

## LCB File No. R115-06

### PROPOSED REGULATION OF THE COMMISSIONER OF INSURANCE

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

The Department of Business and Industry, Division of Insurance (Division), is proposing new regulations establishing reasonable rates for policies of credit personal property insurance, including guaranteed asset protection insurance and clarifying current requirements that require all life insurers to adhere to specific guidelines in the sale of annuity products to a consumer. A workshop has been set for **9:00 a.m., on June 7, 2006**, at the offices 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 regulation.

1. **Credit personal property insurance. The proposed regulation amends Chapter 691C of the Nevada Administrative Code (NAC) by requiring all carriers to submit their rates for approval by the Commissioner using the guidance of recommended rates; and allows for a review of the rates in three years to determine if the rates are reasonable in relation to the benefits provided.**
2. **Annuity suitability. The proposed regulation adds new sections to Chapter 688A of the NAC. The new sections clarify the adopted regulation, LCB File No. R076-05, on annuities.**

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 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 regulations 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 **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.

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

Legislative Counsel Bureau  
Capitol Complex  
Carson City, NV 89710

State Capitol  
Capitol Complex  
Carson City, NV 89710

County Clerk  
Courthouse  
Carson City, NV 89710

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

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

Elko County Library  
720 Court Street  
Elko, NV 89801

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

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

Lyon County Library  
20 Nevin Way  
Yerington, NV 89447

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

Blasdel Building  
Capitol Complex  
Carson City, NV 89710

Capitol Press Room  
State Capitol Basement  
Carson City, NV 89710

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

Churchill County Library  
553 South Maine Street  
Fallon, NV 89406

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

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

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

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

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, (702) 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 June 7, 2006**, immediately following a public workshop, at the offices 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 ANNUITY SUITABILITY

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

1. The proposed regulation provides for standards for sale of annuities.
2. The proposed regulation amends Chapter 688A of the Nevada Administrative Code (NAC) by clarifying current requirements that require all life insurers to adhere to specific guidelines in the sale of annuity products to a consumer.
3. Estimated economic effect of the regulation:  
On the business which it is to regulate:  
The proposed regulation would require a minimal additional cost to the life insurers that would implement the proposed regulation.  
On the public:  
The proposed regulation should have no economic impact on the public.
4. A statement identifying the methods used by the agency in determining the impact on a small business prepared pursuant to subsection 3 of NRS 233B.0608. The Division regulates life insurers that sell annuity products. These carriers are not small businesses. The Division does not regulate these small businesses.
5. The Division may incur some additional expense to enforce the proposed regulation that cannot be measured at this time.
6. The Division is not aware of any overlap or duplication of the regulation with any state, local, or federal regulation.
7. The proposed regulation is not pursuant to federal law.
8. There are no federal regulations regarding these activities.
9. The proposed regulation does not establish any new fees 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 May 31, 2006.** 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.

This notice of hearing has been posted at the following locations:

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

Department of Business and Industry  
Division of Insurance  
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Virginia City, NV 89440

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Reno, NV 89505-2151

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## LCB File No. R115-06

### PROPOSED REGULATION OF THE COMMISSIONER OF INSURANCE

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

**Authority:** NRS 679B.130

**Section 1.** Chapter 688A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 7 of this regulation.

**Sec. 2.** Section 9 of LCB File No. R076-05 is amended as follows:

~~["Nonguaranteed elements" means the elements under an annuity the values of which are not guaranteed at the time that the 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.]~~ *“Non-guaranteed elements” means the premiums, credited interest rates (including any bonus), benefits, values, non-interest based credits, charges or elements of formulas used to determine any of these, that are subject to company discretion and are not guaranteed at issue. An element is considered non-guaranteed if any of the underlying non-guaranteed elements are used in its calculation.*

**Sec. 3.** Section 11 of LCB File No. R076-05 is amended as follows:

“Recommendation” means advice provided by a producer of insurance, or an insurer where no producer is involved, to a prospective purchaser of an annuity concerning the purchase or exchange of one or more annuities that *results in a purchase or exchange of an annuity in accordance with that advice.*

**Sec. 4.** Subsection 1 of Section 13 of LCB File No. R076-05 is amended as follows:

1. Except as otherwise provided in subsection 2, before an insurer or a producer of insurance recommends to a person the purchase of an annuity, or the exchange of an annuity that results in ~~[any additional insurance transaction]~~ *the purchase or exchange of an annuity in accordance with that recommendation*, 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.

**Sec. 5.** Subsection 3 of Section 13 of LCB File No. R076-05 is amended as follows:

3. Except as otherwise provided in subsection 4, if an insured is harmed financially because *a managing general agent*, an insurer or a producer of insurance failed to comply with subsection 1 or 2, the Commissioner may require the insurer or producer of insurance to take corrective action.

**Sec. 6.** Section 14 of LCB File No. 076-05 is amended as follows:

14. ~~[Each insurer shall establish and maintain policies and procedures for the manner in which producers of insurance that it employs or with which it has entered into a contract recommend annuities offered by the insurer to persons and periodically review those producers of insurance for compliance with such policies and procedures. The insurer is responsible for the acts of such producers of insurance when the producers of insurance recommend the purchase of an annuity or the exchange of an annuity that results in any additional insurance transaction.]~~ *1. An insurer either shall assure that a system to supervise recommendations that is reasonably designed to achieve compliance with this regulation is established and maintained by complying with subsections 3 to 5 of this section, or shall establish and maintain such a system, including but not limited to:*

- (a) Maintaining written procedures; and*



*(b) Conducting periodic reviews of its records that are reasonably designed to assist in detecting and preventing violations of this regulation.*

*2. Producers of insurance shall either adopt a system established by an insurer to supervise recommendations of its insurance producers that is reasonably designed to achieve compliance with this regulation, or shall establish and maintain such a system, including, but not limited to:*

*(a) Maintaining written procedures; and*

*(b) Conducting periodic reviews of records that are reasonably designed to assist in detecting and preventing violations of this regulation.*

*3. An insurer may contract with a third party, including a producer of insurance, to establish and maintain a system of supervision as required by subsection 1 with respect to insurance producers under contract with or employed by the third party.*

*4. An insurer shall make reasonable inquiry to assure that the third party contracting under subsection 3 of this section is performing the functions required under subsection 1 of this section and shall take such action as is reasonable under the circumstances to enforce the contractual obligation to perform the functions. An insurer may comply with its obligation to make reasonable inquiry by doing all of the following:*

*(a) The insurer annually obtains a certification from a third party senior manager who has responsibility for the delegated functions that the manager has a reasonable basis to represent, and does represent, that the third party is performing the required functions; and*

*(b) The insurer, based on reasonable selection criteria, periodically selects third parties contracting under subsection 3 of this section for a review to determine whether the third parties are performing the required functions. The insurer shall perform those*

*procedures to conduct the review that are reasonable under the circumstances.*

*5. An insurer that contracts with a third party pursuant to subsection 3 of this section and that complies with the requirements to supervise in subsection 4 of this section shall have fulfilled its responsibilities under subsection 1 of this section.*

*6. An insurer or a producer of insurance is not required by subsection 1 or 2 of this subsection to:*

*(a) Review, or provide for review of, all insurance producer solicited transactions; or*

*(b) Include in its system of supervision an insurance producer's recommendations to consumers of products other than the annuities offered by the insurer, general agent or independent agency.*

*7. A producer of insurance contracting with an insurer pursuant to subsection 3 of this section shall promptly, when requested by the insurer pursuant to subsection 4 of this section, give a certification as described in subsection 4 of this section or give a clear statement that it is unable to meet the certification criteria.*

*8. No person may provide a certification under subsection 4(a) of this section unless:*

*(a) The person is a senior manager with responsibility for the delegated functions; and*

*(b) The person has a reasonable basis for making the certification.*

*9. Compliance with the National Association of Securities Dealers Conduct Rule 2310 (formally Article III, Section 2 of the NASD Rules of Fair Practices) pertaining to suitability shall satisfy the requirements under this section for the recommendation of variable annuities. However, nothing in this section shall limit the Commissioner's ability to enforce the provisions of this regulation.*

*Sec.7. This regulation is effective on October 1, 2006.*