

Chapter 686A of NAC

LCB File No. T001-05

**PROPOSED TEMPORARY REGULATION OF THE DIVISION
OF INSURANCE OF THE DEPARTMENT
OF BUSINESS AND INDUSTRY**

**NOTICE OF WORKSHOPS TO SOLICIT COMMENTS ON
PROPOSED TEMPORARY REGULATION**

The Department of Business and Industry, Division of Insurance (Division), is proposing new temporary regulations pertaining to a broker's duties to clients. A workshop has been set for 9:00 a.m., on February 3, 2005, at the offices of the Division, 788 Fairview Drive, Suite 300, Carson City, Nevada 89701. Interested parties may also participate through a simultaneous video-conference conducted at the Bradley Building, 2501 East Sahara Avenue, Manufactured Housing Division Conference Room, 2nd Floor, Las Vegas, Nevada 89104. The purpose of the workshop is to solicit comments from interested persons on the following general topics addressed in the proposed temporary regulations.

1. Broker's duties to clients: (a) a broker's duty against self-dealing; (b) a broker's duty to disclose compensation to a client; and (c) a broker's duty to disclose information regarding quotes to a client.

A copy of this notice and the proposed regulations will be on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the proposed regulations will be available at the offices of the Division, 788 Fairview Drive, Suite 300, Carson City, Nevada 89701, and 2501 East Sahara Avenue, Suite 302, Las Vegas, Nevada 89104, and in all counties in which an office of the agency is not maintained, at the main public library, for inspection and copying by members of the public during business hours. This notice and the text of the proposed regulations are also available on the **Division of Insurance Web site** on the Internet at **<http://doi.state.nv.us>**. Copies will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

This Notice of Workshop to Solicit Comments on Proposed Regulations has been sent to all persons on the agency's mailing list for administrative regulations and posted at the following locations:

Department of Business and Industry
Division of Insurance
788 Fairview Drive, Suite 300
Carson City, NV 89701

Department of Business and Industry
Division of Insurance
2501 East Sahara Avenue, Suite 302
Las Vegas, NV 89104

Legislative Counsel Bureau
Capitol Complex
Carson City, NV 89710

Blasdel Building
Capitol Complex
Carson City, NV 89710

State Capitol
Capitol Complex
Carson City, NV 89710

Capitol Press Room
State Capitol Basement
Carson City, NV 89710

County Clerk
Courthouse
Carson City, NV 89710

Nevada State Library & Archives
Capitol Complex
Carson City, NV 89710

Carson City Library
900 North Roop Street
Carson City, NV 89701

Churchill County Library
553 South Maine Street
Fallon, NV 89406

Las Vegas Library
833 Las Vegas Blvd. North
Las Vegas, NV 89101

Douglas County Library
1625 Library Lane
P.O. Box 337
Minden, NV 89423

Elko County Library
720 Court Street
Elko, NV 89801

Goldfield Public Library
Fourth & Cook Street
P.O. Box 430
Goldfield, NV 89013

Eureka Branch Library
10190 Monroe Street
P.O. Box 293
Eureka, NV 89316

Humboldt County Library
85 East 5th Street
Winnemucca, NV 89445

Battle Mountain Branch Library
P.O. Box 141
Battle Mountain, NV 89820

Lincoln County Library
93 Main Street
P.O. Box 330
Pioche, NV 89043

Lyon County Library
20 Nevin Way
Yerington, NV 89447

Mineral County Library
First & A Street
P.O. Box 1390
Hawthorne, NV 89415

Tonopah Public Library
171 Central Street
P.O. Box 449
Tonopah, NV 89049

Pershing County Library
1125 Central Avenue
P.O. Box 781
Lovelock, NV 89419

Storey County Library
95 South R Street
P.O. Box 14
Virginia City, NV 89440

Washoe County Library
ATTN: Reference
P.O. Box 2151
Reno, NV 89505-2151

White Pine County Library
950 Campton Street
Ely, NV 89301

Clark County Library
1401 East Flamingo Road
Las Vegas, NV 89119

Members of the public who are disabled and require special accommodations or assistance at the hearing are requested to notify the Commissioner's secretary in writing at 788 Fairview Drive, Suite 300, Carson City, Nevada 89701, or by calling no later than 5 working days prior to the hearing, (775) 687-4270, extension 260.

NOTICE OF INTENT TO ACT UPON REGULATIONS

Notice of Hearing for the Adoption of Regulations of the Department of Business and Industry, Division of Insurance

The Department of Business and Industry, Division of Insurance (Division), will hold a public hearing, at 9:00 a.m., on February 3, 2005, immediately following a public workshop, at the offices of the Division, 788 Fairview Drive, Suite 300, Carson City, Nevada 89701. Interested persons may also participate through a simultaneous video-conference conducted at the Bradley Building, 2501 East Sahara Avenue, Manufactured Housing Division Conference Room, 2nd Floor, Las Vegas, Nevada 89104. The purpose of the hearing is to receive comments from all interested persons regarding the adoption of:

TEMPORARY REGULATION CONCERNING BROKER'S DUTIES TO CLIENT: DUTY AGAINST SELF-DEALING, DUTY TO DISCLOSE COMPENSATION AND DUTY TO DISCLOSE INFORMATION REGARDING QUOTES; VIOLATIONS

The following information is provided pursuant to the requirements of NRS 233B.0603:

1. The proposed temporary regulation is based on a need to ensure that a client of a broker has an increased opportunity to be better informed about the nature of the insurance transaction through which the client may purchase an insurance product with the assistance of the broker. The purpose of the proposed temporary regulation is to provide more information to a client by requiring the broker to disclose certain information to the client prior to the client's purchase of the insurance product.

2. In general, the information the broker would be required to disclose to a client includes information about the compensation the broker would receive as a result of the client's purchase of the insurance product. The broker would also be required to disclose the name of each insurer from whom the broker requested a quote, and whether the insurer provided a quote or declined to give a quote.

3. Estimated economic effect of the regulation:

On the business which is to be regulated: There would be an initial additional, but minimal, cost to the business. However, there would be minimal to no additional cost to the business in the long term.

On the public: There would be no adverse economic effects to the public. There would be an economic benefit to the public based on a client's increased opportunity to consider more information about the nature of the insurance transaction when purchasing insurance with the assistance of a broker.

4. Estimated cost to the agency for enforcement of the proposed regulation: No additional cost to the agency.
5. The Division is not aware of any overlap or duplication of the regulation with any state, local or federal regulation that is in effect at this time.
6. The proposed regulation is not pursuant to federal regulation.
7. If the proposed regulation includes provisions which are more stringent than a federal regulation that regulates the same activity, a summary of such provisions: Not applicable.
8. The proposed regulation does not establish a new fee or increase an existing fee.

Persons wishing to comment upon the proposed action of the Division may appear at the scheduled public hearing or may address their comments, data, views or arguments, in written form, to the Division, 788 Fairview Drive, Suite 300, Carson City, Nevada 89701. Written submissions must be received by the Division on or before January 27, 2005. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Division may proceed immediately to act upon any written submissions.

A copy of this notice and the proposed regulation will be on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the proposed regulation will be available at the offices of the Division, 788 Fairview Drive, Suite 300, Carson City, Nevada 89701, and 2501 East Sahara Avenue, Suite 302, Las Vegas, Nevada 89104, and in all counties in which an office of the agency is not maintained, at the main public library, for inspection and copying by members of the public during business hours. This notice and the text of the proposed regulation are also available in the **State of Nevada Register of Administrative Regulations** which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653 and on the Internet at <http://www.leg.state.nv.us>. Copies will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

Upon adoption of any regulation, the agency, if requested to do so by an interested person, either before adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption, and incorporate therein its reason for overruling the consideration urged against its adoption.

This notice of hearing has been posted at the following locations:

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Division of Insurance
788 Fairview Drive, Suite 300
Carson City, NV 89701

Department of Business and Industry
Division of Insurance
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720 Court Street
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Fourth & Cook Street
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Goldfield, NV 89013

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10190 Monroe Street
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Winnemucca, NV 89445

Battle Mountain Branch Library
P.O. Box 141
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Lincoln County Library
93 Main Street
P.O. Box 330
Pioche, NV 89043

Mineral County Library
First & A Street
P.O. Box 1390
Hawthorne, NV 89415

Lyon County Library
20 Nevin Way
Yerington, NV 89447

Tonopah Public Library
171 Central Street
P.O. Box 449
Tonopah, NV 89049

Pershing County Library
1125 Central Avenue
P.O. Box 781
Lovelock, NV 89419

Storey County Library
95 South R Street
P.O. Box 14
Virginia City, NV 89440

Washoe County Library
ATTN: Reference
P.O. Box 2151
Reno, NV 89505-2151

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950 Campton Street
Ely, NV 89301

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LCB File No. T001-05

**PROPOSED TEMPORARY REGULATION OF THE DIVISION
OF INSURANCE OF THE DEPARTMENT
OF BUSINESS AND INDUSTRY**

Proposed Temporary Regulation Concerning Broker's Duties To Client: Duty Against Self-Dealing, Duty To Disclose Compensation and Duty To Disclose All Quotes; Violations.

Authority: NRS 679B.130 and NRS 233B.063(3)

Section 1. Chapter 686A of NAC is hereby amended by adding thereto the provisions set forth as Sections 2 to 12, inclusive.

Broker's Duties To Client

Sec. 2 *Definitions. (NRS 679B.130, 686A.015, 686A.230(3)) For purposes of Sections 1 to 12, inclusive, the words and terms defined in Sections 3 to 8, inclusive, shall be applied.*

Sec. 3 *"Affiliate" defined. (NRS 679B.130, 686A.015, 686A.230(3)) "Affiliate" means a person that controls, is controlled by, or is under common control with the broker.*

Sec. 4 *"Broker" defined. (NRS 679B.130, 686A.015, 686A.230(3)) "Broker" has the meaning ascribed to it in NRS 683A.321. However, for purposes of Sections 1-12, it shall not include:*

(a) an insurance producer who: (1) does not receive compensation from a client for an insurance transaction; or who does not otherwise represent, purport to represent, or allow a reasonable client to believe that he represents a client in an insurance transaction or potential insurance transaction, and (2) who discloses to a client prior to an insurance transaction that he acts on behalf of an insurer that has appointed him in connection with the insurance transaction and that he may provide services to the client on behalf of the insurer; or

(b) an insurance producer who acts only as: (1) an intermediary between an insurer and the client's broker, for example, a managing general agent, or wholesale broker; or (2) a reinsurance intermediary.

Sec. 5 *"Client" defined. (NRS 679B.130, 686A.015, 686A.230(3)) "Client" means a natural person, corporation, association, partnership or other legal entity who is an insured, or one who seeks the advice of a broker about becoming an insured or receiving a quotation. For purposes of Sections 1-12, a client does not include one that is merely:*

(a) A participant or beneficiary of an employee benefit plan; or

(b) Covered by a group or blanket insurance policy or group annuity contract sold, solicited or negotiated by the broker or affiliate.

Sec. 6 *“Represents” defined. (NRS 679B.130, 686A.015, 686A.230(3)) “Represents” means to act on behalf of a client in relation to an insurance transaction or potential insurance transaction.*

Sec. 7 *“Insurance Transaction” defined. (NRS 679B.130, 686A.015, 686A.230(3)) “Insurance transaction” shall be defined as set forth in NRS 679A.130, and shall also include the procurement or the potential procurement of insurance, or the giving of advice concerning matters related to the nature and type of insurance policies, coverage, terms, duration, premiums or premium payment arrangements.*

Sec. 8 *“Compensation” defined. (NRS 679B.130, 686A.015, 686A.230(3)) “Compensation” means all types of commissions, fees and other forms of remuneration as otherwise defined in the Insurance Code, and shall also include payments, commissions, fees, awards, overrides, bonuses, contingency commission arrangements, loans, stock options, gifts, trips, prizes, placement service agreements, market service agreements or any other form of valuable consideration offered as an incentive, whether or not payable pursuant to a written agreement.*

Sec. 9 *Scope. (NRS 679B.130, 686A.015, 686A.230(3)) The scope of Sections 1 to 12 includes all insurance producers required to be licensed as producers in Nevada, performing in the capacity of a broker as defined in Section 3.*

Sec. 10 *Broker’s Duties To Client. (NRS 679B.130, 686A.015, 686A.230(3)) In addition to other provisions in the Insurance Code that define a broker’s duties and as may otherwise be imposed on a broker by traditional agency principles under Nevada law, a broker shall also owe the following duties to a client when representing that client in an insurance transaction or potential insurance transaction.*

(a) Duty against self-dealing: A broker must not unreasonably place his own financial or other interest above that of his client’s interest in an insurance transaction or potential insurance transaction.

(b) Duty to disclose compensation: Prior to or simultaneously with a client’s purchase of the insurance, in addition to any other written disclosures required in the Insurance Code, a broker shall make the disclosures set forth in (1)-(8) below, to the client. These disclosures must be made in a written disclosure statement, signed and dated by the client and the broker, clearly indicating the client’s understanding of the contents of the disclosure statement prior to or simultaneously with the client’s purchase of the insurance or any other insurance transaction that would entitle the broker to compensation as a result of his representation of the client. In the case of a purchase over the telephone or electronic means, the client’s understanding of the disclosure must be documented by the broker followed by a written disclosure statement signed and dated by the client and the broker. Required disclosures:

(1) That the broker may receive compensation for the sale of the insurance to the client from an insurer or other source including, but not limited to, excess insurers, surplus lines or reinsurance entities, risk retention groups, captives, underwriting entities or other

alternative markets. The broker's receipt of compensation must not otherwise be prohibited by other provisions of the Insurance Code;

(2) The name and identity of the source of the compensation, and whether the broker has any ownership interest in the entity providing the compensation;

(3) The nature and form of the compensation;

(4) The amount or value of the compensation;

(5) If the amount of the compensation is not known at the time of the disclosure, then the method of calculating such compensation, including any contingent compensation and, if possible, a reasonable estimate of the amount;

(6) That the compensation received by the broker may differ depending upon the product and insurer;

(7) That the broker may receive additional compensation from the insurer based upon other factors, such as premium volume placed with a particular insurer and loss or claims experience; and

(8) The name and identity of any other business entity reasonably known to the broker that will receive compensation for assisting the broker in the sale of the insurance to the client, including the source, nature, amount or value, or the method of calculating such compensation.

(c) Duty to disclose quotes. Prior to a client's purchase of insurance, a broker shall disclose to the client the name of each insurer, or any other source, from which the broker requested a quote, and whether the insurer or other source provided a quote or declined to provide a quote.

Sec. 11 Violations. *(NRS 679B.130, 686A.015, 686A.230(3)) A broker who does not comply with the provisions of Section 10, violates NRS chapter 683A and NRS chapter 686A, and shall be subject to penalties as set forth in the Insurance Code, including those specified in NRS 683A.451, 683A.461, and NRS 686A.183.*

Sec. 12 Effective date. *(NRS 679B.130, 686A.015, 686A.230(3)) Pursuant to NRS 233B.0633, as a temporary regulation, Sections 1-12 become effective as of the date filed with the Secretary of State, and remains in effect until November 1, 2005, unless otherwise replaced or repealed prior to that date.*