

**ADOPTED REGULATION OF
THE COMMISSIONER OF INSURANCE**

LCB File No. R076-05

Effective February 23, 2006

EXPLANATION – Matter in *italics* is new; matter in brackets [~~omitted material~~] is material to be omitted.

AUTHORITY: §§1-18, NRS 679B.130.

A REGULATION relating to annuities; providing requirements for the solicitation of annuities; and providing other matters properly relating thereto.

Section 1. Chapter 688A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 17, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 17, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 11, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Annuity” has the meaning ascribed to it in NRS 688A.020.*

Sec. 4. *“Buyer’s guide” means a current guide relating to annuities that is published by the National Association of Insurance Commissioners for use by consumers.*

Sec. 5. *“Determinable elements” means the elements under an annuity that are guaranteed at the time the annuity is issued, but the values of which cannot be determined until after the annuity is issued. A determinable element is calculated using other determinable elements or a combination of determinable elements and guaranteed elements. The term includes, without limitation, premiums, benefits, values, noninterest-based credits, credited interest rates, bonuses and charges.*

Sec. 6. *“Generic name” means a term that is descriptive of an annuity, including, without limitation, the term “single premium deferred annuity.”*

Sec. 7. *“Guaranteed elements” means the premiums, benefits, values, credits or charges under an annuity that are guaranteed and determined at the time the annuity is issued.*

Sec. 8. *“Insurer” has the meaning ascribed to it in NRS 679A.100.*

Sec. 9. *“Nonguaranteed elements” means the elements under an annuity the values of which are not guaranteed at the time that the annuity is issued. A nonguaranteed element is calculated using at least one other nonguaranteed element. The term includes, without limitation, premiums, benefits, values, noninterest-based credits, credited interest rates, bonuses and charges.*

Sec. 10. *“Producer of insurance” has the meaning ascribed to it in NRS 679A.117.*

Sec. 11. *“Recommendation” means advice provided by an insurer or a producer of insurance to a prospective purchaser of an annuity concerning the purchase or exchange of one or more annuities.*

Sec. 12. 1. *Except as otherwise provided in subsections 2 and 3, sections 2 to 17, inclusive, of this regulation apply to:*

- (a) Any solicitation, negotiation or procurement of annuities occurring within this State;*
- (b) Any issuer of annuities, including, without limitation, fraternal benefit societies; and*
- (c) Individual deferred annuities.*

2. *Sections 2 to 17, inclusive, of this regulation do not apply to:*

(a) Annuities used to pay for:

(1) An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act of 1974, 29 U.S.C. §§ 1001 et seq.

(2) A plan established or maintained by an employer and authorized by 26 U.S.C. § 401(a), 401(k), 403(b), 408(k) or 408(p).

(3) A governmental plan, as defined in 26 U.S.C. § 414(d).

(4) A church plan, as defined in 26 U.S.C. § 414(e).

(5) A government or church welfare benefit plan.

(6) A deferred compensation plan of a state or local government or a tax exempt organization authorized by 26 U.S.C. § 457.

(7) A nonqualified deferred compensation arrangement.

(8) A settlement or an assumption of liabilities associated with litigation or any other process for dispute resolution related to a claim for compensation for personal injury.

(9) A prepaid funeral contract.

(10) A structured settlement annuity.

(11) A funding agreement.

(b) Immediate annuity contracts that do not contain any nonguaranteed elements.

(c) Annuities purchased from an insurer in response to a direct-response solicitation and where the purchase was not based on a recommendation from the insurer.

3. Notwithstanding the provisions of subsection 2, sections 2 to 17, inclusive, of this regulation apply to any annuity that is used to pay for a plan or arrangement which is paid for solely by contributions made by an employee on a pretax or after-tax basis and where participants are able to choose from among two or more fixed annuity providers.

4. As used in this section:

(a) “Funding agreement” means an agreement under which an insurer accepts and accumulates money for the purpose of making one or more future payments to a person that are not based on mortality or morbidity contingencies.

(b) “Structured settlement annuity” means:

(1) A qualified funding asset that meets the requirements of section 130(d) of the Internal Revenue Code, 26 U.S.C. § 130(d); or

(2) An annuity that meets the requirements to be a qualified funding asset pursuant to section 130(d) of the Internal Revenue Code, 26 U.S.C. § 130(d), except that the annuity is not owned by an assignee under qualified assignment.

Sec. 13. *1. Except as otherwise provided in subsection 2, before an insurer or a producer of insurance recommends to a person the purchase of an annuity, or the exchange of an annuity that results in any additional insurance transaction, the insurer or producer of insurance must make reasonable efforts to obtain:*

(a) The financial and tax status of the person;

(b) The investment objectives of the person; and

(c) Any other information that the insurer or producer of insurance determines would be useful in making such a recommendation.

2. Before an insurer or a producer of insurance recommends to a person the purchase of a variable annuity, or the exchange of a variable annuity that results in any additional insurance transaction, the insurer or producer of insurance must make reasonable efforts to obtain:

(a) The information described in subsection 1; or

(b) The information described in Conduct Rule 2310 of the National Association of Securities Dealers.

3. Except as otherwise provided in subsection 4, if an insured is harmed financially because an insurer or a producer of insurance failed to comply with subsection 1 or 2, the Commissioner may require the insurer or producer of insurance to take corrective action.

4. An insurer or a producer of insurance is not responsible for any financial damages incurred by an insured relating to the purchase or exchange of an annuity that was recommended by the insurer or producer of insurance if the insured:

(a) Refused to provide to the insurer or producer of insurance the information described in subsection 1 or 2;

(b) Provided to the insurer or producer of insurance information that was incomplete or inaccurate; or

(c) Entered into an insurance transaction that was not based on the recommendation of the insurer or producer of insurance.

Sec. 14. *Each insurer shall establish and maintain policies and procedures for the manner in which producers of insurance that it employs or with which it has entered into a contract recommend annuities offered by the insurer to persons and periodically review those producers of insurance for compliance with such policies and procedures. The insurer is responsible for the acts of such producers of insurance when the producers of insurance recommend the purchase of an annuity or the exchange of an annuity that results in any additional insurance transaction.*

Sec. 15. 1. *If a person purchases an annuity that was recommended to him by an insurer or producer of insurance, the insurer or producer of insurance that made the recommendation shall:*

(a) Maintain all records or information that it obtained from the person for making the recommendation for at least 7 years after the date on which the annuity was purchased; and

(b) Make the records or information described in paragraph (a) available to the Commissioner, upon request, during that period.

2. *The records and information that are described in subsection 1 may be maintained by an insurer or producer of insurance on paper, on photographic, microprocessed, magnetic, mechanical or electronic media or by any other process that accurately maintains the records and information.*

Sec. 16. 1. *Except as otherwise provided in subsection 3, an insurer or a producer of insurance shall provide a buyer's guide and a disclosure statement to each applicant for an annuity:*

(a) If the application for an annuity is submitted in person to the insurer or producer of insurance, at the time that the application is submitted.

(b) If the application for an annuity is not submitted in person to the insurer or producer of insurance, not later than 5 business days after the application is received by the insurer or producer of insurance.

2. *The disclosure statement required by subsection 1 must be written in plain language and include, without limitation:*

(a) A brief description of the annuity, including, without limitation, a statement that the contract is an annuity, an explanation of the long-term nature of an annuity, the generic

name of the annuity and the product name for the annuity that is used by the insurer or producer of insurance;

(b) The name, address and telephone number, including a toll-free number, if available, of the insurer or producer of insurance;

(c) A brief description of any determinable elements, the guaranteed elements and the nonguaranteed elements, an explanation of the method by which the determinable elements, guaranteed elements and nonguaranteed elements will be calculated and an explanation of the impact that the nonguaranteed elements may have on the benefits and values of the annuity;

(d) The crediting rate, any bonus or introductory portion of the crediting rate, the duration of the crediting rate and a disclosure that the crediting rate may change in value during the life of the annuity;

(e) Periodic income options, regardless of whether the options are guaranteed or nonguaranteed;

(f) An explanation of any reduction in the value of the annuity that would be caused by a withdrawal of money from the annuity or the surrender of the annuity by the owner of the annuity;

(g) An explanation of any method by which the values of the annuity can be accessed by the owner of the annuity;

(h) The value of any death benefit paid by the annuity and an explanation of the method by which the death benefit is calculated;

(i) An explanation of any effect that the annuity will have upon the tax status of the owner of the annuity and any tax penalties that may result upon any withdrawal of money from the annuity;

(j) An explanation of any rider to the annuity, including, without limitation, a rider that contains long-term care benefits;

(k) The amount of and an explanation of any charges and fees associated with the annuity, including, without limitation, a premium tax;

(l) The amount of the current guaranteed interest rates of the annuity and an explanation that the interest rates are not guaranteed for any other annuities that may be purchased in the future by the owner of the annuity;

(m) An explanation of the method by which the owner of the annuity may terminate the annuity and any penalties that may occur as a result of the termination;

(n) The date on which the owner of the annuity will begin to receive benefits from the annuity and the date on which the payment of those benefits will cease; and

(o) An explanation of the method by which the owner of the annuity may withdraw money from the annuity and any penalties associated with a withdrawal.

3. An insurer or a producer of insurance is not required to provide to an applicant the buyer's guide and disclosure statement that is required by subsection 1 if:

(a) The annuity that the applicant is applying for is a variable annuity, investment annuity or any other type of annuity that is subject to the registration requirements of the Securities Act of 1933, 15 U.S.C. §§ 77 et seq.; and

(b) The insurer or producer of insurance provides a prospectus to the applicant that satisfies the requirements of section 10 of the Securities Act of 1933, 15 U.S.C. §§ 77 et seq.

Sec. 17. 1. *An insurer shall provide an annual report to each owner of an annuity that was purchased from the insurer.*

2. *The annual report required pursuant to subsection 1 must include, without limitation:*

(a) The beginning and ending dates of the reporting period;

(b) A comparison of the cash surrender and accumulated values of the annuity between the end of the prior reporting period and the end of the current reporting period;

(c) Any amount that was paid out to the owner during the reporting period;

(d) Any amount that was credited or charged to the value of the annuity during the reporting period; and

(e) The amount of any loans taken out by the owner of the annuity on the annuity that remain outstanding at the end of the reporting period.

Sec. 18. NAC 688A.150 is hereby amended to read as follows:

688A.150 Terms such as “financial planner,” “investment adviser,” “financial consultant” or “financial ~~["counseling"]~~ *counselor*” must not be used in such a way as to imply that the insurance agent is generally engaged in an advisory business in which compensation is unrelated to sales, unless that is actually the case. *This section is not intended to preclude a person who is a financial planner, an investment adviser, a financial consultant, a financial counselor or a member of a recognized trade or professional organization from using such a designation when he is selling an annuity, but a person who is a financial planner, an investment adviser, a financial consultant, a financial counselor or a member of a recognized trade or professional organization may not charge any fees for his services that are in addition to those fees customarily associated with the solicitation, negotiation or servicing of annuities.*

NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R076-05

The Commissioner of Insurance adopted regulations assigned LCB File No. R076-05, which pertain to chapter 688A of the Nevada Administrative Code, on November 16, 2005.

Notice date: 6/30/2005; 8/12/2005
Hearing date: 8/4/2005; 8/26/2005

Date of adoption by agency: 11/16/2005
Filing date: 2/23/2006

INFORMATIONAL STATEMENT

A hearing was held on August 4, 2005, and continued on August 26, 2005, in Carson City, Nevada, and video-conferenced to the Bradley Building in Las Vegas, regarding the adoption of the regulation concerning Consumer Protection in Life Insurance and Annuity Transactions.

Public comment was solicited by posting notice of the hearing in the following public locations: 788 Fairview Drive, Legislative Counsel Bureau, Capitol Building Lobby, Blasdel Building, Carson City Courthouse, State Library, Clark County Library, Capitol Press Room and the Division's Las Vegas Office.

The Department of Business and Industry, Division of Insurance (Division), maintains a list of interested parties, comprised mainly of insurance companies, agencies and other persons regulated by the Division. These persons were notified of the hearing and that copies of the regulation could be obtained from or examined at the offices of the Division in Carson City.

The hearing was attended by 36 individuals in Carson City and 17 individuals in Las Vegas. Seven persons provided oral testimony and 3 written comments were received.

Considering the comments by those attending the hearing, the Commissioner has issued an order adopting the regulation as a permanent regulation of the Division.

Based upon the testimony received at the hearing, the proposed regulation is changed as follows:

1. Section 1 is amended to read as follows:

Chapter [686A] **688A** of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to [22] **18**, inclusive, of this regulation.

2. Section 4 is amended to read as follows:

“Buyers Guide”, **as used in this regulation**, means a current issue of [any of the product specific guides that are] **the annuity buyer’s guides** published by the National Association of Insurance Commissioners for use by consumers.

3. Sections 5 and 6 are deleted.

4. Section 7 is renumbered to read section 5 and is amended to read as follows:

“Determinable elements” means the elements under [a life insurance policy or] **an** annuity that are guaranteed at the time the [policy or] annuity is issued, but the values of which cannot be determined until after the [policy or] annuity is issued. A determinable element is calculated using other determinable elements or a combination of determinable elements and guaranteed elements. The term includes, without limitation, premiums, benefits, values, noninterest-based credits, credited interest rates, bonuses and charges.

5. Section 8 is renumbered to read section 6 and is amended to read as follows:

“Generic name” means a term that is descriptive of [a policy of life insurance or] an annuity being **applied for or** illustrated, [including, without limitation, the terms “whole life,” “term life” or “flexible premium adjustable life.”] **such as “single premium deferred annuity.”**

6. Section 9 is renumbered to read section 7 and is amended to read as follows:

“Guaranteed elements” means the premiums, benefits, values, credits or charges under [a policy of life insurance or] an annuity that are guaranteed and determined at the time the [policy] **annuity** is issued.

7. Section 10 is renumbered to read section 8.

8. Section 11 is renumbered to read section 9 and is amended to read as follows:

“Nonguaranteed elements” means the elements under [a life insurance policy or] an annuity the values of which are not guaranteed at the time that the [policy or] annuity is issued. A nonguaranteed element is calculated using at least one other nonguaranteed element. The term includes, without limitation, premiums, benefits, values, noninterest-based credits, credited interest rates, bonuses and charges.

9. Section 12 is deleted.

10. Section 13 is renumbered to read section 10.

11. A new Section 11 is added and amended to read as follows:

“Recommendation” means advice provided by an insurance producer, or an insurer where no producer is involved, to an individual consumer that results in a purchase or exchange of an annuity in accordance with that advice.

12. Section 14 is renumbered to read section 12 and is amended to read as follows:

1. Before an insurer or producer of insurance recommends to a person the purchase of [a life insurance policy or] an annuity, or the exchange of [a life insurance policy or] an annuity [that results in any additional insurance transaction,] **in accordance with that recommendation**, the insurer or producer of insurance must make reasonable efforts to obtain:

- (a) The financial and tax status of the person;
- (b) The investment objectives of the person; and
- (c) Any other information that the insurer or producer of insurance determines would be useful in making such a recommendation.

2. Except as otherwise provided in subsection 3, if an insured is [damaged financially] **harmed** because an insurer or a producer of insurance failed to obtain the information described in subsection 1, the Commissioner may require the insurer or the producer of insurance to take corrective action.

3. An insurer or a producer of insurance is not responsible for any financial damages incurred by an insured relating to the purchase or exchange of [a life insurance policy or] **an** annuity that was recommended by the insurer or producer of insurance if the insured:

- (a) Refused to provide the insurer or the producer of insurance the information described in subsection 1;
- (b) Provided to the insurer or producer of insurance information that was incomplete or inaccurate; or
- (c) Entered into an insurance transaction that was not based on the recommendation of the insurer or the producer of insurance.

13. Section 15 is renumbered to read section 13 and is amended to read as follows:

1. Each insurer shall [:

(a) Adopt policies and procedures for the manner in which producers of insurance that it employs or with which it contracts recommend life insurance policies and annuities to persons and periodically review those producers of insurance for compliance with such policies and procedures; or] **establish and maintain a system to supervise recommendations of its insurance producers designed to achieve compliance with this regulation. Such a system shall include, but not be limited to:**

(a) Maintaining written procedures; and

(b) Conducting periodic reviews of records that are reasonably designed to assist in detecting and preventing violations of this regulation.

[(b) Contract with a third party to develop and adopt policies and procedures for the manner in which producers of insurance that the insurer employ or with which the insurer contracts recommend life insurance policies and annuities to persons. The third

party shall periodically review those producers of insurance for compliance with such policies and procedures.

2. An insurer that contracts with a third party pursuant to paragraph (b) of subsection 1 is responsible for the actions of the third party and any noncompliance of its producers of insurance with the policies and procedures adopted pursuant of paragraph (b) of subsection 1.]

2. To achieve compliance with this regulation, each general agent or independent agency shall either adopt a system established by the insurer to supervise recommendations of its insurance producers, or establish and maintain a system which includes, but is not limited to:

(a) Maintaining written procedures; and

(b) Conducting periodic reviews of records that are reasonably designed to assist in detecting and preventing violations of this regulation.

3. Each insurer, general agent or independent agency may contract with a third party to establish and maintain a system to supervise the recommendations of its insurance producers. Such insurer, general agent or independent agency shall make a reasonable inquiry to assure that the third party contracted is performing the functions required and shall take such action as is reasonable under the circumstances to enforce the contractual obligation. An insurer, general agent or independent agency may comply with its obligation to make inquiry by doing the following:

(a) Annually obtain a certification from a third party senior manager who has responsibility for the delegated functions that the manager has a reasonable basis to represent, and does represent, that the third party is performing the required functions; and

(b) The insurer, general agent or independent agency, based on reasonable selection criteria, may periodically select another independent party to audit the third party's performance of the required functions.

4. An insurer that contracts with a third party pursuant to subsection 3 and that complies with the requirements to supervise shall have fulfilled its responsibilities under subsection 1.

5. An insurer, general agent or independent agency is not required by subsections 1 and 2 to:

(a) Review, or provide for review of, all insurance producer solicitation transactions; or

(b) Include in its system of supervision an insurance producer's recommendations to consumers of products other than the annuities offered by the insurer, general agent or independent agency.

6. Compliance with the National Association of Securities Dealers Conduct Rule 2310 (formerly Article III, Section 2 of the NASD Rules of Fair Practices) pertaining to suitability shall satisfy the requirements of this regulation for the recommendation of variable annuities. Nothing in this subsection shall limit the insurance commissioner's ability to enforce the provisions of this regulation.

7. Except as provided in subsection 3, an insurer that contracts with a third party to perform services under this regulation is responsible for the actions of the third party and any noncompliance of its producers of insurance.

14. Section 16 is renumbered to read section 14 and is amended to read as follows:

1. If a person [terminates a life insurance policy or] **effectuates** an annuity that was recommended to him by an insurer or producer of insurance, the insurer or producer of insurance that made the recommendation shall:

(a) Maintain any records or information that were obtained from the person for making the recommendation for at least [3] **7** years after the date on which the [policy or] annuity was [terminated] **effectuated**; and

(b) Make the records or information described in paragraph (a) available to the Commissioner, upon request, during that period.

2. The records and information that are described in subsection 1 may be maintained by an insurer or producer of insurance on paper, on photographic, microprocessed, magnetic, mechanical or electronic media or by any other process that accurately maintains the records and information.

15. Section 17 is renumbered to read section 15 and is amended to read as follows:

...

3. An insurer may satisfy the requirements of this section for variable annuities, investment annuities and contracts registered under the Securities Act of 1933, 15 U.S.C. § 77a, et seq., by complying with the prospectus delivery requirements of such Act.

16. Section 18 is renumbered to read section 16.

17. Sections 19 through 23, inclusive, are deleted.

18. Section 24 is renumbered to read section 17 and is amended to read as follows:

NAC [686A.415] **688A.115** is hereby amended to read as follows:
[686A.415] **688A.115**

1. Except as otherwise provided in subsections 2 and 3, the provisions of NAC [686A.410 to 686A.455,] **688A.110 to 688A.180**, inclusive, and sections 2 to [21] **18**, inclusive, of this regulation, apply to:

(a) Any solicitation, negotiation, or procurement of [life insurance or] annuities occurring within this State;[and]

(b) Any issuer of [life insurance contracts or] annuities, including, without limitation, fraternal benefit societies[.] ; **and**

(c) **Individual deferred annuities.**

2. Unless they are otherwise specifically included, [this regulation does not apply to] **NAC 688A.100 to 688A.180, inclusive, and sections 2 to 18, inclusive, of this regulation do not apply to:**

(a) [Life insurance or annuities] **Annuities** used to pay for:

(1) An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act of 1974, 29 U.S.C. §§ 1001 et seq.

(2) A plan established or maintained by an employer and authorized by 26 U.S.C. § 401(a), 401(k), 403(b), 408(k) or 408(p).

(3) A governmental plan, as defined in 26 U.S.C. § 414(d).

(4) A church plan, as defined in 26 U.S.C. § 414(e).

(5) A government or church welfare benefit plan.

(6) A deferred compensation plan of a state or local government or a tax exempt organization authorized by 26 U.S.C. § 457.

(8) A settlement or an assumption of liabilities associated with litigation or any other process for dispute resolution related to a claim for compensation for personal injury.

(9) Prepaid funeral contracts.

(10) Structured settlement annuities.

(11) Funding agreements.

(b) [Credit life insurance.] **Immediate annuity contracts that contain no nonguaranteed elements.**

(c) [Group life insurance.] **Direct response solicitation where there is no recommendation based on information collected from the consumer pursuant of this regulation.**

[(d) Life insurance policies issued in connection with pension and welfare plans subject to the federal Employee Income Security Act of 1974 (ERISA) (29 U.S.C.&& 1001 et seq.)]

[(e) Variable life insurance under which the death benefits and cash values vary in accordance with unit values of investments held in a separate account.]

3. Notwithstanding the provisions of subsection 2, the provisions of NAC [686A.410 to 686A.455] **688A.110 to 688A.180**, inclusive, and sections 2 to [21] **18**, inclusive, of this regulation apply to any annuity that is used to pay for a plan or

arrangement which is paid for solely by contributions made by an employee on a pretax or after-tax basis and where participants are able to choose from among two or more fixed annuity providers.

4. As used in this section:

(a) “Funding agreement” means an agreement under which an insurer accepts and accumulates money for the purpose of making one or more future payments to a person that are not based on mortality or morbidity contingencies.

(b) “Structured settlement annuity” means:

(1) A qualified funding asset that meets the requirements of section 130(d) of the Internal Revenue Code, 26 U.S.C. § 130(d); or

(2) An annuity that meets the requirements to be a qualified funding asset pursuant to section 130(d) of the Internal Revenue Code, 26 U.S.C. § 130(d), except that the annuity is not owned by an assignee under qualified assignment.

19. Section 25 is deleted in its entirety.

20. Section 26 is renumbered to section 18 and is amended to read as follows:

NAC [686A.425] **688A.150** is hereby amended to read as follows:
[686A.425] **688A.150**

Subsections 1, 2, and 4 through 9, inclusive, are deleted in their entirety. Subsection 3 remains and should appear as follows:

[3] Terms such as “financial planner”, “investment advisor”, “financial consultant” or “financial **counsel[ing]or**” may not be used in a way which implies that the insurance agent is generally engaged in an advisory business in which compensation is unrelated to sales, unless that is actually the case. This subsection is not intended to preclude a person who is a financial planner, an investment advisor, a financial consultant, a financial counselor or a member of a recognized trade or professional organization from using such designation when he is selling insurance, but a person who is a financial planner, an investment advisor, a financial consultant, a financial counselor may not charge any fees for his services that are in addition to those fees customarily associated with the solicitation, negotiation or servicing of insurance products.

21. Sections 27 through 30, inclusive, are deleted in their entirety.

The economic impact of the regulation is as follows:

(a) On the business it is to regulate:

There will be a minimal financial impact on the industry for filing and distribution

of forms and procedures required by this regulation.

(b) On the public:

The regulation may have a beneficial impact on the citizens of Nevada as the regulation will provide product information requirements and procedures that must be provided to them by the producer and insurer prior to purchase of an annuity product.

The Division anticipates a nominal expense to enforce the proposed regulation. The Division is not aware of any overlap or duplication of the regulation with any state, local or federal regulation.

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INSURANCE

IN THE MATTER OF THE
LCB File No. **R076-05**

CAUSE NO. **05.463**

**REGULATION REGARDING
CONSUMER PROTECTION IN
LIFE INSURANCE AND ANNUITY
TRANSACTIONS**

**SUMMARY OF PROCEEDINGS
AND ORDER**

SUMMARY OF PROCEEDINGS

A public workshop, as required by NRS 233B.061, on the proposed regulation regarding Consumer Protection in Life Insurance and Annuity Transactions was held before Alice A. Molasky-Arman, Commissioner of Insurance and Cliff King, Chief Insurance Assistant, on August 4, 2005, in Carson City, Nevada, and video-conferenced to the Bradley Building in Las Vegas, Nevada. A public hearing on the proposed regulation was also held before Commissioner Molasky-Arman on August 4, 2005, with continued hearing held on August 26, 2005, in Carson City, Nevada, and video-conferenced to the Bradley Building in Las Vegas, Nevada. The regulation is proposed under the authority of NRS 679B.130.

The Department of Business and Industry, Division of Insurance (Division), received three (3) written comments from American Council of Life Insurers, Northwestern Mutual Insurance Company and State Farm Mutual Automobile Insurance Company. The hearing was attended by thirty six (36) individuals in Carson City and seventeen (17) individuals in Las Vegas. The following persons provided testimony before the Hearing Officer: Louis Roggensack, representing the Division; Angela Leminaugh, testifying on behalf of consumers; Todd Thakar, representing Prudential Financial; Diana Marchesi, representing Transamerica Occidental; JoAnn Waiters, representing the American Council of Life Insurers; Robert Nash, representing State Farm Mutual Automobile Insurance Company; Fred Hillerby and Jim Wadhams, representing Southern Nevada Funeral Services.

Based upon the testimony received at the hearing, the regulation was changed as follows from the proposed regulation:

1. Section 1 is amended to read as follows:
Chapter [686A] **688A** of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to [22] **18**, inclusive, of this regulation.
2. Section 4 is amended to read as follows:
“Buyers Guide”, **as used in this regulation**, means a current issue of [any of the product specific guides that are] **the annuity buyer’s guides** published by the National Association of Insurance Commissioners for use by consumers.
3. Sections 5 and 6 are deleted.
4. Section 7 is renumbered to read section 5 and is amended to read as follows:
“Determinable elements” means the elements under [a life insurance policy or] **an** annuity that are guaranteed at the time the [policy or] annuity is issued, but the values of which cannot be determined until after the [policy or] annuity is issued. A determinable element is calculated using other determinable elements or a combination of determinable elements and guaranteed elements. The term includes, without limitation, premiums, benefits, values, noninterest-based credits, credited interest rates, bonuses and charges.
5. Section 8 is renumbered to read section 6 and is amended to read as follows:
“Generic name” means a term that is descriptive of [a policy of life insurance or] an annuity being **applied for or** illustrated, [including, without limitation, the terms “whole life,” “term life” or “flexible premium adjustable life.”] **such as “single premium deferred annuity.”**
6. Section 9 is renumbered to read section 7 and is amended to read as follows:
“Guaranteed elements” means the premiums, benefits, values, credits or charges under [a policy of life insurance or] an annuity that are guaranteed and determined at the time the [policy] **annuity** is issued.
7. Section 10 is renumbered to read section 8.
8. Section 11 is renumbered to read section 9 and is amended to read as follows:
“Nonguaranteed elements” means the elements under [a life insurance policy or] an annuity the values of which are not guaranteed at the time that the [policy or] annuity is

issued. A nonguaranteed element is calculated using at least one other nonguaranteed element. The term includes, without limitation, premiums, benefits, values, noninterest-based credits, credited interest rates, bonuses and charges.

9. Section 12 is deleted.

10. Section 13 is renumbered to read section 10.

11. A new Section 11 is added and amended to read as follows:

“Recommendation” means advice provided by an insurance producer, or an insurer where no producer is involved, to an individual consumer that results in a purchase or exchange of an annuity in accordance with that advice.

12. Section 14 is renumbered to read section 12 and is amended to read as follows:

1. Before an insurer or producer of insurance recommends to a person the purchase of [a life insurance policy or] an annuity, or the exchange of [a life insurance policy or] an annuity [that results in any additional insurance transaction,] **in accordance with that recommendation**, the insurer or producer of insurance must make reasonable efforts to obtain:

- (a) The financial and tax status of the person;
- (b) The investment objectives of the person; and
- (c) Any other information that the insurer or producer of insurance determines would be useful in making such a recommendation.

2. Except as otherwise provided in subsection 3, if an insured is [damaged financially] **harmed** because an insurer or a producer of insurance failed to obtain the information described in subsection 1, the Commissioner may require the insurer or the producer of insurance to take corrective action.

3. An insurer or a producer of insurance is not responsible for any financial damages incurred by an insured relating to the purchase or exchange of [a life insurance policy or] **an** annuity that was recommended by the insurer or producer of insurance if the insured:

(a) Refused to provide the insurer or the producer of insurance the information described in subsection 1:

(b) Provided to the insurer or producer of insurance information that was incomplete or inaccurate; or

(c) Entered into an insurance transaction that was not based on the recommendation of the insurer or the producer of insurance.

13. Section 15 is renumbered to read section 13 and is amended to read as follows:

1. Each insurer shall [:

(a) Adopt policies and procedures for the manner in which producers of insurance that it employs or with which it contracts recommend life insurance policies and annuities to persons and periodically review those producers of insurance for compliance with such policies and procedures; or] **establish and maintain a system to supervise recommendations of its insurance producers designed to achieve compliance with this regulation. Such a system shall include, but not be limited to:**

(a) Maintaining written procedures; and

(b) Conducting periodic reviews of records that are reasonably designed to assist in detecting and preventing violations of this regulation.

[(b) Contract with a third party to develop and adopt policies and procedures for the manner in which producers of insurance that the insurer employer or with which the insurer contracts recommend life insurance policies and annuities to persons. The third party shall periodically review those producers of insurance for compliance with such policies and procedures.

2. An insurer that contracts with a third party pursuant to paragraph (b) of subsection 1 is responsible for the actions of the third party and any noncompliance of its producers of insurance with the policies and procedures adopted pursuant of paragraph (b) of subsection 1.]

2. To achieve compliance with this regulation, each general agent or independent agency shall either adopt a system established by the insurer to supervise recommendations of its insurance producers, or establish and maintain a system which includes, but is not limited to:

(a) Maintaining written procedures; and

(b) Conducting periodic reviews of records that are reasonably designed to assist in detecting and preventing violations of this regulation.

3. Each insurer, general agent or independent agency may contract with a third party to establish and maintain a system to supervise the recommendations of its insurance producers. Such insurer, general agent or independent agency shall make a reasonable inquiry to assure that the third party contracted is performing the functions required and shall take such action as is reasonable under the circumstances to enforce the contractual obligation. An insurer, general agent or independent agency may comply with its obligation to make inquiry by doing the following:

(a) Annually obtain a certification from a third party senior manager who has responsibility for the delegated functions that the manager has a reasonable basis to represent, and does represent, that the third party is performing the required functions; and

(b) The insurer, general agent or independent agency, based on reasonable selection criteria, may periodically select another independent party to audit the third party's performance of the required functions.

4. An insurer that contracts with a third party pursuant to subsection 3 and that complies with the requirements to supervise shall have fulfilled its responsibilities under subsection 1.

/ / /

5. An insurer, general agent or independent agency is not required by subsections 1 and 2 to:

(a) Review, or provide for review of, all insurance producer solicitation transactions; or

(b) Include in its system of supervision an insurance producer's recommendations to consumers of products other than the annuities offered by the insurer, general agent or independent agency.

6. Compliance with the National Association of Securities Dealers Conduct Rule 2310 (formerly Article III, Section 2 of the NASD Rules of Fair Practices) pertaining to suitability shall satisfy the requirements of this regulation for the recommendation of variable annuities. Nothing in this subsection shall

limit the insurance commissioner's ability to enforce the provisions of this regulation.

7. Except as provided in subsection 3, an insurer that contracts with a third party to perform services under this regulation is responsible for the actions of the third party and any noncompliance of its producers of insurance.

14. Section 16 is renumbered to read section 14 and is amended to read as follows:

1. If a person [terminates a life insurance policy or] **effectuates** an annuity that was recommended to him by an insurer or producer of insurance, the insurer or producer of insurance that made the recommendation shall:

(a) Maintain any records or information that were obtained from the person for making the recommendation for at least [3] **7** years after the date on which the [policy or] annuity was [terminated] **effectuated**; and

(b) Make the records or information described in paragraph (a) available to the Commissioner, upon request, during that period.

2. The records and information that are described in subsection 1 may be maintained by an insurer or producer of insurance on paper, on photographic, microprocessed, magnetic, mechanical or electronic media or by any other process that accurately maintains the records and information.

15. Section 17 is renumbered to read section 15 and is amended to read as follows:

...

3. An insurer may satisfy the requirements of this section for variable annuities, investment annuities and contracts registered under the Securities Act of 1933, 15 U.S.C. § 77a, et seq., by complying with the prospectus delivery requirements of such Act.

16. Section 18 is renumbered to read section 16.

17. Sections 19 through 23, inclusive, are deleted.

18. Section 24 is renumbered to read section 17 and is amended to read as follows:

NAC [686A.415] **688A.115** is hereby amended to read as follows:

[686A.415] **688A.115**

1. Except as otherwise provided in subsections 2 and 3, the provisions of NAC [686A.410 to 686A.455,] **688A.110 to 688A.180**, inclusive, and sections 2 to [21] **18**, inclusive, of this regulation, apply to:

(a) Any solicitation, negotiation, or procurement of [life insurance or] annuities occurring within this State;[and]

(b) Any issuer of [life insurance contracts or] annuities, including, without limitation, fraternal benefit societies[.] ; **and**

(c) Individual deferred annuities.

2. Unless they are otherwise specifically included, [this regulation does not apply to] **NAC 688A.100 to 688A.180, inclusive, and sections 2 to 18, inclusive, of this regulation do not apply to:**

(a) [Life insurance or annuities] **Annuities** used to pay for:

(1) An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act of 1974, 29 U.S.C. §§ 1001 et seq.

(2) A plan established or maintained by an employer and authorized by 26 U.S.C. § 401(a), 401(k), 403(b), 408(k) or 408(p).

(3) A governmental plan, as defined in 26 U.S.C. § 414(d).

(4) A church plan, as defined in 26 U.S.C. § 414(e).

(5) A government or church welfare benefit plan.

(6) A deferred compensation plan of a state or local government or a tax exempt organization authorized by 26 U.S.C. § 457.

(7) A nonqualified deferred compensation arrangement.

(8) A settlement or an assumption of liabilities associated with litigation or any other process for dispute resolution related to a claim for compensation for personal injury.

(9) Prepaid funeral contracts.

(10) Structured settlement annuities.

(11) Funding agreements.

(b) [Credit life insurance.] **Immediate annuity contracts that contain no nonguaranteed elements.**

(c) [Group life insurance.] **Direct response solicitation where there is no recommendation based on information collected from the consumer pursuant of this regulation.**

[(d) Life insurance policies issued in connection with pension and welfare plans subject to the federal Employee Income Security Act of 1974 (ERISA) (29 U.S.C. & 1001 et seq.)]

[(e) Variable life insurance under which the death benefits and cash values vary in accordance with unit values of investments held in a separate account.]

3. Notwithstanding the provisions of subsection 2, the provisions of NAC [686A.410 to 686A.455] **688A.110 to 688A.180**, inclusive, and sections 2 to [21] **18**, inclusive, of this regulation apply to any annuity that is used to pay for a plan or arrangement which is paid for solely by contributions made by an employee on a pretax or after-tax basis and where participants are able to choose from among two or more fixed annuity providers.

4. As used in this section:

(a) “Funding agreement” means an agreement under which an insurer accepts and accumulates money for the purpose of making one or more future payments to a person that are not based on mortality or morbidity contingencies.

(b) “Structured settlement annuity” means:

(1) A qualified funding asset that meets the requirements of section 130(d) of the Internal Revenue Code, 26 U.S.C. § 130(d); or

(2) An annuity that meets the requirements to be a qualified funding asset pursuant to section 130(d) of the Internal Revenue Code, 26 U.S.C. § 130(d), except that the annuity is not owned by an assignee under qualified assignment.

19. Section 25 is deleted in its entirety.

20. Section 26 is renumbered to section 18 and is amended to read as follows:

NAC [686A.425] **688A.150** is hereby amended to read as follows:

[686A.425] **688A.150**

Subsections 1, 2, and 4 through 9, inclusive, are deleted in their entirety. Subsection 3 remains and should appear as follows:

[3] Terms such as “financial planner”, “investment advisor”, “financial consultant” or “financial counsel[ing]or” may not be used in a way which implies that the insurance agent is generally engaged in an advisory business in which compensation is unrelated to sales, unless that is actually the case. This subsection is not intended to preclude a person who is a financial planner, an investment advisor, a financial consultant, a financial counselor or a member of a recognized trade or professional organization from using such designation when he is selling insurance, but a person who is a financial planner, an investment advisor, a financial consultant, a financial counselor or a member of a recognized trade or professional organization may not charge any fees for his services that are in addition to those fees customarily associated with the solicitation, negotiation or servicing of insurance products.

21. Sections 27 through 30, inclusive, are deleted in their entirety.

ORDER OF THE COMMISSIONER

Having reviewed the record in this matter, it is hereby ordered that the proposed regulation regarding Consumer Protection in Life Insurance and Annuity Transactions, LCB File R076-05, be adopted, as amended, as a permanent regulation of the Division.

SO ORDERED this _____ day of November, 2005.

ALICE A. MOLASKY-ARMAN
Commissioner of Insurance