

**ADOPTED REGULATION OF THE
COMMISSIONER OF INSURANCE**

LCB File No. R009-05

Effective October 31, 2005

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

AUTHORITY: §§1-12, NRS 679B.130, 686A.015 and 686A.230.

A REGULATION relating to insurance; imposing certain duties on a broker who represents a client in an insurance transaction, including a duty to avoid self-dealing, a duty to disclose compensation and a duty to disclose information concerning certain quotes; and providing other matters properly relating thereto.

Section 1. Chapter 686A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 11, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 11, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 8, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Affiliate” means a person that controls, is controlled by, or is under common control with, a broker. As used in this section, “control” has the meaning ascribed to it in NRS 692C.050.*

Sec. 4. 1. *Except as otherwise provided in subsection 2, “broker” has the meaning ascribed to it in NRS 683A.321.*

2. The term does not include a producer of insurance acting as:

(a) An intermediary between an insurer and a client’s broker, including, without limitation, a managing general agent or wholesale broker; or

(b) A reinsurance intermediary. As used in this paragraph, “intermediary” has the meaning ascribed to it in NRS 681A.330.

Sec. 5. “Client” means a natural person, corporation, association, partnership or other legal entity that is a named insured or seeks the advice of a broker about becoming an insured or receiving a quotation. The term does not include a person if the person is only:

- 1. A participant or beneficiary of an employee benefit plan; or*
- 2. Covered by a group or blanket insurance policy or group annuity contract,*
↳ that is sold, solicited or negotiated by the broker or affiliate.

Sec. 6. “Compensation” means consideration in any form for the production of insurance received by a producer of insurance from an insurer or other source.

Sec. 7. “Represents” means to act on behalf of a client in relation to an insurance transaction or potential insurance transaction pursuant to an agreement for compensation.

Sec. 8. “Transaction” has the meaning ascribed to it in NRS 679A.130. The term includes:

- 1. The procurement or potential procurement of insurance.*
- 2. The giving of advice concerning matters related to the procurement of insurance, including, without limitation, the nature and type of insurance policies, their coverage, terms, duration, premiums and premium payment arrangements.*

Sec. 9. A broker who represents a client in an insurance transaction:

- 1. Shall not unreasonably place his own interest above the interest of his client.*
- 2. Shall, before or simultaneously with a client’s purchase of insurance, or the consummation of any other insurance transaction that would entitle the broker to compensation as a result of his representation of the client, disclose to the client:*

(a) That the broker may receive compensation in some form from an insurer or other source as a result of his representation of the client in the transaction.

(b) The name and identity of the source of the compensation and whether the broker has any ownership interest in, or is under common control with, the person providing the compensation.

(c) That the compensation received by the broker may differ depending upon the product and insurer.

(d) The identity of any other person that the broker knows, or reasonably ought to know, will receive compensation from the insurer for assisting the broker in the insurance transaction. As used in this paragraph, "person" does not include an intermediary, managing general agent or wholesale broker acting in the normal course of production.

↳ These disclosures must be followed by a documented acknowledgment by the client and the broker that clearly indicates the client's understanding of the contents of the disclosure statement before or simultaneously with the consummation of the insurance transaction. In the case of a transaction consummated over the telephone or by electronic means, the client's understanding of the disclosure must be documented by the broker at the time of the transaction and followed by a documented acknowledgment by the client and the broker.

3. Shall, before a client's purchase of insurance, disclose to the client the name of each insurer or other person that supplied the broker with a quote that would reasonably meet the client's needs.

Sec. 10. *The duties imposed on a broker in section 9 of this regulation:*

1. Apply to every producer of insurance when acting as a broker.

2. Are in addition to and not in lieu of any other duty imposed on a broker by the Nevada Insurance Code or the common law of agency as recognized in this State.

Sec. 11. *A violation of any provision of section 9 of this regulation is:*

1. An unfair method of competition or an unfair or deceptive act or practice in the business of insurance in violation of NRS 686A.020.

2. A cause for disciplinary action pursuant to NRS 683A.451.

Sec. 12. Sections 1 to 12, inclusive, of LCB File No. T001-05 are hereby repealed.

TEXT OF REPEALED SECTIONS

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

Sec. 2. *Definitions. (NRS 679B.130, 686A.015, 686A.230(3)) For purposes of sections 2 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, as that term is defined in NRS 692C.050, 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 2 to 12, it shall not include 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 a named insured, or one who seeks the advice of a broker about becoming an insured or receiving a quotation. For purposes of sections 2 to 12, a client does not include one that is merely:*

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

(2) 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 both standard and non-standard compensation as further defined:*

(1) Standard compensation means a payment received by a producer from an insurer which is paid pursuant to a set compensation schedule offered to all producers for services provided in connection with the placement of insurance coverage.

(2) Non-standard compensation means consideration in any form for the production of insurance received by some producers from an insurer or other source which is paid in addition to or in lieu of the standard compensation and paid pursuant to a separate agreement for additional services or other consideration provided in connection with the placement of insurance coverage.

Sec. 9. Scope. *(NRS 679B.130, 686A.015, 686A.230(3)) The scope of sections 2 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 4.*

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.*

(1) 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.

(2) 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 paragraphs (a) - (f) below, to the client. These disclosures must be made followed by a documented acknowledgement 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 documented acknowledgement by the client and the broker. Required disclosures:

(a) That the broker may receive compensation in some form for the sale of the insurance to the client from an insurer or other source;

(b) The name and identity of the source of the compensation, and whether the broker has any ownership interest in or is under common control with the entity providing the compensation;

(c) Whether the compensation is standard or non-standard compensation;

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

(e) If the compensation is non-standard compensation, that the broker may receive additional remuneration from the insurer based upon other factors which must be disclosed; and

(f) The name and identity of any other business entity reasonably known to the broker that will receive compensation from the insurer 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 to the other business entity.

(3) 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 which supplied the broker a quote that would reasonably meet the client's specifications.

Sec. 11. Violations. (NRS 679B.130, 686A.015, 686A.230(3)) *A broker who does not comply with the provisions of section 10, violates chapters 683A and 686A of NRS, 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 2 to 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.

NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R009-05

The Commissioner of Insurance adopted regulations assigned LCB File No. R009-05 which pertain to chapter 686A of the Nevada Administrative Code on September 26, 2005.

Notice date: 6/29/2005
Hearing date: 8/4/2005

Date of adoption by agency: 9/26/2005
Filing date: 10/31/2005

INFORMATIONAL STATEMENT

A hearing was held on August 4, 2005, in Carson City, Nevada and video-conferenced to the Bradley Building, in Las Vegas, concerning the adoption of a permanent regulation concerning a broker's duties to clients.

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 also notified of the hearing and advised that copies of the regulation could be obtained from or examined at the office of the Division in Carson City.

The hearing was attended by 39 people. Oral testimony was provided by: Amy L. Parks, Esq., Division Insurance Counsel representing the Division; Shane Chesney, Esq., State of Nevada Deputy Attorney General; James Wadhams, Esq., representing the Nevada Independent Insurance Agents, the American Insurance Association and Anthem; Sam Sorich, representing the Property Casualty Insurers Association of America; and Joanne Waiters, representing the American Council of Life Insurers. Written comments were discussed during the workshop.

There were eight revisions recommended and made to the proposed permanent regulation, LCB File No. R009-05. The revised version of the regulation is attached. The revision amends Chapter 686A of NAC. The Commissioner has issued an order adopting the regulation, as revised pursuant to the workshop and hearing, as a permanent regulation of the Division.

Based upon the testimony received at the workshop and hearing, the proposed permanent regulation is revised as follows:

1. Section 2 is amended as follows:

Sec. 2. As used in sections 2 to 13, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to ~~10~~ 9,

inclusive, of this regulation have the meanings ascribed to them in those sections.

2. Section 6 is amended as follows:

Sec. 6. “Compensation” means ~~[standard compensation and nonstandard compensation.]~~ *consideration in any form for the production of insurance received by a producer of insurance from an insurer or other source.*

3. Section 7 is amended as follows:

Sec. 7. ~~[“Nonstandard compensation” means consideration in any form for the production of insurance received by a producer of insurance from an insurer or other source that is paid in addition to or in lieu of the standard compensation and paid pursuant to a separate agreement for additional services or other consideration provided in connection with the placement of insurance coverage.]~~ *Except as otherwise provided in Section 10(d), “person” has the meaning ascribed to it in NRS 0.039.*

4. Section 8 is amended as follows:

Sec. 8. “Represents” means to act on behalf of a client *under an agreement for compensation* in relation to an insurance transaction or potential insurance transaction.

5. Section 9 is deleted.

6. Section 10 is amended as follows:

Sec. ~~[10]~~ **9**. “Transaction” has the meaning ascribed to it in NRS 679A.130. The term includes:

7. Section 11 is amended as follows:

Sec. ~~[11]~~ **10**. A broker who represents a client in an insurance transaction:

8. Section 11, subsection 1 is amended as follows:

Sec. ~~[11]~~ **10**. A broker who represents a client in an insurance transaction:

1. Shall not unreasonably place his own ~~[financial or other]~~ interest above the interest of his client.

9. Section 11, subsection 2(b) is amended as follows:

Sec. ~~[11]~~ **10**. A broker who represents a client in an insurance transaction:

(b) The name and identity of the source of the compensation and whether the broker has any ownership interest in, or is under common control with, the ~~[entity]~~ *person* providing the compensation:

10. Section 11, subsection 2(c) is deleted as follows:

Sec. ~~[11]~~ **10**. A broker who represents a client in an insurance transaction:

~~[(e) Whether the compensation is standard or nonstandard compensation.]~~

11. Section 11, subsection 2(d) is amended as follows:

Sec. ~~[11]~~ **10**. A broker who represents a client in an insurance transaction:

~~[(d)]~~ (c) That the compensation received by the broker may differ depending upon the product and insurer; *and*

12. Section 11, subsection 2(e)(1) and (2) is deleted as follows:

Sec. ~~[11]~~ **10**. A broker who represents a client in an insurance transaction:

~~[(e) If the compensation is nonstandard compensation
—(1) That the broker may receive additional remuneration from the insurer, and
—(2) The factors upon which such compensation is based, and]~~

13. Section 11, subsection 2(f) is amended as follows:

Sec. ~~[11]~~ **10**. A broker who represents a client in an insurance transaction:

~~[(f)]~~ (d) The identity of any other ~~[business entity]~~ *person* that the broker knows, or reasonably ought to know, will receive compensation from the insurer for assisting the broker in the insurance transaction. ~~[and the source, nature and amount or value, of the method of calculating the amount or value, of the compensation of the business entity.]~~ *For purposes of this subsection, the term “person” does not include an intermediary, a managing general agent or a wholesale broker who is in the normal course of production.*

14. Section 11, subsection 3 is amended as follows:

Sec. ~~[11]~~ **10**. A broker who represents a client in an insurance transaction:

3. Shall, before a client’s purchase of the insurance, disclose to the client the name of each insurer or other ~~[entity]~~ *person* that supplied the broker with a quote that would reasonably meet the client’s needs.

15. Section 12 is amended as follows:

Sec. ~~12~~ **11**. The duties imposed on a broker in section ~~11~~ **10** of this regulation:

16. Section 13 is amended as follows:

Sec. ~~13~~ **12**. A violation of any provision of section ~~11~~ **10** of this regulation is:

17. Section 14 is amended as follows:

Sec. ~~14~~ **13**. Sections 1 to 12, inclusive, of LCB File No. T001-05 are hereby repealed.

The economic impact of the regulation is as follows:

(a) On the business it is to regulate: There will be an additional, but minimal, cost to the regulated businesses to initially set up their forms and procedures to ensure compliance with the regulation. There will be minimal to no additional cost to the regulated business in the long term.

(b) On the public: None

The Division anticipates that there will be no additional cost to the agency to enforce the regulation.

The Division is not aware of any overlap or duplication of the regulation with any state, local or federal regulation.