Nelson*.² In *Barnett*, the court held that federal banking laws preempt certain state anti-affiliation laws and other state laws that “significantly interfere” with a national bank’s insurance agency powers.³ This is true even though the bank is located in that state and is otherwise subject to state law.⁴

The Act is divided into two distinct, operative sections. The latter sections repeal what is commonly referred to as an anti-affiliation provision.⁵ An anti-affiliation provision generally prohibits banks and other deposit-taking financial institutions and their subsidiaries, affiliates, agents, officers, directors and employees (financial institutions)⁶ from acting as an insurance producer.⁷ Insurance producers include insurance agents, solicitors, and with

1. *Barnett Bank v. Nelson*, 116 S. Ct. 1103 (1996); Preemption Determination, 62 Fed. Reg. 1950 (Dep’t Treasury, Office of the Comptroller of the Currency 1997).

2. 116 S. Ct. 1103 (1996).

3. *Id.* at 1109.

4. *Id.*

5. The Financial Institution Insurance Sales Act, 1996 R.I. Pub. Laws ch. 325, repealed Rhode Island General Laws section 27-3-46 (1994). Rhode Island General Laws section 27-3-46 prohibited financial institutions from being licensed to sell insurance, except for certain credit-related products. *Id.* § 27-3-46 (1994) (repealed 1996).

6. R.I. Gen. Laws § 27-58-3 (Supp. 1996). This provision defines “financial institution” as any association authorized to take deposits and make loans of money including its officers, agents, representatives, employees, affiliates and subsidiaries thereof. *Id.*

7. *Id.* § 27-3-46 (1994) (repealed 1996). Technically, section 27-3-46 of the Rhode Island General Laws did not directly prohibit financial institutions from selling insurance, but it prohibited financial institutions from obtaining a license required to sell insurance. *Id.*

certain exceptions, brokers.⁸ A companion statute, Rhode Island General Laws section 27-3-47 entitled, "Acts prohibited,"⁹ originally prohibited financial institutions from using their premises to sell or underwrite insurance, except for the sale of certain credit-related insurance products.¹⁰ The Act amends this prohibition to exempt financial institutions duly licensed as insurance producers.¹¹

The repeal of Rhode Island General Laws section 27-3-46¹² and the amendments to section 27-3-47¹³ of the Rhode Island General Laws authorize financial institutions to become licensed insurance producers, or to affiliate with or own licensed insurance producers. Additionally, licensed financial institutions can now use their premises to sell insurance to a limited extent.¹⁴

The first section of the Act provides a regulatory scheme, which sets out the terms and conditions under which a financial institution may sell insurance within the State of Rhode Island.¹⁵ The Act generally prohibits linking banking and insurance products,¹⁶ requires certain disclosures,¹⁷ restricts which financial institution employees may sell insurance,¹⁸ limits the use of financial institution customer information by insurance producers,¹⁹ requires physical separation between banking services and insurance activities²⁰ and provides remedial penalties for violations.²¹ The Commissioner of Insurance,²² who also oversees the

8. *Id.* § 27-2.3-1 (1994). Insurance producer "means a person who solicits, negotiates, effects, procures, delivers, renews, continues or binds policies of insurance or who offers advice, counsel, opinion or service in this state." *Id.* § 27-2.3-2(5). Insurance producers are required to be licensed. *Id.* § 27-2.3-3.

9. *Id.* § 27-3-47 (1994 & Supp. 1996).

10. *Id.* § 27-3-47(a) (Supp. 1996).

11. *Id.* § 27-3-47(b)(4).

12. *Id.* § 27-3-46 (1994) (repealed 1996).

13. *Id.* § 27-3-47 (1994 & Supp. 1996).

14. *Id.* § 27-58-12 (Supp. 1996). Pursuant to this provision, the physical location of insurance activities by a financial institution must be physically separated from the banking activities, but does not require a separate building. *Id.*

15. *Id.* §§ 27-58-1 to -13.

16. *Id.* § 27-58-6.

17. *Id.* § 27-58-7.

18. *Id.* § 27-58-8.

19. *Id.* § 27-58-10.

20. *Id.* § 27-58-12.

21. *Id.* § 27-58-13.

22. *Id.* § 27-2.3-2(1) (1994). The Commissioner of Insurance is also the Director of the Department of Business Regulation. *Id.*

regulation of state-chartered banks and financial institutions,²³ is authorized to promulgate regulations to effectuate the purposes of the Act and "to ensure the safety and soundness of the banking and insurance businesses."²⁴

As an anti-coercion measure, the Act prohibits financial institutions from requiring, or even implying, that insurance must be obtained from that financial institution, or from a particular insurance producer, as a condition of being offered a banking product or service.²⁵ Financial institutions are also prohibited from varying the conditions of banking products based on insurance sales or purchases.²⁶ They must disclose to the consumer that any insurance sold is not a deposit,²⁷ is not insured by the Federal Deposit Insurance Corporation,²⁸ is not guaranteed by the financial institution,²⁹ and where appropriate, disclose that such a purchase involves investment risk, including a risk of losing principal.³⁰ Financial institutions are also required to disclose, in writing, that any insurance that is required as a condition of a loan (e.g., homeowner's insurance on a mortgage), cannot by law be required to be purchased from that financial institution.³¹ Additionally, banking and insurance transactions are required to be completed independently and through separate documentation.³² Also, the Act prohibits the inclusion of insurance premium financing in the primary credit extension without the written consent of the customer.³³

The Act also prohibits persons whose responsibilities include loan or deposit transactions from soliciting for the purchase or sale of insurance,³⁴ and limits the information a financial institution may use to solicit the purchasing or selling of insurance.³⁵ Addi-

23. *Id.* § 42-14-5 (1993).

24. *Id.* § 27-58-4 (Supp. 1996).

25. *Id.* § 27-58-6.

26. *Id.* This prohibition extends to existing or prospective customers, and includes lending money, extending credit, or establishing or maintaining any type of account. *Id.*

27. *Id.* § 27-58-7(a)(i).

28. *Id.* § 27-58-7(a)(ii).

29. *Id.* § 27-58-7(a)(iii).

30. *Id.* § 27-58-7(a)(iv). The disclosure must be written in clear and concise language, and must be prominent. *Id.* § 27-58-7(a).

31. *Id.* § 27-58-7(b).

32. *Id.* § 27-58-11.

33. *Id.* § 27-58-11(b).

34. *Id.* § 27-58-8.

35. *Id.* § 27-58-10.

tionally, financial institutions must not use "non-public customer information"³⁶ to sell or solicit the purchase of insurance, or provide the information to a third party for this purpose.³⁷

Lastly, the Act provides civil penalties of up to one hundred dollars for each day a violation continues, and the Insurance Commissioner may seek injunctions against further violations in superior court.³⁸

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36. *Id.* § 27-58-10(1)(b). This refers to information derived from a record of a financial institution, but does not include the customer's name, address or telephone number. *Id.*

37. *Id.* § 27-58-10(2).

38. *Id.* § 27-58-13.