

**LCB File No. R009-05**

**PROPOSED REGULATION OF THE DIVISION  
OF INSURANCE OF THE DEPARTMENT  
OF BUSINESS AND INDUSTRY**

(This proposed regulation was previously adopted as T001-05)

**NOTICE OF WORKSHOP TO SOLICIT COMMENTS ON  
PROPOSED REGULATIONS**

The Department of Business and Industry, Division of Insurance (Division), is proposing new regulations pertaining to consumer protection for individual life insurance and annuity transactions, funeral service contracts, Medicare Supplement plans, and broker's duties to clients. A workshop has been set for 9:00 a.m., on August 4, 2005, at the office of the Division, 788 Fairview Drive, Suite 300, Carson City, Nevada 89701. Interested parties may also participate through a simultaneous video-conference conducted at the Bradley Building, 2501 East Sahara Avenue, Manufactured Housing Division Conference Room, 2<sup>nd</sup> Floor, Las Vegas, Nevada 89104. The purpose of the workshop is to solicit comments from interested persons on the following general topics addressed in the proposed regulations.

1. **Consumer Protection for Life Insurance and Annuity Transactions. Chapter 688A of the Nevada Administrative Code (NAC) is amended to address guidelines in transacting life and annuity transactions. The guidelines are for consumer protection and address transactions and disclosure requirements.**
2. **Funeral Service Contracts. Chapter 689 of NAC is amended to address that the provisions of chapter 688A of the Nevada Revised Statutes (NRS) and chapter 688A of the NAC apply to any life insurance policy issued to fund a preneed contract.**
3. **Medicare Supplement Plans. This regulation adds new sections to chapter 687B and amends chapter 687B of the NAC. The new sections provide for additional federal requirements under the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA). The amended sections update the current regulations to be in compliance with the federal law. The proposed regulation applies to all life and health insurers marketing Medigap policies in this state.**
4. **Broker's Duties to Clients: This regulation became effective on February 16, 2005, as a temporary regulation. It is now proposed as a permanent regulation concerning (a) a broker's duty against self-dealing; (b) a broker's duty to disclose compensation to a client; and (c) a broker's duty to disclose information regarding quotes to a client.**

A copy of this notice and the proposed regulations will be on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the proposed regulations will be available at the offices of the Division, 788 Fairview Drive, Suite 300, Carson City, Nevada 89701, and 2501 East Sahara Avenue, Suite 302, Las Vegas, Nevada 89104, and in all counties in which an office of the agency is not maintained, at the main public library, for inspection and copying by members of the public during business hours. Copies will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

This Notice of Workshop to Solicit Comments on Proposed Regulations has been sent to all persons on the agency's mailing list for administrative regulations and posted at the following locations:

Department of Business and Industry  
Division of Insurance  
788 Fairview Drive, Suite 300  
Carson City, NV 89701

Department of Business and Industry  
Division of Insurance  
2501 East Sahara Avenue, Suite 302  
Las Vegas, NV 89104

Legislative Counsel Bureau  
Capitol Complex  
Carson City, NV 89710

Blasdel Building  
Capitol Complex  
Carson City, NV 89710

State Capitol  
Capitol Complex  
Carson City, NV 89710

Capitol Press Room  
State Capitol Basement  
Carson City, NV 89710

County Clerk  
Courthouse  
Carson City, NV 89710

Nevada State Library & Archives  
Capitol Complex  
Carson City, NV 89710

Carson City Library  
900 North Roop Street  
Carson City, NV 89701

Churchill County Library  
553 South Maine Street  
Fallon, NV 89406

Las Vegas Library  
833 Las Vegas Blvd. North  
Las Vegas, NV 89101

Douglas County Library  
1625 Library Lane  
P.O. Box 337  
Minden, NV 89423

Elko County Library  
720 Court Street  
Elko, NV 89801

Goldfield Public Library  
Fourth & Cook Street  
P.O. Box 430  
Goldfield, NV 89013

Eureka Branch Library  
10190 Monroe Street  
P.O. Box 293  
Eureka, NV 89316

Humboldt County Library  
85 East 5<sup>th</sup> Street  
Winnemucca, NV 89445

Battle Mountain Branch Library  
P.O. Box 141  
Battle Mountain, NV 89820

Lincoln County Library  
93 Main Street  
P.O. Box 330  
Pioche, NV 89043

Lyon County Library  
20 Nevin Way  
Yerington, NV 89447

Mineral County Library  
First & A Street  
P.O. Box 1390  
Hawthorne, NV 89415

Tonopah Public Library  
171 Central Street  
P.O. Box 449  
Tonopah, NV 89049

Pershing County Library  
1125 Central Avenue  
P.O. Box 781  
Lovelock, NV 89419

Storey County Library  
95 South R Street  
P.O. Box 14  
Virginia City, NV 89440

Washoe County Library  
ATTN: Reference  
P.O. Box 2151  
Reno, NV 89505-2151

White Pine County Library  
950 Campton Street  
Ely, NV 89301

Clark County Library  
1401 East Flamingo Road  
Las Vegas, NV 89119

Members of the public who are disabled and require special accommodations or assistance at the hearing are requested to notify the Commissioner's secretary in writing at 788 Fairview Drive, Suite 300, Carson City, Nevada 89701, or by calling no later than 5 working days prior to the hearing, (775) 687-4270, extension 260.

## NOTICE OF INTENT TO ACT UPON REGULATIONS

### Notice of Hearing for the Adoption of Regulations of the Department of Business and Industry, Division of Insurance

The Department of Business and Industry, Division of Insurance (Division), will hold a public hearing at 9:00 a.m., on August 4, 2005, immediately following a public workshop, at the office of the Division, 788 Fairview Drive, Suite 300, Carson City, Nevada 89701. Interested persons may also participate through a simultaneous video-conference conducted at the Bradley Building, 2501 East Sahara Avenue, Manufactured Housing Division Conference Room, 2<sup>nd</sup> Floor, Las Vegas, Nevada 89104. The purpose of the hearing is to receive comments from all interested persons regarding the adoption of:

#### **REGULATION CONCERNING BROKER'S DUTIES TO CLIENT: DUTY AGAINST SELF-DEALING, DUTY TO DISCLOSE COMPENSATION AND DUTY TO DISCLOSE INFORMATION REGARDING QUOTES; VIOLATIONS**

The following information is provided pursuant to the requirements of NRS 233B.0603:

1. The proposed regulation is based on a need to ensure that a client of a broker has an increased opportunity to be better informed about the nature of the insurance transaction through which the client may purchase an insurance product with the assistance of the broker. The purpose of the proposed regulation is to provide more information to a client by requiring the broker to disclose certain information to the client prior to the client's purchase of the insurance product.
2. In general, (a) the broker would owe the client a duty against self-dealing; (b) information the broker would be required to disclose to a client includes information about the compensation the broker would receive as a result of the client's purchase of the insurance product; and (c) the broker would also be required to disclose the name of each insurer, or any other source, which supplied the broker with a quote that reasonably meets the client's specifications.
3. Estimated economic effect of the regulation:  
On the business which is to be regulated: There would be an initial additional, but minimal, cost to the business. However, there would be minimal to no additional cost to the business in the long term.  
On the public: There would be no adverse economic effects to the public. There would be an economic benefit to the public based on the client's increased opportunity to consider more information about the nature of the insurance transaction when purchasing insurance with the assistance of a broker.
4. Estimated cost to the agency for enforcement of the proposed regulation: No additional cost to the agency.
5. The Division is not aware of any overlap or duplication of the regulation with any state, local or federal regulation that is in effect at this time.
6. The proposed regulation is not pursuant to federal regulation.

7. If the proposed regulation includes provisions which are more stringent than a federal regulation that regulates the same activity, a summary of such provisions. Not applicable.
8. The proposed regulation does not establish a new fee or increase an existing fee.

Persons wishing to comment upon the proposed action of the Division may appear at the scheduled public hearing or may address their comments, data, views or arguments, in written form, to the Division, 788 Fairview Drive, Suite 300, Carson City, Nevada 89701. Written submissions must be received by the Division on or before July 28, 2005. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Division may proceed immediately to act upon any written submissions.

A copy of this notice and the proposed regulation will be on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the proposed regulation will be available at the offices of the Division, 788 Fairview Drive, Suite 300, Carson City, Nevada 89701, and 2501 East Sahara Avenue, Suite 302, Las Vegas, Nevada 89104, and in all counties in which an office of the agency is not maintained, at the main public library, for inspection and copying by members of the public during business hours. This notice and the text of the proposed regulation are also available in the **State of Nevada Register of Administrative Regulations** which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653 and on the Internet at <http://www.leg.state.nv.us>. Copies will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

Upon adoption of any regulation, the agency, if requested to do so by an interested person, either before adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption, and incorporate therein its reason for overruling the consideration urged against its adoption.

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Division of Insurance  
788 Fairview Drive, Suite 300  
Carson City, NV 89701

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20 Nevin Way  
Yerington, NV 89447

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171 Central Street  
P.O. Box 449  
Tonopah, NV 89049

Pershing County Library  
1125 Central Avenue  
P.O. Box 781  
Lovelock, NV 89419

Storey County Library  
95 South R Street  
P.O. Box 14  
Virginia City, NV 89440

Washoe County Library  
ATTN: Reference  
P.O. Box 2151  
Reno, NV 89505-2151

White Pine County Library  
950 Campton Street  
Ely, NV 89301

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Las Vegas, NV 89119

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LCB File No. R009-05

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OF INSURANCE OF THE DEPARTMENT  
OF BUSINESS AND INDUSTRY**

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.*