

**PROPOSED REGULATION OF THE
COMMISSIONER OF INSURANCE**

LCB File No. R076-05

August 2, 2005

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

AUTHORITY: §§1-30, NRS 679B.130 and NRS 686A.015.

A REGULATION relating to insurance; providing requirements for the solicitation of annuities; revising requirements for the solicitation of life insurance; 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 22, inclusive, of this regulation.

Sec. 2. *“Agent” means a producer of insurance that is compensated by the insurer and sells, solicits or negotiates insurance for the insurer.*

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

Sec. 4. *“Buyer’s guide” means a current issue of any of the product specific guides that are published by the National Association of Insurance Commissioners for use by consumers.*

Sec. 5. *“Cash dividend” means the current illustrated dividend which can be applied toward payment of the gross premium.*

Sec. 6. *“Currently payable scale” has the meaning ascribed to it in NAC 686A.462.*

Sec. 7. *“Determinable elements” means the elements under a life insurance policy or 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.

Sec. 8. *“Generic name” means a term that is descriptive of a policy of life insurance or an annuity being illustrated, including, without limitation, the terms “whole life,” “term life” or “flexible premium adjustable life.”*

Sec. 9. *“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 is issued.*

Sec. 10. *“Insurer” has the meaning ascribed to it in NRS 679A.100.*

Sec. 11. *“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.*

Sec. 12. *“Preneed funeral or prearrangement contract” means an agreement relating to the purchase of specific funeral or cemetery merchandise or services that is or will be paid for with the proceeds of a life insurance policy.*

Sec. 13. *“Producer of insurance” has the meaning ascribed to it in NRS 679A.117.*

Sec. 14. *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, 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 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 annuity that was recommended by the insurer or producer of insurance if the insured:

(a) Refused to provide to 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 producer of insurance.

Sec. 15. 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

(b) Contract with a third party to develop and adopt policies and procedures for the manner in which producers of insurance that the insurer employs 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 to paragraph (b) of subsection 1.

Sec. 16. *1. If a person terminates a life insurance policy or 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 years after the date on which the policy or annuity was terminated; 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. 17. *1. 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, no later than 5 business days after the application is received by the insurer or producer of insurance.

2. The disclosure statement required pursuant to 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, the product name for the annuity that is used by the insurer or producer of insurance and the policy form;

(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 such 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 such a withdrawal.

Sec. 18. *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. 19. *If an insurer:*

1. Changes its method of determining its currently payable scale, the insurer shall advise each affected policyholder residing in this State of the effects of the new method before any premium is due that is affected by the new currently payable scale.

2. Revises materially the terms and conditions under which it will limit its right to change the value of any nonguaranteed element, the insurer shall advise each affected policyholder residing in this State of the revision not later than the next anniversary of the life insurance policy following the revision.

Sec. 20. *In addition to the information required pursuant to subsection 1 of NAC 686A.430, an insurer shall provide the following information to an applicant for a life insurance policy that will be used to pay for a preneed funeral contract or arrangement:*

1. *The fact that a life insurance policy is being used to pay for funeral or cemetery merchandise or services.*
2. *The nature of the relationship between the insurer, the producer of insurance, if any, the administrator of the life insurance policy and the provider of any funeral or cemetery merchandise or services named in the preneed funeral or prearrangement contract.*
3. *An explanation of the relationship between the life insurance policy and the preneed funeral or prearrangement contract.*
4. *The impact on the preneed funeral or prearrangement contract of:*
 - (a) *Any changes made to the life insurance policy after the effective date of the preneed funeral or prearrangement contract, including, without limitation, changes to the assignment, beneficiary designation or use of the proceeds.*
 - (b) *The penalties that may result from:*
 - (1) *The failure of the insured to make premium payments; and*
 - (2) *The cancellation or surrender of the life insurance policy that will be used to pay for the preneed funeral or prearrangement contract.*
5. *A description of any funeral or cemetery merchandise or services that are named in the preneed funeral or prearrangement contract and an explanation of whether the prices for such services and merchandise are guaranteed from the date on which the preneed funeral or prearrangement contract is entered.*
6. *An explanation of the effect of any difference between the amount of the proceeds from the life insurance policy and the amount needed to pay for the preneed funeral or prearrangement contract.*

7. An explanation of any penalties or restrictions that may occur if any party to the preneed funeral or prearrangement contract is unable to perform under the terms of the preneed funeral or prearrangement contract. As used in this subsection, “party,” includes, without limitation, the insurer, the producer of insurance, if any, the insured, and any provider of funeral or cemetery merchandise or services.

Sec. 21. On or before March 1 of each year, each insurer that has obtained a certificate of authority pursuant to NRS 680A.060 shall submit to the Commissioner a certification that states that the insurer complied with the provisions of NAC 686A.410 to 686A.455, inclusive, and sections 2 to 21, inclusive, of this regulation during the previous calendar year.

Sec. 22. Upon request of an insured who purchased a life insurance policy:

1. Before January 14, 1998, an insurer shall provide to the insured:

(a) A schedule of the values of guaranteed elements and nonguaranteed elements for each policy year or a series of designated policy years that includes, without limitation, illustrated annual and other periodic dividends, terminal dividends, premiums, death benefits, cash surrender values and endowment benefits; or

(b) An in-force illustration.

2. On or after January 14, 1998:

(a) If the insurer notified the Commissioner in writing pursuant to NAC 686A.471 that the policy form would be sold with an illustration, the insurer shall provide an in-force illustration.

(b) If the insurer notified the Commissioner in writing pursuant to NAC 686A.471 that the policy form would not be sold with an illustration, the insurer shall provide a schedule of the values of guaranteed elements and nonguaranteed elements for each policy year or a series of

designated policy years that includes, without limitation, illustrated annual and other periodic dividends, terminal dividends, premiums, death benefits, cash surrender values and endowment benefits.

Sec. 23. NAC 686A.410 is hereby amended to read as follows:

686A.410 1. ~~[This regulation requires]~~ *The provisions of NAC 686A.410 to 686A.455, inclusive, and sections 2 to 21, inclusive, of this regulation require* insurers to deliver to purchasers of life insurance ~~[.]~~ *or annuities* information which will:

- (a) Improve the buyer's ability to select the most appropriate plan of life insurance *or annuity* for his needs;
- (b) Improve the buyer's understanding of the basic features of the policy *or annuity* which has been purchased or which is under consideration; and
- (c) Improve the ability of the buyer to evaluate the relative costs of similar plans of life insurance ~~[.]~~

~~—2.— This regulation does] and annuities.~~

2. *The provisions of NAC 686A.410 to 686A.455, inclusive, and sections 2 to 21, inclusive, of this regulation do* not prohibit the use of additional material which is not in violation of ~~[this regulation]~~ *the provisions of NAC 686A.410 to 686A.455, inclusive, and sections 2 to 21, inclusive, of this regulation* or any other Nevada law or regulation.

Sec. 24. NAC 686A.415 is hereby amended to read as follows:

686A.415 1. ~~[This regulation applies]~~ *Except as otherwise provided in subsections 2 and 3, the provisions of NAC 686A.410 to 686A.455, inclusive, and sections 2 to 21, 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.

2. Unless they are otherwise specifically included, this regulation does not apply to:

(a) ~~[Annuities.]~~ *Life insurance or 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.

(c) Group life insurance.

(d) ~~[Life insurance policies issued in connection with pension and welfare plans subject to the Federal Employee Retirement 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. ~~[This regulation applies to all solicitations of life insurance which begin on or after January 1, 1979.]~~ *Notwithstanding the provisions of subsection 2, the provisions of NAC 686A.410 to 686A.455, inclusive, and sections 2 to 21, 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. 25. NAC 686A.420 is hereby amended to read as follows:

686A.420 As used in NAC 686A.410 to 686A.455, inclusive, *and sections 2 to 21, inclusive, of this regulation*, unless the context otherwise requires, the ~~following~~ words and terms *defined in sections 2 to 13, inclusive, of this regulation* have the meanings ascribed to them ~~:~~

- ~~1. “Agent” has the meaning ascribed to it in NRS 683A.030.~~
- ~~2. “Buyer’s guide” means a document which contains, and is limited to, the language contained in the appendix* to this regulation or language approved by the Commissioner.~~
- ~~3. “Cash dividend” means the current illustrated dividend which can be applied toward payment of the gross premium.~~
- ~~4. “Generic name” means a short title which is descriptive of the premium and benefit pattern of a policy or a rider.~~
- ~~5. This “regulation” means NAC 686A.410 to 686A.455, inclusive.~~
- ~~*The appendix is not codified but is available in the office of the Secretary of State or the Division.] in those sections.~~

Sec. 26. NAC 686A.425 is hereby amended to read as follows:

686A.425 1. Each insurer shall maintain at its home office or principal office, a complete file containing one copy of each document which it has authorized for use pursuant to ~~this regulation.]~~ *NAC 686A.410 to 686A.455, inclusive, and sections 2 to 21, inclusive, of this regulation.* The file must contain one copy of each authorized form for a period of 3 years following the date of the last authorized use of the form.

2. An agent shall inform the prospective purchaser, prior to commencing a life insurance sales presentation, that he is acting as a life insurance agent and of the full name of the insurance

company which he is representing. In sales situations in which an agent is not involved, the insurer shall identify its full name.

3. Terms such as “financial planner,” “investment adviser,” “financial consultant” or “financial counseling” 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 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 insurance products.*

4. Any reference to ~~[policy dividends]~~ *nonguaranteed elements in the policy* must include ~~[a statement that dividends]~~ :

(a) *A statement that the nonguaranteed elements of the policy are not guaranteed ~~[]~~ and are based on the insurer’s currently payable scale; and*

(b) *If the nonguaranteed elements would be reduced by a loan on the policy, a statement to that effect.*

5. A system or presentation which does not recognize the time value of money through the use of appropriate interest adjustments may not be used for comparing the cost of two or more life insurance policies. Such a system may not be used to demonstrate the cash-flow pattern of a policy if the presentation is accompanied by a statement disclosing that the presentation does not recognize that, because of inflation, a dollar in the future may have less value.

6. A presentation of benefits may not display guaranteed benefits and benefits which are not guaranteed as a single sum unless they are shown separately in close proximity to the single sum.

7. A statement regarding the use of the life insurance cost indexes must include an explanation to the effect that the indexes are useful only for the comparison of the relative costs of two or more similar policies.

8. A life insurance cost index which reflects dividends or an equivalent level annual dividend must be accompanied by a statement that it is based on the company's current dividend scale and is not guaranteed.

9. For the purposes of ~~[this regulation.]~~ *NAC 686A.410 to 686A.455, inclusive, and sections 2 to 21, inclusive, of this regulation*, the annual premium for a basic policy or rider for which the company reserves the right to change the premium must be the maximum annual premium.

Sec. 27. NAC 686A.460 is hereby amended to read as follows:

686A.460 As used in NAC 686A.460 to 686A.479, inclusive, *and section 22 of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 686A.4605 to 686A.469, inclusive, have the meanings ascribed to them in those sections.

Sec. 28. NAC 686A.4695 is hereby amended to read as follows:

686A.4695 1. Except as otherwise provided in subsection 2 ~~H~~ *and section 22 of this regulation*, the provisions of NAC 686A.460 to 686A.479, inclusive, apply to all group and individual policies and certificates of life insurance issued or delivered on or after January 1, 1998.

2. NAC 686A.460 to 686A.479, inclusive, *and section 22 of this regulation* do not apply to:

- (a) Variable life insurance;
- (b) Individual and group annuity contracts;
- (c) Credit life insurance; or
- (d) Policies of life insurance that do not have illustrated death benefits for any person which exceed \$10,000.

Sec. 29. Chapter 689 of NAC is hereby amended by adding thereto a new section to read as follows:

1. The provisions of chapter 688A of NRS and NAC 686A.410 to 686A.455, inclusive, and sections 2 to 21, inclusive, of this regulation apply to any policy of life insurance issued to pay for a preneed funeral or prearrangement contract.

2. As used in this section, “preneed funeral or prearrangement contract” has the meaning ascribed to it in section 12 of this regulation.

Sec. 30. 1. This section and sections 1 to 20, inclusive, and 22 to 29, inclusive, become effective upon filing with the Secretary of State.

2. Section 21 of this regulation becomes effective on January 1, 2007.