HOUSE RESEARCH ORGANIZATION bill analysis | 5/6/97 | HB 3391 Smithee (CSHB 3391 by Averitt)

SUBJECT: Allowing banks to sell insurance in communities of 5,000 or less

COMMITTEE: Insurance — committee substitute recommended

VOTE: 7 ayes — Smithee, Van de Putte, Averitt, Bonnen, Burnam, Olivo, Wise

0 nays

2 present, not voting — Eiland, G. Lewis

WITNESSES: For — Karen Neeley, Independent Bankers Association of Texas; Tyson Payne and Ken Tooley, Texas Association of Life Underwriters; Wade Spillman, Texas Association of Insurance Agents;

Against — Joseph Boggins, First State Bank of Rio Vista; John Heasley, Texas Bankers Association

On — Edna Butts, Texas Department of Insurance

BACKGROUND: Texas law prevents banks from being licensed to sell insurance. Sec. 92 of the federal National Banking Act allows national banks to sell insurance in places with a population of 5,000 or less, under rules and regulations prescribed by the Comptroller of the Currency. In March 1996, the U.S. Supreme Court ruled, in *Barnett Bank of Marion County, N.A. v. Bill Nelson, Florida Insurance Commissioner* (116 S. Ct. 1103), that the federal law preempted a Florida statute barring banks from selling most types of insurance.

DIGEST: CSHB 3391 would allow state and national banks, including savings banks, branch banks, and subsidiary banks, doing business in a place with a population of 5,000 or less to sell insurance. At least one bank officer and bank employee selling insurance would have to be licensed by the Texas Department of Insurance (TDI). Banks and bank employees holding licenses to sell insurance would be required to comply with TDI licensing requirements.

The bill would prohibit banks from engaging in unfair methods of competition and practices by:

- prohibiting banks from requiring the purchase of insurance as a condition of extending or renewing credit, leasing or selling property or furnishing services;

- rejecting a required insurance policy because the agent was not associated with the bank; or

- imposing any requirements on an agent or broker not associated with the bank that it would not place on its own agents.

In addition, banks would be required to fully disclose the bank's affiliation with the sale of insurance on its premises and that insurance it sells is not insured by the Federal Deposit Insurance Corporation and could involve risk, including loss of principal, where appropriate. The bill would specify the content of the disclosure forms to be used by banks in selling insurance or insurance products.

The bill would also prohibit a bank employee involved in a loan transaction from also being involved in selling insurance in connection with the loan unless the bank's total assets were $40 million or less.

The bill would prevent a bank from disclosing private information about a loan to a third party to use to try to sell insurance or using the private information to sell insurance without customer approval.

The bill would authorize the insurance commissioner to adopt rules in line with federal law allowing banks to sell insurance.

The bill would take effect September 1, 1997.

SUPPORTERS SAY:

CSHB 3391 would put in statute Texas Department of Insurance temporary rules issued last year allowing banks located in places of 5,000 or less to sell insurance. TDI issued the temporary rules after the March 1996 U.S. Supreme Court ruling, *Barnett Bank of Marion County, N.A. v. Bill Nelson,* *Florida Insurance Commissioner*, affirmed that federal law allowing banks located in places of 5,000 or less to sell insurance supersedes contrary state law. This bill would simply put those rules into law, along with a range of protections to prevent unfair and anticompetitive practices.

The bill would put in place necessary consumer safeguards to avoid any confusion that might lead bank customers to believe that there is any connection between getting a bank loan and purchasing insurance.

The bill also would clarify the intent of the U.S. Supreme Court decision, and its interpretation by other courts, including the Fifth U.S. Circuit Court of Appeals that covers Texas, that national banks have no power to act as insurance agents in places of over 5,000 population.

The bill would allow bank loan officers to sell insurance only in the smallest banks because such banks have so few employees they might otherwise be prevented from being able to take advantage of the law.

OPPONENTS SAY:

No bank loan officer should be able to sell insurance connected with a loan they are making. No matter how much notification the bank is required to post and disclose, consumers may get confused and believe that somehow they must purchase insurance in order to get a loan. Allowing the same person make the loan and sell insurance could lead to conflicts of interest.

OTHER OPPONENTS SAY:

CSHB 3391 would prohibit a bank located in a place of 5,000 or less from opening up branch offices in larger communities and selling insurance. The TDI temporary rules and the bill are overly restrictive in interpreting sec. 92 of the National Banking Act. The Comptroller of the Currency, the agency that regulates national banks, has indicated that the Texas proposal is too narrowly tailored in this regard, which could cause it to be preempted by federal regulations.

The bill would also prohibit a loan officer in all but about 100 of the nearly 900 banks in Texas from acting as both the loan officer and an insurance agent on the same loan. The National Banking Act does not limit who is authorized to sell insurance, and this provision could also be challenged by the Comptroller of the Currency. The bill's consumer protection provisions are sufficient to ensure that no ties can be made to issuing a loan and insurance without adding this additional restriction.

NOTES: The committee substitute made technical changes to the original version of the bill, including specifying that the word "place" be used instead of city or county to conform with the sec. 92 of the National Banking Act, specified that no bank loan officer could make a loan and sell insurance connected with the loan, and required privacy of bank customer records.

The companion bill, SB 1900 by Sibley, has been referred to the Senate Economic Development Committee.