



# NEWS RELEASE

Comptroller of the Currency  
Administrator of National Banks

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## **OCC Concludes that GLBA and Barnett Decision Show Parts of Massachusetts Law do not Apply to National Banks**

WASHINGTON--The Office of the Comptroller of the Currency concluded in an opinion that will be published in the *Federal Register* that some provisions of a Massachusetts insurance law would be preempted under the Gramm-Leach-Bliley Act (GLBA) and therefore would not apply to national banks.

The Massachusetts Bankers Association had asked the OCC for an opinion on whether three provisions of a Massachusetts law relating to the sale of insurance by banks apply to national banks. The OCC published a [notice](#) of this request in the Federal Register on July 14, 2000 and received 110 comments.

In reaching its conclusion, the OCC applied the standards contained in Section 104 of the GLBA. Section 104 provides that, in accordance with the legal standards for preemption set forth in the U.S. Supreme Court's *Barnett* decision, no state may prevent or significantly interfere with the ability of a depository institution or an affiliate to sell, solicit or cross-market insurance. Section 104 also protects from preemption 13 different types of state law provisions.

As required by Section 104 and *Barnett*, the OCC based its conclusions on the substantive effects of a particular state provision on a national bank's ability to conduct its insurance business.

The agency also specifically noted that none of its conclusions on the Massachusetts law would result in a finding that any provision of the model Unfair Trade Practices Act developed by the National Association of Insurance Commissioners would be preempted.

Specifically, the OCC determined that the following provisions of Massachusetts law frustrate the ability of national banks to solicit and cross-market products, authorities specifically referenced in section 104 of GLBA and recognized by the Supreme Court as essential to the conduct of modern business:

- A provision prohibiting non-licensed personnel from referring a prospective customer to a licensed insurance agent or broker except upon an inquiry initiated by the customer (the Massachusetts Referral Prohibition);
- A provision prohibiting a bank from compensating an employee for such a referral (the Massachusetts Referral Fee Prohibition); and

- A provision prohibiting a bank from telling a loan applicant that insurance products are available through the bank until the application is approved (the Massachusetts Waiting Period Requirement).

It is OCC's opinion that the Massachusetts Referral Prohibition, the Massachusetts Referral Fee Prohibition, and the Massachusetts Waiting Period Requirement would be preempted under the *Barnett* standards incorporated in GLBA section 104.

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The OCC charters, regulates and examines approximately 2,200 national banks and 52 federal branches of foreign banks in the U.S., accounting for more than 54 percent of the nation's banking assets. Its mission is to ensure a safe and sound and competitive national banking system that supports the citizens, communities and economy of the United States.