

**Chapter 686A of NAC**

**LCB File No. T001-05**

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

**Filed with the Secretary of State on February 16, 2005**

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

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

**Section 1.** Chapter 686A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 12, inclusive, 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 TEMPORARY REGULATION  
LCB File No. T001-05**

The Division of Insurance of the Department of Business and Industry adopted regulations assigned LCB File No. T001-05 which pertain to chapter 686A of the Nevada Administrative Code.

**STATE OF NEVADA  
DEPARTMENT OF BUSINESS AND INDUSTRY  
DIVISION OF INSURANCE**

**IN THE MATTER OF  
TEMPORARY REGULATION  
CONCERNING BROKER'S DUTIES TO  
CLIENT**

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**CAUSE NO. 04.1178**

**INFORMATIONAL STATEMENT  
PURSUANT TO NRS 233B.066**

The following statement is submitted by the Department of Business & Industry, Division of Insurance (Division) pursuant to NRS 233B.066 for adopted temporary amendments to Chapter 686A of the Nevada Administrative Code.

**A. NRS 233B.066(1)(a): A description of how public comment was solicited, a summary of the public response, and an explanation how other interested persons may obtain a copy of the summary.**

On December 28, 2004, the Division filed and made public (via its Web site and other public locations) the text of its proposed temporary regulation, Cause No. 04.1178, along with a formal *Notice of Workshops to Solicit Comments on Proposed Temporary Regulation* and a formal *Notice of Intent to Act Upon Temporary Regulations* specifying the public workshop and hearing date of February 3, 2005. See Exhibit "A", *Notices*. The *Notices* also provided a deadline of January 27, 2005, for submission of written comments to the Division. Finally, the *Notices* informed the public that any person was invited to provide testimony during the

workshop and/or hearing on February 3, 2005. The hearing was held in both Carson City and Las Vegas via video-conference.

Comments on the proposed regulation came from all corners of the insurance industry rather than the consumer public. See Section C, below, concerning industry participation. A lack of comment from the consumer public concerning such a regulation should not be considered unusual given the fact that this regulation is directed specifically at the conduct of insurance producers who are acting as brokers. As a result, there is no summary available for comments from the consumer public.

**B. NRS 233B.066(1)(b): The number of persons who (1) attended each hearing, (2) testified at each hearing, and (3) submitted to the agency written statements.**

Approximately 75 people attended the workshop and hearing on this matter in both Carson City and Las Vegas. Included among the attendees were three former Insurance Commissioners, namely Jim Wadhams, Esq., Lou Mastos and Dick Rottman. Eleven (11) people testified at the workshop, and ten (10) people testified at the hearing. Nineteen (19) letters containing written comments were received by the Division from various individual insurance producers, insurers and industry organizations and associations. A list of the nineteen (19) letters containing written comments is attached hereto as Exhibit "B".

**C. NRS 233B.066(1)(c): A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.**

Description of how comment was solicited from affected businesses: This project began in early November 2004 when the Division announced to the Commissioner's various advisory committees its intent to adopt a temporary regulation specifying an insurance broker's duties to

his client. At that time the Division invited comments and suggestions from the committee members. In mid-November 2004, the Division released a preliminary rough draft of the proposed temporary regulation to the committee members, as well as to other representatives of the insurance industry. As a result of this initial release, the Division began to receive comments from a limited number of persons. In mid-December 2004, the Division again reminded committee members that their comments were welcome.

On December 28, 2004, the Division filed and made public the text of its proposed temporary regulation along with a formal *Notice of Workshops to Solicit Comments on Proposed Temporary Regulation* and a formal *Notice of Intent to Act Upon Temporary Regulations* specifying a public workshop and hearing date of February 3, 2005. The *Notices* also provided a deadline of January 27, 2005, for submission of written comments to the Division. Finally, the *Notices* informed the public that any person was invited to provide testimony during the workshop and/or hearing on February 3, 2005. The hearing was held in both Carson City and Las Vegas via video-conference.

By the January 27<sup>th</sup> deadline by which to submit written comments, the Division had received many letters from individuals and representatives of the industry, including brokers, agents and insurers. A list of the nineteen (19) letters containing written comments is attached hereto as Exhibit "B".<sup>1</sup>

A summary of industry's response (comments) is as follows:

During the workshop portion on February 3, 2005, there was an overall expression of appreciation and support from industry for the Division's efforts in promptly addressing the matter of broker disclosure of information. There was also an overall and vehement expression



of condemnation from the local agent, broker and insurer community in Nevada against the matters recently in the news from the State of New York regarding illegal bid-rigging and steering which was carried out by a small group of insurance brokers in New York. As a result, there was a general consensus that a regulation, at least similar to the one being presented at the workshop by the Division, was welcome and encouraged by the industry in Nevada. Coming from that platform, the comments made were focused on trying to provide more refinement and enhancement to the Division's proposal.

The most frequently stated comment of concern was whether the scope of this temporary regulation would include insurance agents as well as brokers. The Division made clear that the scope does not include agents, but only producers acting as brokers. Although Nevada's licensing law allows for a single license for insurance producers, Nevada Revised Statutes nonetheless make a distinction between a producer who is acting as an agent versus a producer who is acting as a broker. Although the comments presented by industry at the workshop (concerning Section 4) resulted in further streamlining of the Division's proposed language defining "broker" in the temporary regulation, the distinction between an agent and a broker as set forth in Nevada statute was firmly maintained in the adopted temporary regulation.

The next major area of comment and discussion focused on the Division's proposed language defining "compensation" in Section 8. The workshop discussions resulted in the Division's proposed language, which specifically listed various forms of consideration, being revised into two general categories of compensation termed "standard compensation" and "non-standard compensation". "Standard compensation" was further defined, in essence, to be a

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<sup>1</sup> Some of these letters addressed concerns about the language of the National Council of Insurance Commissioners' (NAIC) proposed model law for a similar disclosure requirement. Nonetheless, these comments were considered by the Division as information relevant to the drafting of its propose temporary regulation.

payment received by a producer from and insurer which is paid pursuant to a set compensation schedule. On the other hand, “non-standard compensation” was defined, in essence, to be consideration in any form received by some producers from an insurer or other source, which is paid in addition to or in lieu of the “standard compensation”.

The next major area of comment and discussion concerned Section 10 (2) and the types of information the broker has a duty to disclose to his client.<sup>2</sup> Of specific mention was the replacement of the Division’s proposal to require the broker to disclose the nature, form, amount and value of the compensation (or, if the amount is not known, then the method of calculating the compensation), with a more general disclosure of, in essence, whether the compensation is standard or non-standard and, if there is non-standard compensation possible, that the broker may receive it based upon factors that must be disclosed to the client.

The final major area of comment and discussion involved Section 10 (3), a broker’s duty to disclose quotes. The Division’s original proposal required the broker disclose to the client the name of each insurer, or any other source, from which the broker requested a quote, and whether a quote was provided or declined. Although a participant suggested the complete elimination of this requirement, it was ultimately decided that this type of disclosure was necessary, but that its purpose could be accomplished, instead, by requiring only the disclosure of the name of the insurer or other source which supplied the broker with a quote that would reasonably meet the client’s expectations.

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<sup>2</sup> It should be noted that industry members present at both the workshop and the hearing, as a whole, had no objection to the Division’s proposed inclusion and wording of Section 10 (1) concerning the broker’s Duty Against Self-Dealing, which states: “A broker must not unreasonably place his own financial interest or other interest above that of his client’s interest in an insurance transaction or potential insurance transaction.” This is noteworthy as an example of our local insurance industry’s commitment toward providing the highest quality of service to Nevada’s consumers, as well as its support of the Division’s efforts in protecting those same consumers’ interests.

Certain other important, but fairly minor changes were made to the Division's proposed language during both the workshop and the hearing.

The workshop was adjourned after approximately three (3) hours of testimony and discussion. After some additional comment and discussion during the hearing that followed, there was final testimony from all corners of the insurance industry withdrawing any prior objections and expressing its support for the newly revised version of the temporary regulation. After approximately an hour-long hearing, the temporary regulation concerning a broker's duties to the client was adopted.

How interested persons may receive a copy of the above summarized information:

Persons interested in viewing the written comments, the transcript of the workshop, or a transcript of the hearing may contact the Division at 788 Fairview Drive, Suite 300, Carson City, NV 89701-5491, (775) 687-4208.

**D. NRS 233B.066(1)(d): If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.**

Not applicable.

**E. NRS 233B.066(1)(e): The estimated economic effect of the regulation on the business which it is to regulate and on the public, including (1) both the adverse and beneficial effects, and (2) both immediate and long-term effects.**

There will be an initial 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.

**F. NRS 233B.066(1)(f): The estimated cost to the agency for enforcement of the proposed**

There will be no additional cost to the agency.

**G. NRS 233B.066(1)(g): A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.**

The Division is not aware of any regulations of other state or governmental agencies which this regulation overlaps or duplicates.

**H. NRS 233B.066(1)(h): if the regulation includes provisions which are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.**

Not applicable.

**I. NRS 233B.066(1)(i): If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.**

This regulation does not provide for a new fee nor does it increase an existing fee.

STATE OF NEVADA  
DEPARTMENT OF BUSINESS AND INDUSTRY  
DIVISION OF INSURANCE

**IN THE MATTER OF  
TEMPORARY REGULATION  
CONCERNING BROKER'S DUTIES TO  
CLIENT**

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**CAUSE NO. 04.1178  
SUMMARY OF PROCEEDINGS  
AND ORDER**

A public workshop and hearing as required by NRS 233B.061, on the proposed temporary regulation concerning an insurance broker's duties to his client, was held before Alice A. Molasky-Arman, Commissioner of Insurance (Commissioner) on February 3, 2005, in Carson City, Nevada, at the offices of the Department of Business & Industry, Division of Insurance (Division), 788 Fairview Drive, Suite 300, Carson City, Nevada 89701, with a simultaneous video-conference at the Bradley Building, 2501 E. Sahara Avenue, Manufactured Housing Division Conference Room, 2<sup>nd</sup> Floor, Las Vegas, Nevada 89104. The temporary regulation is proposed under the authority of NRS 679B.130, 686A.015 and 686A.230(3).

The hearing was attended by approximately 75 individuals. The following people provided testimony before the Hearing Officer: Amy L. Parks, Esq., representing the Division; Betty C. Baker, Esq., representing the Division; Clifford King, Chief Insurance Assistant, representing the Division; Jim Wadhams, Esq., representing various members of the insurance industry in Nevada; Sam Sorich, representing the Property Casualty Insurers Association of America; Jean Paul Rebillard, representing Marsh; Christian Rataj, representing the National Association of Mutual Insurance Companies; Joann Waiters, representing the American Council of Life Insurers, the Association For Advanced Life Underwriting, the National Association of Insurance and Financial Advisors, and the National Association of Independent

Life Brokerage Agencies; Larry Hurst, representing the Nevada Association of Insurance and Financial Advisors; Janine Gibford, representing the American Insurance Commission; Tom Burns, representing the Nevada Independent Insurance Agents; Allen Kaercher, representing Kaercher & Associates; Joe Hernandez, representing Joseph Hernandez Insurance; and Mark Webb, Esq., representing the American International Group.

Amy L. Parks, Esq., testified that the intent and purpose of the temporary regulation would be to provide more information to a client of an insurance broker by requiring the broker to disclose certain information to the client prior to or simultaneously with the client's purchase of an insurance product, so that the client may be better informed about the nature of the insurance transaction through which he or she may purchase an insurance product with the assistance of the broker. Ms. Parks testified that the further purpose of the temporary regulation would be to help prevent instances of illegal activities, such as bid-rigging and steering. The proposed temporary regulation was then presented by Ms. Parks.

The Commissioner then opened the floor for comments and discussion with respect to the Division's proposed language for the temporary regulation. The most frequently stated comment of concern was whether the scope of this temporary regulation would include insurance agents as well as brokers. The Division made clear that the scope does not include agents, but only producers acting as brokers. Although Nevada's licensing law allows for a single license for insurance producers, Nevada Revised Statutes nonetheless make a distinction between a producer who is acting as an agent versus a producer who is acting as a broker. Although the comments presented by industry at the workshop (concerning Section 4) resulted in further streamlining of the Division's proposed language defining "broker" in the temporary regulation,

the distinction between an agent and a broker as set forth in Nevada statute was firmly maintained in the adopted temporary regulation.

The next major area of comment and discussion focused on the Division's proposed language defining "compensation" in Section 8. The workshop discussions resulted in the Division's proposed language, which specifically listed various forms of consideration, being revised into two general categories of compensation termed "standard compensation" and "non-standard compensation". "Standard compensation" was further defined, in essence, to be a payment received by a producer from an insurer which is paid pursuant to a set compensation schedule. On the other hand, "non-standard compensation" was defined, in essence, to be consideration in any form received by some producers from an insurer or other source which is paid in addition to or in lieu of the "standard compensation".

The next major area of comment and discussion concerned Section 10 (2) and the types of information the broker has a duty to disclose to his client. Of specific mention was the replacement of the Division's proposal to require the broker to disclose the nature, form, amount and value of the compensation (or, if the amount is not known, then the method of calculating the compensation), with a more general disclosure of, in essence, whether the compensation is standard or non-standard and, if there is non-standard compensation possible, that the broker may receive it based upon factors that must be disclosed to the client.

The final major area of comment and discussion involved Section 10 (3), a broker's duty to disclose quotes. The Division's original proposal required the broker to disclose to the client the name of each insurer, or any other source, from which the broker requested a quote, and whether a quote was provided or declined. Although a participant suggested the complete elimination of this requirement, it was ultimately decided that this type of disclosure was

necessary, but that its purpose could be accomplished, instead, by requiring only the disclosure of the name of the insurer or other source which supplied the broker with a quote that would reasonably meet the client's expectations.

Certain other important, but fairly minor changes were made to the Division's proposed language during both the workshop and the hearing. The workshop was adjourned after approximately three (3) hours of testimony and discussion. After some additional comment and discussion during the hearing that followed, there was final testimony from all corners of the insurance industry withdrawing any prior objections and expressing its support for the newly revised version of the temporary regulation. After approximately an hour-long hearing, the Commissioner instructed Ms. Parks to prepare the Order adopting the temporary regulation as revised.

### **ORDER OF THE COMMISSIONER**

Having reviewed the record in this matter, it is hereby ordered that the proposed temporary regulation concerning a broker's duties to his client, Cause No. 04.1178, as revised during the workshop and hearing on this matter, be adopted as a temporary regulation of the Division.

**IT IS SO ORDERED** this \_\_\_\_\_ day of February, 2005.

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ALICE A. MOLASKY-ARMAN  
Commissioner of Insurance