



Texas Department of Insurance

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June 20, 1996

Commissioner's Bulletin No. B-0043-96

TO: ALL INSURANCE COMPANIES, CORPORATIONS, EXCHANGES, MUTUALS, RECIPROCALs, ASSOCIATIONS, LLOYDS, HEALTH MAINTENANCE ORGANIZATIONS OR OTHER ENTITIES REGULATED BY THE TEXAS DEPARTMENT OF INSURANCE AND AUTHORIZED TO DO BUSINESS IN TEXAS; AND TO THEIR AGENTS AND REPRESENTATIVES AND THE PUBLIC GENERALLY

RE: INTERIM PROCEDURES FOR BANKS SELLING INSURANCE

On March 26, 1996, the U.S. Supreme Court ruled in *Barnett Bank of Marion County, N.A. v. Bill Nelson, Florida Insurance Commissioner*, that Section 92 of the National Bank Act preempts any state law that prevents banks from exercising the insurance powers granted under that law. Section 92 gives national banks located in a place with a population not exceeding 5000 the authority to act as agent for any insurance company authorized to do business in the state where the bank is located. Under the Court's analysis, "prevents" means "significantly impairs" or "significantly interferes with" a bank's federal law authority.

Based on this ruling, several provisions of the Texas Insurance Code may be preempted as applied to banks who wish to exercise their powers under Section 92 of the National Bank Act. Since the Texas Insurance Code as it now exists does not contemplate that banks could be authorized to sell insurance, the federal preemption accomplished by *Barnett* requires the adoption of procedures to accommodate federal law until the Texas Legislature and the United States Congress can address the differences in state and federal law and decide how to resolve them. For example, Texas law requires that a corporate agent be licensed. Articles 21.07 §2(d), 21.07-1 §4(e), 21.14 §3(c), 3.75 and 28 TAC §19.703. To obtain a license, the applicant must, among other requirements, be organized under the Texas Business Corporation Act, the Texas Limited Liability Company Act or the Texas Professional Corporation Act, and each of its officers, directors *and shareholders* must be individually licensed to sell each line of insurance which the corporate agent is licensed to sell. These requirements make it virtually impossible for a bank, which is chartered under different statutory authority and may have thousands of shareholders, to secure an agent license.

Because I must continue to carry out my responsibility to regulate the sale of insurance in Texas and the legislature will not have a chance to act on these issues for many months, I believe it is in the public interest to devise an interim procedure for allowing banks to exercise the authority they are granted under the federal law subject, to the extent possible, to the same licensing and operating requirements as other insurance agents. Interim procedures will afford oversight of a bank's insurance business until the Texas legislature can consider appropriate statutory changes.

On May 6, 1996, I directed that a draft bulletin announcing proposed interim procedures be made available to all interested parties and invited comment on the proposed procedures. I scheduled a public meeting to hear comments; notice of the meeting was published in the *Texas Register* and the meeting was held May 22, 1996. I heard comments from representatives of banking and insurance agent associations, insurance companies, individual insurance agents and consumer groups. Department staff and I appreciate the helpful input from all parties, including representatives of the Texas Department of Banking and the U.S. Comptroller of the Currency. We have considered all comments in formulating the guidelines that appear in this bulletin.

The purpose of this bulletin is to set forth the Department's **interim** procedures for the sale of insurance by banks in compliance with the preemption of state law as announced in *Barnett*. The bulletin does not attempt to answer all questions that may arise as banks enter this arena because the determination of the scope of a bank's authority is within the jurisdiction of the national bank regulator, the Office of the Comptroller of the Currency, the next session of the Texas legislature may enact a different statutory framework, and Congress may change the state regulatory role by amending the federal law.

Procedures apply to national banks, to state banks through the Texas Constitution bank parity provision, Article XVI, Section 16(c) and to state savings banks under the Texas Savings Bank Act, article 489e, Section 7.11.

These procedures are *interim* only. These procedures are not intended to and do not create a class of licensees whose status must be "grandfathered" into any statutory scheme adopted by the Texas legislature. Neither the existence of nor compliance with the interim procedures confers any property or other rights on licensed entities other than the right to conduct the business of insurance in accordance with these interim procedures until they are superseded or terminated. Moreover, these interim procedures may be modified at any time while they remain in effect.

Interim procedures for authority to sell insurance

- A bank located and doing business in a place with a population not exceeding 5000 as determined by the last decennial census may become a licensed corporate agent by complying with all licensing requirements of the Texas Insurance Code except the currently required statutory organization and the individual licensing of all officers, directors and shareholders. The bank's application must include:
 - a certified copy of its charter;
 - a list of all licensed personnel, including at least one bank officer, who will conduct the business of insurance under the bank's license;
 - a statement that the bank is located in a place with a population not exceeding 5000 as measured by the last decennial census;
 - a board resolution authorizing the applying officer to make application for a corporate agent license on behalf of the bank;
 - all other information required of applicants for a corporate agent license.

- A bank located in a place with a population not exceeding 5000 may own all or part of a licensed corporate agent which is also located and doing business in a place with a population not exceeding 5000. An agency in which a bank acquires any ownership interest must file a change of ownership notification with the Texas Department of Insurance. To advertise under the bank name or participate in the insurance operation other than by receiving profits from the insurance business, the bank must hold a corporate agent license.
- Like all other agents, a bank and its licensed employees must hold the appropriate license for each line of insurance offered by the bank.

Consumer Protections

Banks selling insurance are subject to all consumer protection provisions of Texas law, including Article 21.21 of the Texas Insurance Code and the regulations enacted thereunder. Many of the measures required to protect against possible consumer abuses and unfair competition by a lender who is also selling insurance are included in the federal anti-tying provisions of 12 U.S.C.A. §1972, and the disclosure provisions of the February 15, 1994, Interagency Statement on Retail Sales of Nondeposit Investment Products, issued jointly by federal bank regulatory agencies. Adherence to these standards will help avoid violations of state law but will not exempt banks acting as agents from compliance with state laws and regulations applicable to insurance agents.

- To avoid violations of the Insurance Code, the following guidelines should be observed:
 - **Licensed personnel.** All insurance transactions must be conducted by individually licensed agents. The licensed bank officer should be responsible for the bank's insurance business activities. The conduct of the business of insurance by unlicensed bank employees may subject the bank, the responsible officer and the employees who do insurance business to liability for doing unauthorized insurance.
 - **Authorized carriers.** Banks may offer only insurance products of insurance companies authorized to do business in Texas.
 - **No tying of banking and insurance products.** There must be no tying of banking and insurance products. Banks shall not require purchase of insurance from the bank or from a designated insurer or agent as a condition of any other bank transaction.
 - **No inducements or rebating.** A bank shall not offer any special benefits, including discounts, as an inducement to purchase insurance from the bank, nor offer any special benefit, including discounts, on insurance products in connection with the use of any other bank service or product. A bank shall not offer or confer any discount, benefit or inducement which is not specified in the policy contract.
 - **Disclosures.** To avoid customer confusion, in addition to all disclosures specifically required by the Insurance Code and the Administrative Code, the Department suggests that all advertising, promotional material and solicitation include prominent disclosure that a purchase of insurance is not a deposit, is not protected by the Federal Deposit Insurance Corporation or any other agency or instrumentality of the federal government, and is not guaranteed by the bank. At the time of sale, the banks should also provide written disclosures of how to complain to the bank about problems in the sale or solicitation of an

insurance product. Insurance products sold by banks, like insurance products sold elsewhere, must include the name, address, and consumer complaint telephone number of the Department. (See information at the end of this bulletin.)

- **No discrimination against non-affiliated companies or agents.** A bank may not condition the provision or terms of any bank service upon acquisition of insurance through a particular insurer, agent or broker; reject any required policy solely because such policy has been issued or underwritten by a person who is not associated with such bank or impose any requirement on any agent or broker not associated with the bank that is not imposed on any agent who is associated with such bank.

- **Distribution of revenue.** In distributing any revenue of the insurance, care must be taken to avoid any violation of rebating or inducement prohibitions under the Texas Insurance Code. For example, a portion of the insurance business revenue may flow to parent companies or holding companies; however, other non-licensed entities or individuals must not be awarded a portion of the insurance business revenue as a reward for referrals. This subsection does not apply to assignment of commissions for the sale of credit related products as authorized under Article 21.07 §18 of the Texas Insurance Code.

To contact the Department of Insurance

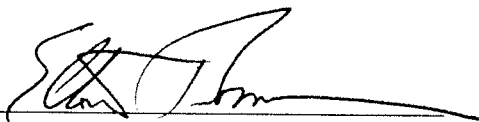
To obtain agent license applications, call (512) 322-3503.

To notify the Department of Insurance of a change in ownership of an agency, write to:

Texas Department of Insurance
Licensing Group
P.O. Box 149104
Mail Code 107-1A
Austin, Texas 78714-9104

To notify consumers of how to file a complaint with the Department of Insurance, include the following information:

Texas Department of Insurance
Consumer Protection Program (111-1A)
P.O. Box 149091
Austin, TX 78714-9091
Phone: 1-800-252-3439 In Austin, call 463-6515
Fax: 512-475-1771



Elton Bomer
Commissioner of Insurance