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**SENATE BILL 309**

**45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001**

**INTRODUCED BY**

**Carroll M Leavell**

**AN ACT**

**RELATING TO INSURANCE; AUTHORIZING A LENDING INSTITUTION THAT IS A SUBSIDIARY OF A STATE OR FEDERALLY CHARTERED BANK TO BE LICENSED TO SELL TITLE INSURANCE.**

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:**

**Section 1. Section 59A-12-10 NMSA 1978 (being Laws 1997, Chapter 48, Section 1, as amended by Laws 1999, Chapter 272, Section 7 and also by Laws 1999, Chapter 289, Section 8) is amended to read:**

**"59A-12-10. LICENSING OF LENDING INSTITUTION--  
DEFINITIONS AND EXCEPTIONS. --**

**A. As used in this section:**

**(1) "lending institution" means an institution, including its holding company, subsidiary or insurance agent, solicitor or broker affiliate, whose business**

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1 includes accepting deposits or lending money in New Mexico,  
2 including banks, savings and loan associations and credit  
3 unions; "lending institution" does not include insurance  
4 companies;

5 (2) "holding company", "subsidiary" and  
6 "affiliate" mean those terms as defined in regulations adopted  
7 by the superintendent, except "bank holding company" means  
8 that term as defined in Section 2 of the federal Bank Holding  
9 Company Act of 1956;

10 (3) "public utility" means a private employer  
11 subject to the jurisdiction of the commission that is engaged  
12 in the business of providing telecommunications, electric,  
13 gas, water or ~~[stream]~~ steam heat services to the public;

14 (4) "sell" means to engage in the  
15 solicitation, sale and placement of insurance and such other  
16 related activities conducted by an agent, solicitor or broker  
17 pursuant to the Insurance Code;

18 (5) "service contract" means a contract  
19 issued on consumer products pursuant to which the vendor or  
20 manufacturer bears the cost of the repair or replacement of  
21 the consumer product;

22 (6) "insurance premium finance agreement"  
23 means an agreement by which an insured or a prospective  
24 insured promises to pay to any person engaged in the business  
25 of premium financing, the amount advanced or to be advanced

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1 under the agreement to an insurer or to an insurance agent or  
2 broker in payment of premiums on an insurance contract; and

3 (7) "loan transaction" and any other  
4 reference to lending or extension of credit does not include  
5 loans made by broker-dealers registered in accordance with  
6 applicable state and federal securities laws that are wholly  
7 collateralized by securities.

8 B. A lending institution:

9 (1) that is a subsidiary of a state or  
10 federally chartered bank may be licensed to sell:

11 [~~(1)~~] (a) any insurance [~~except title~~  
12 ~~insurance~~] in accordance with the Insurance Code and to the  
13 extent authorized by federal and state lending institution  
14 regulators; and

15 [~~(2)~~] (b) annuities to the extent  
16 authorized by law and federal and state lending institution  
17 regulators, but nothing in this [~~paragraph~~] subparagraph shall  
18 affect the rights and obligations of nationally chartered  
19 lending institutions; and

20 (2) other than one described in Paragraph (1)  
21 of this subsection, may be licensed to sell:

22 (a) any insurance except title  
23 insurance in accordance with the Insurance Code and to the  
24 extent authorized by federal and state lending institution  
25 regulators; and

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(b) annuities to the extent authorized by law and federal and state lending institution regulators, but nothing in this subparagraph shall affect the rights and obligations of nationally chartered lending institutions.

C. A public utility or its holding company, subsidiary or affiliate shall not be licensed to sell insurance or act as a broker for insurance in New Mexico.

D. As used in Subsections E through Y of this section, "insurance" means all products defined or regulated as insurance under the Insurance Code except:

(1) credit life, credit accident and health, credit involuntary unemployment, credit casualty and credit property insurance, and when providing insurance coverage to a borrower or co-borrower or both, the following insurance products: accidental death and dismemberment, accidental disability and any other accidental casualty insurance product;

(2) insurance placed by a lending institution on the collateral pledged as security for a loan when the debtor breaches the contractual obligation to provide that insurance;

(3) private mortgage insurance and financial guarantee insurance;

(4) annuities;

(5) service contracts;

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1 (6) insurance premium finance agreements; and

2 (7) travel accident or baggage insurance.

3 E. A lending institution shall not require as a  
4 condition precedent to the extension of credit, or any  
5 subsequent renewal thereof, or the procurement of other bank  
6 services that the customer purchase insurance through a  
7 particular insurer, agent, solicitor or broker.

8 F. A lending institution shall not extend credit,  
9 lease or sell property or furnish any other service or fix or  
10 vary the consideration for any of the foregoing on the  
11 condition or requirement that the customer obtain insurance  
12 from that lending institution or from a particular insurer,  
13 agent, solicitor or broker.

14 G. A lending institution shall not impose a  
15 requirement on an insurance agent, solicitor or broker who is  
16 not associated with the lending institution that is not  
17 imposed on an insurance agent, solicitor or broker who is  
18 associated with that institution or, unless otherwise  
19 authorized by applicable federal or state law, require a  
20 debtor, insurer, agent, solicitor or broker to pay a separate  
21 charge in connection with the handling of insurance that is  
22 required under a contract.

23 H. A lending institution, except an institution  
24 that does not accept deposits that are federally insured, that  
25 sells insurance on its premises shall:

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1 (1) conspicuously post a notice that is  
2 clearly visible to anyone who may purchase insurance that  
3 insurance is not a deposit account insured by a federal  
4 deposit insuring agency;

5 (2) orally inform a prospective purchaser of  
6 insurance that insurance is not a deposit account insured by a  
7 federal deposit insuring agency; and

8 (3) provide a written disclosure to the  
9 customer containing the following statements before the sale  
10 of insurance is complete:

11 (a) insurance is not a lending  
12 institution deposit account and is not insured by its federal  
13 deposit insuring agency;

14 (b) insurance is not an obligation of  
15 or guaranteed by the lending institution;

16 (c) the customer is not required to  
17 obtain insurance from a particular lending institution, agent,  
18 solicitor or broker; and

19 (d) where applicable, insurance  
20 involves investment risk, including potential loss of  
21 principal.

22 I. The sale of insurance by a lending institution,  
23 except an institution that does not accept deposits that are  
24 federally insured, shall be effectuated in such a manner so as  
25 to avoid confusion between federally insured deposit products

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1 offered by a lending institution and the nonfederally insured  
2 insurance sold. Insurance advertisements and other sales  
3 material shall be accurate and not misleading or deceptive.  
4 Insurance advertising and other sales materials regarding  
5 insurance shall include disclosures that contain language that  
6 is the same or substantially similar to the following:

7 (1) insurance is not a lending institution  
8 deposit and is not insured by its federal deposit insuring  
9 agency;

10 (2) insurance is not an obligation of or  
11 guaranteed by the lending institution; and

12 (3) where applicable, insurance involves  
13 investment risk, including potential loss of principal.

14 J. Insurance operations may be conducted by the  
15 lending institution, its holding company, an affiliate or  
16 subsidiary of either or through a separate corporate entity or  
17 partnership.

18 K. A lending institution shall not provide  
19 nonpublic customer information to a third party for the  
20 purpose of another's sale of insurance without written  
21 authorization from the customer. As used in this subsection,  
22 "nonpublic customer information" means information regarding a  
23 person that has been derived from a record of a financial  
24 institution. "Nonpublic customer information" does not  
25 include customer names and addresses and telephone numbers or

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1 information about an individual that could be obtained from an  
2 unaffiliated credit bureau that is subject to the federal Fair  
3 Credit Reporting Act by a third party that is not entering  
4 into a credit relationship with the individual but has a  
5 legitimate need for the information in connection with a  
6 business transaction with the individual, except that  
7 "nonpublic customer information" includes information  
8 concerning insurance premiums, the terms and conditions of  
9 insurance coverage, insurance expirations, insurance claims  
10 and insurance history of an individual. Notwithstanding any  
11 provision in this section to the contrary, compliance with  
12 Section 603 of the federal Fair Credit Reporting Act by a  
13 lending institution shall be deemed to be full compliance with  
14 this subsection. "Nonpublic customer information" does not  
15 include material excluded from the definition of "consumer  
16 report" by Section 603(d)(2)(A) of the federal Fair Credit  
17 Reporting Act.

18 L. Records relating to the insurance sales of a  
19 lending institution, including files relating to and  
20 reflecting customer complaints, shall be kept separate and  
21 apart from all records relating to the banking transactions of  
22 the lending institution. Records pertaining to insurance  
23 activities of the lending institution or copies of those  
24 records shall be subject to the inspection and audit by the  
25 insurance division. If the division determines to inspect and

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1     audit the records relating to the insurance activities of a  
2     lending institution, that institution shall make available to  
3     the division, at a location in New Mexico the lending  
4     institution's records and knowledgeable personnel to assist in  
5     the interpretation of the lending institution's records.

6             M. A lending institution, or officer, director or  
7     employee acting on behalf of the institution, who qualifies  
8     for issuance of an agent's, solicitor's or broker's license  
9     pursuant to the Insurance Code may be issued an agent or  
10    broker license authorizing the sale of insurance.

11            N. A lending institution shall not pay a  
12    commission or other valuable consideration to a person for  
13    services of an insurance agent, solicitor or broker unless the  
14    person performing the service holds a valid insurance license  
15    for the class of insurance for which the service is rendered  
16    or performed at the time the service is performed. No person,  
17    other than a person properly licensed in accordance with the  
18    Insurance Code, shall accept any commission or valuable  
19    consideration for those services.

20            O. A lending institution shall not offer an  
21    inducement to a customer to purchase insurance from the  
22    institution other than as plainly expressed in the insurance  
23    policy. Investment programs, memberships or other programs  
24    designed or represented to waive, reduce, pay, produce or  
25    provide funds to pay all or part of the cost on insurance are

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1 an illegal inducement.

2 P. A lending institution may not in the same  
3 transaction solicit the purchase of insurance from a customer  
4 who has applied for a loan from the institution before the  
5 time the customer has received a written commitment from the  
6 lending institution with respect to that loan, or, in the  
7 event that no written commitment has been or will be issued in  
8 connection with the loan, a lending institution shall not  
9 solicit the purchase of insurance before the time the customer  
10 receives notification of approval of the loan by the lending  
11 institution and the institution creates a written record of  
12 the loan approval. This subsection shall not apply when a  
13 lending institution contacts a customer in the course of  
14 direct or mass marketing to a group of persons in a manner  
15 that bears no relation to the customer's loan application or  
16 credit decision.

17 Q. The sale of insurance by a lending institution,  
18 credit union, sales finance company, insurance company,  
19 insurance agent, an institution that grants or arranges  
20 consumer credit or an institution that solicits or makes loans  
21 in New Mexico may be conducted by a person whose  
22 responsibilities include loan transactions or other  
23 transactions involving the extension of credit so long as the  
24 person who is primarily responsible for making the specific  
25 loan or extension of credit is not the same person engaged in

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1 the sale of insurance for that same transaction; provided,  
2 however, that the provisions of this subsection shall not  
3 apply to:

4 (1) a broker or dealer registered under the  
5 federal Securities Exchange Act of 1934; or

6 (2) a lending institution location that has  
7 three or fewer persons with lending authority.

8 R. If insurance is required as a condition of  
9 obtaining a loan, the credit and insurance transactions shall  
10 be completed independently and through separate documents.

11 S. A loan for premiums on required insurance shall  
12 not be included in the primary credit without the written  
13 consent of the customer, which may be evidenced by compliance  
14 with the federal Truth in Lending Act.

15 T. A person who engages in loan transactions at  
16 any office of, or on behalf of, a lending institution or any  
17 other agent, employee, director or officer of the lending  
18 institution may refer a customer who seeks to purchase, or  
19 seeks an opinion or advice on any insurance product, to a  
20 person, or may give the phone number of a person, who sells or  
21 provides opinions or advice on such products only if the  
22 customer expressly requests the referral; the person who  
23 engages in loan transactions does not solicit the customer  
24 request; and the person who engages in the loan transaction  
25 does not receive any compensation for the referral.

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1           U. The location for the sale of insurance on the  
2 premises of a lending institution, except an institution that  
3 does not accept deposits that are federally insured, to the  
4 extent practicable shall be:

5                   (1) physically located to be distinct from  
6 the lending activities of the institution; and

7                   (2) clearly and conspicuously signed to be  
8 easily distinguishable by the public as separate and distinct  
9 from the lending activities of the institution.

10           V. Signs and other informational material  
11 concerning the availability of insurance products from the  
12 lending institution or third party soliciting the purchase of  
13 or selling insurance on the premises of the lending  
14 institution shall not be displayed to the extent practicable  
15 in an area where application for loans or other extensions of  
16 credit are being taken or closed.

17           W. Nothing in this section grants a lending  
18 institution, including its holding company, subsidiary or  
19 affiliate, except those enumerated in this section, the power  
20 to sell insurance that was not allowed prior to July 1, 1997.

21           X. Nothing in this section precludes the  
22 superintendent from adopting reasonable rules and regulations  
23 for the purposes of the administration of the provisions of  
24 this section, including rules and regulations for written  
25 disclosures.

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Y. If any of the provisions of this section are preempted by federal law, then those preempted provisions shall not apply to any person or lending institution subject to the provisions of this section."

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.