

**ADOPTED REGULATION OF THE  
COMMISSIONER OF INSURANCE**

**LCB File No. R031-07**

Effective September 1, 2007

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

AUTHORITY: §§1-26, NRS 679B.130 and 686A.015.

A REGULATION relating to insurance; providing that an insurer or producer of insurance engages in an unfair or deceptive act or practice if the insurer or producer of insurance engages in certain acts or practices when soliciting and selling certain life insurance products to active duty service members of the United States Armed Forces; 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 23, inclusive, of this regulation.

**Sec. 2. 1.** *Sections 2 to 23, inclusive, of this regulation apply to the solicitation or sale of a life insurance product by an insurer or producer of insurance to an active duty service member.*

*2. Nothing in sections 2 to 23, inclusive, of this regulation abrogates the ability of nonprofit organizations, or any other organization, to educate active duty service members in accordance with Department of Defense Instruction 1344.07, “Personal Commercial Solicitation on DoD Installations,” or any successor directive.*

**Sec. 3.** *As used in sections 2 to 23, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 4 to 15, inclusive, of this regulation have the meanings ascribed to them in those sections.*

**Sec. 4.** *“Active duty service member” means:*

*1. Any commissioned or warrant officer or enlisted member of the United States Armed Forces who is on full-time duty in the active military service of the United States; or*

*2. A member of a reserve component of the United States Armed Forces or the National Guard while the member is serving under published orders for active duty or full-time training.*

**Sec. 5.** *“Department of Defense personnel” means all active duty service members and all civilian employees, including, without limitation, nonappropriated fund employees and special government employees, of the Department of Defense.*

**Sec. 6.** *“Door-to-door” means a solicitation or sales method whereby a producer of insurance proceeds randomly or selectively from household to household without prior specific appointment.*

**Sec. 7.** *“General advertisement” means an advertisement having as its sole purpose the promotion of interest in the concept of insurance or the promotion of the insurer or the producer of insurance who is the subject of the advertisement.*

**Sec. 8.** *“Known” or “knowingly” means that the insurer or producer of insurance had actual awareness, or with the exercise of ordinary care, would have been aware, at the time of the act or practice complained of, that the person solicited is an active duty service member.*

**Sec. 9.** *“Life insurance product” has the meaning ascribed to it in the Military Personnel Financial Services Protection Act, Public Law 109-290, 120 Stat. 1317-26.*

**Sec. 10.** *“Military installation” means any base, reservation, post, camp, building or other facility to which active duty service members are assigned for duty and which is owned, leased or operated by the United States Government. The term includes, without limitation, barracks, transient housing and family quarters.*

**Sec. 11.** *“MyPay” means the system of the Defense Finance and Accounting Service which enables an active duty service member to process discretionary pay transactions or update personal information data elements without using paper forms.*

**Sec. 12.** *“Side fund” means a fund or reserve that is part of, or otherwise attached to, a life insurance policy, other than an individually issued annuity, by any means, including, without limitation, by rider, endorsement or any other mechanism which accumulates premiums or deposits with interest. The term does not include:*

- 1. Accumulated value, cash value or secondary guarantees provided by a universal life policy;*
- 2. Cash values provided by a whole life policy which are subject to standard nonforfeiture law for life insurance; or*
- 3. A premium deposit fund which:*
  - (a) Contains only premiums paid in advance which accumulate at interest;*
  - (b) Imposes no penalty for withdrawal;*
  - (c) Does not permit funding beyond future required premiums;*
  - (d) Is not marketed or intended as an investment; and*
  - (e) Does not carry commission, either paid or calculated.*

**Sec. 13.** *“Solicit” has the meaning ascribed to it in NRS 683A.074.*

**Sec. 14.** *“Specific appointment” means a prearranged appointment agreed upon by both parties and definite as to place and time.*

**Sec. 15.** *“United States Armed Forces” means all components of the Army, Navy, Air Force, Marine Corps and Coast Guard.*

**Sec. 16.** *An insurer or producer of insurance engages in an unfair or deceptive act or practice in violation of NRS 686A.020 if, while on a military installation, the insurer or producer of insurance:*

*1. Knowingly solicits the purchase of a life insurance product door-to-door or without first establishing a specific appointment for each meeting with the prospective purchaser.*

*2. Solicits the purchase of a life insurance product from active duty service members in a group or mass audience or in a captive audience where attendance is not voluntary.*

*3. Knowingly makes appointments with, or solicits the purchase of a life insurance product from, an active duty service member during the normally scheduled duty hours of the active duty service member.*

*4. Makes appointments with, or solicits the purchase of a life insurance product from, an active duty service member in barracks, day rooms, unit areas, transient personnel housing or other areas where the commander of the military installation has prohibited solicitation.*

*5. Solicits the purchase of any life insurance product without first obtaining permission from the commander of the military installation or the designee of the commander.*

*6. Posts bulletins, notices or advertisements without authorization from the commander of the military installation or the designee of the commander.*

*7. Fails to present DD Form 2885, "Personal Commercial Solicitation Evaluation," to an active duty service member solicited by the insurer or producer of insurance or encourages an active duty service member not to complete or submit a DD Form 2885.*

*8. Knowingly accepts an application for a life insurance product from, or issues a policy of life insurance on the life of, an enlisted member of the United States Armed Forces without first obtaining for the files of the insurer or producer of insurance a completed copy of any*

*required form which confirms that the enlisted member has received counseling or fulfilled any other similar requirement for the sale of a life insurance product established by the regulations, directives or rules of the Department of Defense or the branch of the United States Armed Forces in which the enlisted member serves.*

**Sec. 17.** *An insurer or producer of insurance engages in a corrupt practice, or an improper influence or inducement, which constitutes an unfair or deceptive act or practice in violation of NRS 686A.020 if, while on a military installation, the insurer or producer of insurance:*

*1. Uses Department of Defense personnel, directly or indirectly, as a representative or agent in any official or business capacity, with or without compensation, with respect to the solicitation or sale of a life insurance product to active duty service members.*

*2. Uses a producer of insurance to participate in any education or orientation program sponsored by the United States Armed Forces.*

**Sec. 18.** *An insurer or producer of insurance engages in a corrupt practice, or an improper influence or inducement, which constitutes an unfair or deceptive act or practice in violation of NRS 686A.020 if, at any location, the insurer or producer of insurance:*

*1. Except as otherwise provided in this subsection, submits, processes or assists in the submission or processing of any allotment form or similar device used by the United States Armed Forces to direct the pay of an active duty service member to a third party for the purchase of a life insurance product. Violations of this subsection include, without limitation, using, or assisting in the use of, the MyPay account of an active duty service member or other similar Internet or electronic medium for such purposes. An insurer or producer of insurance does not violate this subsection if the insurer or producer of insurance only provides to an*

*active duty service member insurer or premium information which is necessary to complete an allotment form.*

*2. Knowingly receives funds for the payment of a premium of an active duty service member from a depository institution with which the active duty service member has no formal banking relationship.*

*3. Employs any device or method, or enters into any agreement, whereby funds for the payment of the insurance premium of an active duty service member, which are received by allotment from a depository institution with which the service member has no formal banking relationship, are identified on the Leave and Earnings Statement of an active duty service member, or an equivalent or successor form, as “savings” or “checking.”*

*4. Enters into any agreement with a depository institution, for the purpose of receiving funds from an active duty service member, whereby the depository institution, with or without compensation, agrees to accept direct deposits from an active duty service member with whom it has no formal banking relationship.*

*5. Uses Department of Defense personnel, directly or indirectly, as a representative or agent in any official or unofficial capacity, with or without compensation, with respect to the solicitation or sale of a life insurance product to an active duty service member who is junior in rank or grade, or to the family members of such an active duty service member.*

*6. Offers or gives anything of value, directly or indirectly, to Department of Defense personnel to procure assistance in encouraging, assisting or facilitating the solicitation or sale of a life insurance product to an active duty service member.*

*7. Knowingly offers or gives anything of value to an active duty service member for his attendance at any event where an application for a life insurance product is solicited.*

8. *Advises an active duty service member to change his income tax withholding or state of legal residence for the sole purpose of increasing disposable income to purchase a life insurance product.*

9. *For the purposes of this section, a formal banking relationship is established when the depository institution:*

(a) *Provides the active duty service member a deposit agreement and periodic statements and makes the disclosures required by the Truth in Savings Act, 12 U.S.C. §§ 4301 et seq., and any regulations adopted pursuant thereto; and*

(b) *Allows the active duty service member to make deposits and withdrawals unrelated to the payment or processing of insurance premiums.*

**Sec. 19.** *An insurer or producer of insurance engages in an act or practice which leads to confusion regarding source, sponsorship, approval or affiliation, and which constitutes an unfair or deceptive act or practice in violation of NRS 686A.020, if the insurer or producer of insurance:*

1. *Makes any representation, or uses any device, title, descriptive name or identifier, that has the tendency or capacity to confuse or mislead an active duty service member into believing that the insurer, producer of insurance or life insurance product offered is affiliated, connected or associated with, or endorsed, sponsored, sanctioned or recommended by, the United States Government, the United States Armed Forces, any state or federal agency or any other governmental entity. The titles prohibited by this subsection include, without limitation, "Battalion Insurance Counselor," "Unit Insurance Advisor," "Servicemen's Group Life Insurance Conversion Consultant" or "Veteran's Benefits Counselor." This subsection does not prohibit a person from using a professional designation awarded after the successful*

*completion of a course of instruction in the business of insurance by an accredited institution of higher education, including, without limitation, “Chartered Life Underwriter” (CLU), “Chartered Financial Consultant” (ChFC), “Certified Financial Planner” (CFP), “Master of Science in Financial Services” (MSFS) or “Master of Science in Financial Planning” (MS).*

*2. Solicits the purchase of a life insurance product through the use of, or in conjunction with, any third-party organization that promotes the welfare or assists members of the United States Armed Forces in a manner that has the tendency or capacity to confuse or mislead an active duty service member into believing that the insurer, producer of insurance or life insurance product is affiliated, connected or associated with, or endorsed, sponsored, sanctioned or recommended by, the United States Government or the United States Armed Forces.*

**Sec. 20.** *An insurer or producer of insurance engages in an act or practice which leads to confusion regarding premiums, costs or investment returns, and which constitutes an unfair or deceptive act or practice in violation of NRS 686A.020, if the insurer or producer of insurance:*

*1. Uses or describes the credited interest rate on a life insurance policy in a manner that implies that the credited interest rate is a net return on premium paid.*

*2. Misrepresents the mortality costs of a life insurance product other than an individually issued annuity. Violations of this subsection include, without limitation, stating or implying that a life insurance product costs nothing or is free.*

**Sec. 21.** *An insurer or producer of insurance engages in an unfair or deceptive act or practice in violation of NRS 686A.020 if the insurer or producer of insurance:*



*1. Makes any false, misleading or deceptive representation regarding the availability, suitability, amount or cost of, or exclusions or limitations to, coverage provided to an active duty service member or the dependents of an active duty service member by Servicemembers' Group Life Insurance or Veterans' Group Life Insurance.*

*2. Makes any false, misleading or deceptive representation regarding the requirements to convert to a private insurer, including, without limitation, the costs of, or exclusions or limitations to, coverage of Servicemembers' Group Life Insurance or Veterans' Group Life Insurance.*

*3. Suggests or recommends to an active duty service member that the active duty service member cancel or terminate his policy with Servicemembers' Group Life Insurance, or encourages an active duty service member to cancel or terminate his policy with Servicemembers' Group Life Insurance.*

*4. Issues a life insurance policy which replaces an existing life insurance policy with Servicemembers' Group Life Insurance, unless the replacement life insurance policy takes effect upon or after the separation of the active duty service member from the United States Armed Forces.*

**Sec. 22.** *An insurer or producer of insurance engages in an unfair or deceptive act or practice in violation of NRS 686A.020 if the insurer or producer of insurance:*

*1. Deploys, uses or contracts for any lead-generating material which is designed exclusively for use with active duty service members and which does not clearly and conspicuously disclose that the recipient of the material will be contacted by a producer of insurance, if that is the case, for the purpose of soliciting the purchase of a life insurance product.*

2. *Fails to disclose, at the time of establishing a specific appointment for an in-person, face-to-face meeting with an active duty service member, that a solicitation for the purchase of a life insurance product will be made at the specific appointment.*

3. *Except as otherwise provided in this subsection, fails to clearly and conspicuously disclose the fact that the product being sold is a life insurance product. This subsection does not apply to the sale of an individually issued annuity.*

4. *Fails to make to a person known to be an active duty service member, at the time of sale of, or an offer to sell, a life insurance product, the written disclosures required by section 10 of the Military Personnel Financial Services Protection Act, Public Law 109-290, 120 Stat. 1317-26.*

5. *When the sale of a life insurance product, other than an individually issued annuity, is conducted in person, face-to-face with a person known to be an active duty service member, fails to provide to the active duty service member at the time an application for the life insurance product is taken:*

*(a) An explanation of any free look period with instructions on how to cancel a policy if a policy is issued; and*

*(b) A copy of the application or a written disclosure. The copy of the application or the written disclosure must clearly and concisely set forth the type of life insurance product being sold, the death benefit for which the active duty service member applied and the expected first year cost. A basic illustration that meets the requirements of NAC 686A.460 to 686A.479, inclusive, and a buyer's guide is sufficient to meet the requirements of this paragraph. As used in this paragraph, "basic illustration" has the meaning ascribed to it in NAC 686A.461.*

**Sec. 23.** *An insurer or producer of insurance engages in an unfair or deceptive act or practice in violation of NRS 686A.020 if, in connection with the sale of a life insurance product to an active duty service member, the insurer or producer of insurance:*

*1. Recommends to an active duty service member the purchase of, or offers to sell or sells to an active duty service member, a life insurance product, other than an individually issued annuity, which includes a side fund, unless the insurer or producer of insurance has reasonable grounds to believe that the life insurance death benefit, standing alone, is suitable. If an active duty service member is currently enrolled in Servicemembers' Group Life Insurance, a life insurance death benefit is presumed unsuitable, unless, after the completion of a needs assessment, the insurer or producer of insurance demonstrates that the death benefit of the Servicemembers' Group Life Insurance, together with any other military survivor benefits, savings and investments, survivor income and other life insurance, is insufficient to meet the insurable needs for life insurance of the active duty service member. As used in this subsection:*

*(a) "Insurable needs" means the risk associated with premature death taking into consideration the financial obligations and immediate and future cash needs of the estate, survivors and dependents of the service member.*

*(b) "Other military survivor benefits" includes, without limitation, the Death Gratuity, Funeral Reimbursement, Transition Assistance, Survivor and Dependents' Educational Assistance, Dependency and Indemnity Compensation, TRICARE Healthcare benefits, Survivor Housing Benefits and Allowances, Federal Income Tax Forgiveness and Social Security Survivor Benefits.*

*2. Offers for sale or sells a life insurance product, other than an individually issued annuity, that includes a side fund which, by default, diverts or transfers funds accumulated in the side fund to pay, reduce or offset any premiums due, unless:*

*(a) Interest credited accrues from the date of deposit to the date of withdrawal and allows withdrawals without limit or penalty; and*

*(b) At least once each policy year during the first 10 policy years and every fifth policy year thereafter, ending at the age of 100, policy maturity or final expiration, whichever is later, the policyholder will be provided with a schedule of effective rates of return which is based on cash flows of the combined product. The effective rate of return must consider all premiums and cash contributions made by the policyholder and all cash accumulations and cash surrender values available to the policyholder in addition to life insurance coverage.*

*3. Offers for sale or sells a life insurance product, other than an individually issued annuity, which does not comply with standard nonforfeiture law for life insurance after considering all policy benefits, including, without limitation, endowment, return of premium and persistency.*

*4. Sells to a person known to be an active duty service member any life insurance product that excludes coverage if the death of the insured service member is related to a declared or undeclared war or any other act related to military service other than an accidental death.*

**Sec. 24.** Chapter 688A of NAC is hereby amended by adding thereto a new section to read as follows:

*1. An insurer or producer of insurance engages in an unfair or deceptive act or practice in violation of NRS 686A.020 if the insurer or producer of insurance sells to a person who the insurer knows, or, with the exercise of ordinary care, would know, is an active duty service*

*member any annuity or life insurance product, other than accidental death coverage, that excludes coverage if the death of the insured active duty service member is related to a declared or undeclared war or any other act related to military service.*

*2. As used in this section:*

*(a) “Active duty service member” has the meaning ascribed to it in section 4 of this regulation.*

*(b) “Life insurance product” has the meaning ascribed to it in section 9 of this regulation.*

**Sec. 25.** The amendatory provisions of this regulation apply to an act or practice which occurs on or after September 1, 2007.

**Sec. 26.** This regulation becomes effective on September 1, 2007.

**NOTICE OF ADOPTION OF PROPOSED REGULATION**  
**LCB File No. R031-07**

The Commissioner of Insurance adopted regulations assigned LCB File No. R031-07 which pertain to chapter 686A of the Nevada Administrative Code.

**INFORMATIONAL STATEMENT**

A workshop was held on August 15, 2007, and a hearing was held on August 21, 2007, at the offices of the Department of Business and Industry, Division of Insurance (Division), 788 Fairview Drive, Suite 300, Carson City, Nevada 89701, with a simultaneous video-conference conducted at the Bradley Building, 2501 E. Sahara Avenue, Real Estate Division Conference Room, 2<sup>nd</sup> Floor, Las Vegas, Nevada 89104, regarding the adoption of the regulation concerning the Sale of Life Insurance to Military Personnel.

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, Carson City Library, Clark County Library, Churchill County Library, Douglas County Library, Elko County Library, Goldfield Public Library, Eureka Branch Library, Humboldt County Library, Battle Mountain Branch Library, Lincoln County Library, Mineral County Library, Lyon County Library, Tonopah Public Library, Pershing County Library, Storey County Library, Washoe County Library, White Pine County Library, Capitol Press Room, the Donald W. Reynolds Press Center, the Office of the Attorney General, and the Division's Las Vegas Office.

The 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 workshop was attended by 10 individuals. The hearing was attended by 10 individuals. During the hearing, oral testimony was provided by Rebecca Alvarado, representing the Division; Zip Upham, representing the United States Navy; and John Mangan, representing the American Council of Life Insurers. Written testimony, in the form of suggested changes to the model regulation in which this regulation has been based, was provided by Daniel R. Brown, representing Sonnenschein Nath & Rosenthal.

There were three revisions recommended and made to the Proposed Regulation, LCB File No. R031-07, dated June 29, 2007. A revised version of the regulation is attached. The revisions pertain to amending the definitions of "Active Duty Service Member" and "Solicit." 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 hearing, the proposed regulation is revised as follows:

1. Section 4 has been amended as follows:

**Sec. 4.** “Active duty service member” means:

1. Any commissioner or warrant officer or enlisted member of the United States Armed Forces who is on full time duty in the active military service of the United States; or

2. A member or a reserve component of the United States Armed Forces or the National Guard while the member is serving under published orders for active duty or full time training.

~~[The term does not include a member of a reserve component of the United States Armed Forces or the National Guard who is performing active duty or full time training under military calls or orders specifying periods of less than 31 calendar days.]~~

2. Section 13 has been amended as follows:

**Sec. 13.** “Solicit” has the meaning ascribed to it in NRS 683A.074. ~~[1. “Solicit and “Solicitation” do not include the use of:~~

~~(a) A general advertisement;~~

~~(b) Direct mail;~~

~~(c) Internet marketing; or~~

~~(d) Telephone marketing if the caller discloses, explicitly and conspicuously, that the product is life insurance and makes no statements that avoid a clear and unequivocal statement that life insurance is the subject matter of the solicitation.~~

~~2. “Solicit” and “solicitation” do include an in person, face to face meeting which occurs as a result of general advertisement, direct mail, internet marketing or telephone marketing which does not constitute solicitation pursuant to subsection 1.]~~

The economic impact of the regulation is as follows:

(a) On the business it is to regulate: The proposed regulation would require a minimal additional cost to file forms for approval by the Commissioner.

(b) On the public: The proposed will potentially protect active duty military personnel in the purchase of life insurance products by the regulation of marketing practices.

The Division will incur some additional expense to enforce the proposed regulation that cannot be measured at this time. This additional expense is expected to be minimal.

The Division is not aware of any overlap or duplication of the regulation with any state, local or federal regulation. This regulation is pursuant to Federal Public Law 109-290, the “Military Personnel Financial Services Protection Act.”

STATE OF NEVADA  
DEPARTMENT OF BUSINESS AND INDUSTRY  
DIVISION OF INSURANCE

IN THE MATTER OF THE

CAUSE NO. **07.437**  
LCB File No. **R031-07**

**REGULATION REGARDING  
THE SALE OF LIFE INSURANCE TO  
MILITARY PERSONNEL**

**SUMMARY OF  
PROCEEDINGS  
AND ORDER**

**SUMMARY OF PROCEEDINGS**

A public workshop, as required by NRS 233B.061, on the proposed regulation concerning the sale of life insurance products to military personnel was held before Alice A. Molasky-Arman, Commissioner of Insurance, on August 15, 2007, 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 the Commissioner of Insurance on August 21, 2007, 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 and 686A.015.

The Department of Business and Industry, Division of Insurance (Division), received written comments from Sonnenschein Nath & Rosenthal, LLP. These written comments were discussed during the workshop. The hearing was attended by 10 individuals. The following people provided testimony before the Hearing Officer: Becky Alvarado and Van Mouradian, representing the Division; Zip Upham, representing the United States Navy, and John Mangan, representing the American Council of Life Insurers.

Mrs. Alvarado testified that the proposed regulation amends chapter 686A and 688A of the Nevada Administrative Code (NAC) to address guidelines in transacting marketing life insurance products to active duty military personnel. The guidelines are for consumer protection and are pursuant to the Military Personnel Financial Services Protection Act.

**RECOMMENDATION OF THE HEARING OFFICER**

Based upon the written comments and testimony received at the hearing, it is recommended that the proposed regulation be revised as follows:



1. Section 4 has been amended as follows:

**Sec. 4.** “Active duty service member” means:

1. Any commissioner or warrant officer or enlisted member of the United States Armed Forces who is on full time duty in the active military service of the United States; or

2. A member or a reserve component of the United States Armed Forces or the National Guard while the member is serving under published orders for active duty or full time training.

~~[The term does not include a member of a reserve component of the United States Armed Forces or the National Guard who is performing active duty or full-time training under military calls or orders specifying periods of less than 31 calendar days.]~~

2. Section 13 has been amended as follows:

**Sec. 13.** “Solicit” has the meaning ascribed to it in NRS 683A.074. ~~[1. “Solicit and “Solicitation” do not include the use of:~~

~~(a) A general advertisement;~~

~~(b) Direct mail;~~

~~(c) Internet marketing; or~~

~~(d) Telephone marketing if the caller discloses, explicitly and conspicuously, that the product is life insurance and makes no statements that avoid a clear and unequivocal statement that life insurance is the subject matter of the solicitation.~~

~~2. “Solicit” and “solicitation” do include an in-person, face-to-face meeting which occurs as a result of general advertisement, direct mail, internet marketing or telephone marketing which does not constitute solicitation pursuant to subsection 1.]~~

### **ORDER OF THE COMMISSIONER**

Having reviewed the record in this matter, it is hereby ordered that the proposed regulation regarding the sale of life insurance to active duty military personnel, LCB File No. R031-07, be adopted, as amended, as a permanent regulation of the Division.

SO ORDERED this \_\_\_\_\_ day of August, 2007.

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ALICE A. MOLASKY-ARMAN  
Commissioner of Insurance