

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

The State of Nevada, Department of Business and Industry, Division of Insurance (“Division”) is proposing the adoption, amendment or repeal of regulations pertaining to chapter(s) 686A and 688A of the Nevada Administrative Code (“NAC”). A workshop has been set for **9:30 a.m. on November 14, 2018**, at the following location:

**1st Floor Hearing Room
Nevada Division of Insurance
1818 E. College Parkway, Suite 103
Carson City, Nevada 89706**

Interested persons may also participate through a simultaneous videoconference conducted at:

**4th Floor Nevada Room
Nevada State Business Center
Nevada Division of Insurance
3300 W. Sahara Avenue, Suite 275
Las Vegas, Nevada 89102**

The purpose of the workshop is to solicit comments from interested persons on the following general topic(s) that may be addressed in the proposed regulation; and to assist in determining whether the proposed regulation is likely to impose a direct and significant burden upon a small business or directly restricts the formation, operation or expansion of a small business. Please submit any written comments no later than **November 7, 2018**.

LCB File No. R165-18. Annuity Suitability and Best Interest.

A REGULATION relating to insurance; prohibiting a producer of insurance from selling an annuity under certain circumstances; requiring an insurer to verify that a producer of insurance has completed certain training before allowing the producer of insurance to sell an annuity for the insurer; prohibiting a provider of a course in training in annuities from offering the course unless certain conditions are met; revising provisions governing recommendations relating to the sale of annuities; revising provisions governing requirements of systems of supervision of recommendations by insurers and producers of insurance; and providing other matters properly relating thereto.

A copy of all materials relating to the proposal(s) may be obtained at the workshop or by visiting the Division’s Internet Web site at <http://doi.nv.gov/> or by contacting the Division, 1818 E. College Parkway, Suite 103, Carson City, Nevada 89706, (775) 687-0700. A reasonable fee for copying may be charged. Members of the public who would like additional information about a proposed regulation may contact Susan Bell, Legal Secretary, at (775) 687-0704, or via e-mail to suebell@doi.nv.gov.

Notice of the workshop was provided via electronic means to all persons on the agency's e-mail list for noticing of administrative regulations. This *Notice of Workshop to Solicit Comments on Proposed Regulations* was posted to the agency's Internet Web site at <http://doi.nv.gov/>, the Nevada Legislature's Internet Web site at <http://www.leg.state.nv.us>, and at the following locations:

Nevada Division of Insurance
1818 East College Parkway, Suite 103
Carson City, Nevada 89706

Nevada Division of Insurance
3300 West Sahara Avenue, Suite 275
Las Vegas, Nevada 89102

Legislative Building
401 South Carson Street
Carson City, Nevada 89701

Nevada State Business Center
3300 West Sahara Avenue
Las Vegas, Nevada 89102

Blasdel Building
209 East Musser Street
Carson City, Nevada 89701

Grant Sawyer Building
555 East Washington Avenue
Las Vegas, Nevada 89101

Capitol Building Main Floor
101 North Carson Street
Carson City, Nevada 89701

Nevada Department of Employment,
Training and Rehabilitation
2800 East Saint Louis Avenue
Las Vegas, NV 89104

Nevada State Library & Archives
100 North Stewart Street
Carson City, Nevada 89701

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

Churchill County Library
553 South Main Street
Fallon, Nevada 89406

Douglas County Library
P.O. Box 337
Minden, Nevada 89423

Elko County Library
720 Court Street
Elko, Nevada 89801

Esmeralda County Library
P.O. Box 430
Goldfield, Nevada 89013

Eureka Branch Library
P.O. Box 293
Eureka, Nevada 89316

Humboldt County Library
85 East 5th Street
Winnemucca, Nevada 89445

Lander County Library
P.O. Box 141
Battle Mountain, Nevada 89820

Las Vegas-Clark County Library District
7060 West Windmill Lane
Las Vegas, NV 89113

Lincoln County Library
P.O. Box 330
Pioche, Nevada 89043-0330

Lyon County Library
20 Nevin Way
Yerington, Nevada 89447

Mineral County Public Library
P.O. Box 1390
Hawthorne, Nevada 89415

Pershing County Library
P.O. Box 781
Lovelock, Nevada 89419

Storey County Clerk
P.O. Drawer D
Virginia City, Nevada 89440

Tonopah Public Library
P.O. Box 449
Tonopah, Nevada 89049

Washoe County/Downtown Reno Library
P.O. Box 2151
Reno, Nevada 89505-2151

White Pine County Library
950 Campton Street
Ely, Nevada 89301

Members of the public who are disabled and require special accommodations or assistance at the workshop are requested to notify the Commissioner's secretary, in writing, no later than five (5) working days before the workshop: 1818 E. College Parkway, Suite 103, Carson City, Nevada 89706, or suebell@doi.nv.gov.

DATED this 25th day of October, 2018.



BARBARA D. RICHARDSON
Commissioner of Insurance

WORKSHOP AGENDA

The State of Nevada, Department of Business and Industry, Division of Insurance

November 14, 2018 • 9:30 a.m.

Location of Workshop:

Nevada Division of Insurance
1818 E. College Pkwy., 1st Floor Hearing Room
Carson City, NV 89706
(Division Offices located in Suite 103)

Available via Videoconference at:

Nevada Division of Insurance
3300 W. Sahara Ave., 4th Floor Nevada Room
Las Vegas, NV 89102
(Division Offices located in Suite 275)

1. Open Workshop: R165-18.
2. Presentation and Discussion of Proposed Regulation. (For Possible Action)

LCB File No. R165-18. Annuity Suitability and Best Interest.

A REGULATION relating to insurance; prohibiting a producer of insurance from selling an annuity under certain circumstances; requiring an insurer to verify that a producer of insurance has completed certain training before allowing the producer of

insurance to sell an annuity for the insurer; prohibiting a provider of a course in training in annuities from offering the course unless certain conditions are met; revising provisions governing recommendations relating to the sale of annuities; revising provisions governing requirements of systems of supervision of recommendations by insurers and producers of insurance; and providing other matters properly relating thereto.

3. Public Comment.
4. Close Workshop: R165-18.
5. Adjourn.

Supporting public material for this workshop may be requested from Susan Bell, Legal Secretary, Nevada Division of Insurance, 1818 E. College Parkway, Carson City, Nevada 89706, (775) 687-0704, or suebell@doi.nv.gov.

Note: Any agenda item may be taken out of order; items may be combined for consideration by the public body; items may be pulled or removed from the agenda at any time; and, discussion relating to an item may be delayed or continued at any time. The Hearing Officer, within his/her discretion, may allow for public comment on individual agenda items. Public comment may be limited to three minutes per speaker.

Members of the public are encouraged to submit written comments for the record.

We are pleased to make reasonable accommodations for attendees with disabilities. Please notify the Commissioner's secretary, in writing, no later than five (5) working days before the workshop: 1818 E. College Parkway, Suite 103, Carson City, Nevada 89706, or suebell@doi.nv.gov.

NOTICES FOR THIS WORKSHOP HAVE BEEN POSTED IN ACCORDANCE WITH NRS 241 AT THE FOLLOWING LOCATIONS:

Nevada Division of Insurance, 1818 E. College Parkway, Suite 103, Carson City, Nevada 89706
Nevada Division of Insurance, 3300 W. Sahara Avenue, Suite 275, Las Vegas, Nevada 89102
Nevada State Business Center, 3300 W. Sahara Avenue, Las Vegas, Nevada 89102
Nevada State Legislative Building, 401 S. Carson Street, Carson City, Nevada 89701
Grant Sawyer State Office Building, 555 E. Washington Avenue, Las Vegas, Nevada 89101
Blasdel State Office Building, 209 E. Musser Street, Carson City, Nevada 89701
Nevada State Capitol, 101 N. Carson Street, Carson City, Nevada 89701
Nevada Dept. of Employment, Training and Rehabilitation, 2800 E. Saint Louis Avenue, Las Vegas, Nevada 89104
The State of Nevada Website (www.nv.gov)
The Nevada State Legislature Website (www.leg.state.nv.us)
The Nevada Division of Insurance Website (www.doi.nv.gov)

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

**Determination of Necessity - Small Business Impact Statement
NRS 233B.0608(1)**

Annuity Suitability

A regulation relating to transactions involving annuity products; the regulation introduces provisions related to recommendations to consumers to ensure that they are suitable, in the consumer's best interest and result in transactions involving annuity product so that the insurance needs and financial objectives of consumers at the time of the transaction are appropriately addressed. The regulation includes provisions to ensure an insurance producer has adequate knowledge of a product prior to soliciting the sale or replacement of an annuity product.

EFFECTIVE DATE OF REGULATION:
Upon filing with the Nevada Secretary of State

1. BACKGROUND.

The regulation was proposed under the authority of NRS 686A.015. The regulation amends NAC 688A, providing requirements for the solicitation of annuities, and providing other matters properly relating thereto. The purpose of the regulation is to expand the current annuity suitability regulations to conform to federal requirements as well as to require insurers to establish a system to supervise recommendations. Further, the regulation sets forth standards and procedures concerning recommendations to consumers to ensure that they are suitable, in their best interests, and result in transactions involving annuity products so that the insurance needs and financial objectives of consumers, at the time of the transaction, are appropriately addressed. The federal law, known as the Dodd-Frank Act, has incorporated into federal law the suitability provisions from the National Association of Insurance Commissioners ("NAIC") 2010 Suitability in Annuity Transactions Model Regulation #275, and has directed states to adopt the 2010 or newer NAIC model.

2. DESCRIPTION OF SOLICITATION SHOWING A CONCERTED EFFORT. NRS 233B.0608(1).

The Division of Insurance drafted a survey using Survey Monkey requesting respondents self-identify as a statutory small business and provide feedback concerning the effects of the proposed regulation on business. The survey consisted of the following questions:

1. "Please provide us with your contact information."
2. "How many employees work at your company?"
3. "Please select the most * appropriate option."
 - a. "Insurance Company that provides Annuities"
 - b. "Insurance Company that does not provide Annuities"
 - c. "Producer/Broker that has sold an Annuity in the last year"
 - d. "Producer/Broker that has not sold an Annuity in the last year"
 - e. "Small Business Owner using Annuity products"
 - f. "Small Business Owner not using Annuity products"

4. "The proposed regulation amends NAC 688A.455 by expanding the responsibilities of an insurer or producer of insurance when making recommendations related to an annuity transaction. What type of impact does your company anticipate these expanded suitability and best interest provisions having on your day to day operations?"
5. "The proposed regulation amends NAC 688A.460 related to the establishment of a system to supervise recommendations. What type of impact does your company anticipate these amended provisions having?"
6. "Section 7 of the proposed regulation introduces requirements to ensure an insurance producer has adequate knowledge of the product to recommend an annuity. How much of an impact would the provisions of section 7 and the 4 hour annuity training requirement put on your business?"

The survey was sent out to the Chambers of Commerce throughout the state of Nevada for distribution to their members. The Division also sent the survey to the Commissioner's Agency Advisory Council and the Commissioner's Life and Health Advisory Committee for response and distribution to any interested parties. In addition to distributing the survey to the Commissioner's Life and Health Advisory Committee and the Commissioner's Agency Advisory Council, the Division sought discussion, feedback, and comments from both groups during their meetings in January.

3. DOES THE PROPOSED REGULATION IMPOSE A DIRECT AND SIGNIFICANT ECONOMIC BURDEN UPON A SMALL BUSINESS OR DIRECTLY RESTRICT THE FORMATION, OPERATION OR EXPANSION OF A SMALL BUSINESS? NRS 233B.0608(1).


NO YES

4. HOW WAS THAT CONCLUSION REACHED? NRS 233B.0608(3).

Based on analysis done by Division staff, including feedback received from the survey and interested parties, the Division anticipates the impact of this regulation will primarily be on small independent agents, producers, and brokers conducting annuity transactions. The limited feedback the Division has received to date would indicate that there will not be a direct and significant economic burden placed upon a small business conducting annuity transactions to comply with the expanded provisions of the proposed regulation.

I, BARBARA D. RICHARDSON, Commissioner of Insurance for the State of Nevada, hereby certify that, to the best of my knowledge or belief, a concerted effort was made to determine the impact of the proposed regulation on small businesses and that the information contained in this statement is accurate. (NRS 233B.0608(3))

6/22/18
(DATE)


BARBARA D. RICHARDSON
Commissioner of Insurance

Small Business Impact Statement
NRS 233B.0608(2)-(4) and 233B.0609

Annuity Suitability

A regulation relating to transactions involving annuity products; the regulation introduces provisions related to recommendations to consumers to ensure that they are suitable, in the consumer's best interest and result in transactions involving annuity product so that the insurance needs and financial objectives of consumers at the time of the transaction are appropriately addressed. The regulation includes provisions to ensure that an insurance producer has adequate knowledge of a product prior to soliciting the sale or replacement of an annuity product.

1. SUMMARY OF COMMENTS RECEIVED FROM SMALL BUSINESSES. NRS 233B.0609(1)(a).

To date the Division has received 11 responses to the survey related to the proposed regulation. Of those 11 responses, only 5 were considered small businesses in that they had 50 or fewer employees. The overall results indicated a low to moderate impact related to expanding the recommendation requirements, and a moderate impact to expanding the current provisions relating to establishing a system for supervising recommendations and implementing a 4-hour training course on annuity products.

When the results were isolated to companies with 50 or fewer employees, the results indicated a moderate impact related to expanding the recommendation requirements, a moderate to significant impact to expanding the current provisions relating to establishing a system for supervising recommendations, and a moderate impact to implementing a 4-hour training course on annuity products. Based upon the comments received, the only impacts on small businesses are related to those small businesses that are producers of insurance required to comply with the provisions of this regulation. This regulation does not have any impact on non-insurance related small businesses.

The feedback from the Commissioner's Agency Advisory Council is that most states have already adopted the Annuity Suitability Provisions of the NAIC 2015 model, and, for those agencies, producers, or brokers doing business outside of Nevada, they are already accustomed to these requirements. There was general concern expressed about the over-regulation of agents, brokers, and producers, given the limited resources they have, and that more of the regulation should be placed on the carriers.

The Division will continue to accept survey results, comments and feedback from interested parties and incorporate these into our analysis on the small business impact.

Other interested parties may receive a copy of this summary by contacting Susan Bell, Legal Secretary, Nevada Division of Insurance, at (775) 687-0704 or suebell@doi.nv.gov.

2. HOW WAS THE ANALYSIS CONDUCTED? NRS 233B.0609(1)(b).

Division personnel deemed subject matter experts analyzed the small business impact based upon the results of the survey, comments received, and analysis of the requirements of the regulation. Upon receipt of comments from the small business community, the Division personnel responsible for this analysis reviewed comments along with analysis completed by the Division's Life and Health Section.

3. ESTIMATED ECONOMIC EFFECT ON SMALL BUSINESSES THE REGULATION IS TO REGULATE. NRS 233B.0609(1)(c).

The Division anticipates a very minor economic effect from the proposed regulation on those licensed producers selling annuity products. The Division anticipates that the impact will be lessened given that many of the proposed revisions are expansions of requirements already in place and do not represent a new regulatory requirement which must be implemented. The Division does not anticipate any economic impact on other small businesses in the State of Nevada.

4. METHODS CONSIDERED TO REDUCE IMPACT ON SMALL BUSINESSES. NRS 233B.0609(1)(d).

The Division anticipates that the proposed regulation and the provisions it contains have been constructed to minimize the impact on the small business, while still affording the consumers the protections needed when conducting annuity transactions. Most producers from whom the Division obtained feedback indicated they were also licensed in other states that have previously enacted the updated NAIC model and, therefore, have already implemented most of the requirements contained in this proposed regulation.

5. ESTIMATED COST OF ENFORCEMENT. NRS 233B.0609(1)(e).

The proposed regulation expands on existing requirements which have already been enacted and are currently being enforced by the Division. The Division does not anticipate any additional costs associated from the proposed regulation. In regards to the new continuing education requirements, the Division already has procedures in place to monitor continuing education requirements for licensees in the state of Nevada and, therefore, does not anticipate additional costs for enforcing this provision.

6. FEE CHANGES. NRS 233B.0609(1)(f).

No new or additional fees are established.

7. DUPLICATIVE PROVISIONS. NRS 233B.0609(1)(g).


There are no other regulations that overlap or duplicate the regulation.

8. REASONS FOR CONCLUSIONS. NRS 233B.0609(1)(h).

Based on analysis performed by Division staff, including feedback received from our survey and interested parties, the Division anticipates the impact of this proposed regulation will primarily be on small independent agents, producers, and brokers conducting annuity transactions. The limited feedback the Division has received to date would indicate an expected small impact on insurance producer-owned small businesses conducting annuity transactions to comply with the expanded provisions of the proposed regulation. The Division has tried to minimize the impact this regulation will have on these small businesses, while still affording protections to the consumers who conduct transactions related to annuities. No other Nevada small businesses are expected to have an economic impact from this regulation.

I, BARBARA D. RICHARDSON, Commissioner of Insurance for the State of Nevada, hereby certify that, to the best of my knowledge or belief, a concerted effort was made to determine the impact of the proposed regulation on small businesses and that this statement was prepared properly and the information contained herein is accurate. (NRS 233B.0609(2))

6/22/18
(DATE)



BARBARA D. RICHARDSON
Commissioner of Insurance

**PROPOSED REGULATION OF
THE COMMISSIONER OF INSURANCE**

LCB File No. R165-18

October 15, 2018

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

AUTHORITY: §§1-14, NRS 679B.130.

A REGULATION relating to insurance; prohibiting a producer of insurance from selling an annuity under certain circumstances; requiring an insurer to verify that a producer of insurance has completed certain training before allowing the producer of insurance to sell an annuity for the insurer; prohibiting a provider of a course in training in annuities from offering the course unless certain conditions are met; revising provisions governing recommendations relating to the sale of annuities; revising provisions governing requirements of systems of supervision of recommendations by insurers and producers of insurance; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides for the Commissioner of Insurance to regulate annuities. (NRS 679B.120, NRS chapter 688A) Existing regulations govern the selling of annuities. (NAC 688A.400-688A.475) **Section 6** of this regulation prohibits a producer of insurance from selling an annuity unless the producer has successfully completed a course of training in annuities that: (1) has been approved by the Commissioner; (2) consists of not less than 4 hours of instruction; and (3) includes information on certain required subjects. **Section 7** of this regulation prohibits a producer of insurance from selling an annuity unless the producer has: (1) adequate knowledge of the annuity to recommend the annuity; and (2) completed a course of training in annuities. **Section 7** also prohibits a producer of insurance from: (1) dissuading or attempting to dissuade a consumer from truthfully responding to an insurer's request for confirmation of the consumer's suitability information; and (2) filing, or cooperating with the investigation of, a complaint. **Section 8** of this regulation requires an insurer to verify that a producer of insurance has successfully completed a required course of training in annuities before allowing the producer of insurance to sell an annuity for the insurer. **Section 9** of this regulation prohibits a provider of a course of training in annuities from offering the course unless: (1) the provider has obtained approval for the course from the Commissioner; and (2) the provider and course are in compliance with certain requirements governing continuing education.

Existing regulations: (1) require an insurer or producer of insurance to make reasonable efforts to obtain certain information from a person before recommending the purchase or exchange of certain annuities; and (2) authorize the Commissioner to require an insurer or producer of insurance to take corrective action if an insured is harmed financially by the failure of the insurer or a producer of insurance to comply with certain requirements. (NAC 688A.455) **Section 12** of this regulation: (1) requires an insurer or producer of insurance to only make a recommendation that furthers the insurance needs and financial objectives, and is in the best interest, of the consumer; (2) revises the information which an insurer or producer of insurance must obtain in recommending an annuity to a consumer; (3) limits, with certain exceptions, the circumstances under which an insurer or producer of insurance may make the recommendation; (4) requires certain documentation of the recommendation and transaction; and (5) revises the persons whom the Commissioner may require to take corrective action and the circumstances under which such action may be required.

Existing regulations require insurers and producers of insurance to establish and maintain systems to supervise recommendations to ensure compliance with regulations. (NAC 688A.460) **Section 13** of this regulation: (1) establishes new requirements for training; (2) revises procedures for review of recommendations and monitoring of compliance, including oversight of required functions which are contracted out to third parties; and (3) requires annual reporting to senior management of insurers. **Section 13** also revises provisions governing compliance with rules of the securities and financial industries.

Section 14 of this regulation: (1) provides that a producer of insurance who holds an existing line of authority which includes annuities on the effective date of this regulation must complete the required course of training in annuities not later than 6 months after the effective date of this regulation; and (2) relieves an insurer of the duty to verify that a producer of insurance who holds an existing line of authority on the effective date of this regulation has completed the required course of training in annuities for a period of 6 months after the effective date of this regulation.

Section 1. NAC 686A.526 is hereby amended to read as follows:

686A.526 “Replacement” means a transaction in which a new policy is to be purchased and the agent or insurer who proposes the replacement knows or should know, by reason of the transaction, that an existing policy has been or will be:

1. ~~Terminated;~~ *Lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer or otherwise terminated;*

2. Converted to reduced paid-up insurance, continued as extended term insurance or otherwise reduced in value by the use of nonforfeiture benefits or other values in the policy;
3. Amended to reduce benefits or to reduce the term for which coverage would otherwise remain in force;
4. Reissued with any reduction in the cash value of the policy; or
5. Pledged as collateral or subjected to borrowing for an aggregate amount that exceeds 25 percent of the loan value set forth in the policy.

Sec. 2. Chapter 688A of NAC is hereby amended by adding thereto the provisions set forth as sections 3 to 9, inclusive, of this regulation.

Sec. 3. *“Best interest” means that, at the time an annuity is issued, a producer of insurance who is making a recommendation concerning the annuity acts with reasonable diligence, care, skill and prudence in a manner the producer of insurance believes will put the interest of the consumer first. The term does not mean that a resulting recommendation is:*

1. *The least expensive annuity;*
2. *The annuity with the highest stated interest rate or income payout rate; or*
3. *The single best annuity,*

↪ which is available in the marketplace at the time of the annuity transaction.

Sec. 4. *“Replacement” has the meaning ascribed to it in NAC 686A.526.*

Sec. 5. *“Suitability information” means information that is reasonably appropriate to determine the suitability of a recommendation concerning an annuity, including, without limitation:*

1. *The age of the consumer;*

2. *The actual and desired annual income of the consumer;*
3. *The financial situation and needs of the consumer;*
4. *The financial experience of the consumer;*
5. *The financial objectives of the consumer;*
6. *The intended use of the annuity;*
7. *The financial time horizon of the consumer;*
8. *The existing assets and financial products of the consumer, including, without limitation, holdings of investments and life insurance;*
9. *The liquidity needs of the consumer;*
10. *The liquid net worth of the consumer;*
11. *The tolerance of risk by the consumer, including, without limitation, changes in nonguaranteed elements;*
12. *Financial resources used to fund an annuity, including, without limitation, potential surrender charges, tax implications and penalties that could be incurred by the use of those resources; and*
13. *The tax status of the consumer.*

Sec. 6. 1. *A producer of insurance may not sell an annuity unless the producer of insurance successfully completes a course of training in annuities as described in subsection 2 that has been approved by the Commissioner.*

2. The training required by subsection 1:

(a) Must consist of not less than 4 hours of instruction and include, without limitation, information on the following subjects:

- (1) The types of annuities and various classifications of annuities;*
- (2) The identification of the different parties to an annuity;*
- (3) How product-specific features of annuities affect consumers;*
- (4) The application of income taxation on qualified and nonqualified annuities;*
- (5) The primary uses of annuities;*
- (6) The financial exploitation of seniors and other vulnerable adults;*
- (7) Appropriate sales practices; and*
- (8) Requirements concerning disclosures and replacement of annuities.*

(b) May not include:

- (1) Any marketing information;*
- (2) Specific information about a particular insurer's annuities; or*
- (3) Training on sales techniques.*

3. A course which satisfies the requirements for contents of continuing education established by the Financial Industry Regulatory Authority, or its successor entity, pursuant to Rule 1250 of that body will be deemed to satisfy the requirements of subsection 2.

4. A course of training in annuities which has been approved by the Commissioner and which complies with the requirements in subsection 1 of section 9 of this regulation may be conducted and completed through attendance and participation at a live presentation or through participation in a program of self-study.

5. A provider of a course of training in annuities shall comply with the requirements of subsections 1, 2 and 3 of NAC 683A.340.

Sec. 7. A producer of insurance shall not:

1. Solicit the sale or replacement of an annuity unless the producer of insurance:

(a) Has adequate knowledge of the annuity to recommend the annuity; and

(b) Is in compliance with:

(1) The requirements of section 6 of this regulation; and

(2) The insurer's standards for training regarding annuities of the insurer that offers

the annuity.

↪ A producer of insurance may rely on standards and materials from product-specific training which is provided by an insurer to comply with this subsection.

2. Dissuade, or attempt to dissuade, a consumer from:

(a) Truthfully responding to an insurer's request for confirmation of the consumer's suitability information;

(b) Filing a complaint with the Division; or

(c) Cooperating with the investigation of a complaint.

Sec. 8. *1. An insurer shall, before allowing a producer of insurance to sell an annuity for the insurer, verify that the producer of insurance has successfully completed a course of training in annuities in accordance with section 6 of this regulation that is approved by the Commissioner.*

2. An insurer may satisfy the requirements of subsection 1 by obtaining:

(a) A copy of a producer of insurance's certificate of completion for the course of training in annuities;

(b) A report provided by:

(1) A database system or database vendor sponsored by the Commissioner; or

(2) A reasonably reliable commercial database vendor that has a reporting arrangement with approved insurance education providers; or

(c) Proof of the producer of insurance's successful completion of training in another state that is substantially similar to the requirements described in section 6 of this regulation.

Sec. 9. *A provider of a course of training in annuities shall not offer the course unless:*

1. The provider has obtained approval for the course from the Commissioner in accordance with the procedure for obtaining the approval for a course of continuing education as set forth in NAC 683A.335; and

2. The provider and course are in compliance with all provisions applicable to continuing education as set forth in NAC 683A.335, 683A.337 and 683A.340;

↪ as if the course of training in annuities were a course for continuing education.

Sec. 10. NAC 688A.400 is hereby amended to read as follows:

688A.400 As used in NAC 688A.400 to 688A.475, inclusive, *and sections 3 to 9, inclusive, of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 688A.405 to 688A.445, inclusive, *and sections 3 to 5, inclusive, of this regulation* have the meanings ascribed to them in those sections.

Sec. 11. NAC 688A.450 is hereby amended to read as follows:

688A.450 1. Except as otherwise provided in subsections 2 and 3, NAC 688A.400 to 688A.475, inclusive, *and sections 3 to 9, inclusive, of this regulation* apply to:

- (a) Any solicitation, negotiation or procurement of annuities occurring within this State;
- (b) Any issuer of annuities, including, without limitation, fraternal benefit societies; and
- (c) Individual deferred annuities.

2. NAC 688A.400 to 688A.475, inclusive, *and sections 3 to 9, inclusive, of this regulation*

do not apply to:

(a) Annuities used to pay for:

(1) An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act of 1974, 29 U.S.C. §§ 1001 et seq.

(2) A plan established or maintained by an employer and authorized by 26 U.S.C. § 401(a), 401(k), 403(b), 408(k) or 408(p).

(3) A governmental plan, as defined in 26 U.S.C. § 414(d).

(4) A church plan, as defined in 26 U.S.C. § 414(e).

(5) A government or church welfare benefit plan.

(6) A deferred compensation plan of a state or local government or a tax exempt organization authorized by 26 U.S.C. § 457.

(7) A nonqualified deferred compensation arrangement.

(8) A settlement or an assumption of liabilities associated with litigation or any other process for dispute resolution related to a claim for compensation for personal injury.

(9) A prepaid funeral contract.

(10) A structured settlement annuity.

(11) A funding agreement.

(b) Immediate annuity contracts that do not contain any nonguaranteed elements.

(c) Annuities purchased from an insurer in response to a direct-response solicitation and where the purchase was not based on a recommendation from the insurer.

3. Notwithstanding the provisions of subsection 2, NAC 688A.400 to 688A.475, inclusive, *and sections 3 to 9, inclusive, of this regulation* apply to any annuity that is used to pay for a plan or arrangement which is paid for solely by contributions made by an employee on a pretax or after-tax basis and where participants are able to choose from among two or more fixed annuity providers.

4. As used in this section:

(a) “Funding agreement” means an agreement under which an insurer accepts and accumulates money for the purpose of making one or more future payments to a person that are not based on mortality or morbidity contingencies.

(b) “Structured settlement annuity” means:

(1) A qualified funding asset that meets the requirements of section 130(d) of the Internal Revenue Code, 26 U.S.C. § 130(d); or

(2) An annuity that meets the requirements to be a qualified funding asset pursuant to section 130(d) of the Internal Revenue Code, 26 U.S.C. § 130(d), except that the annuity is not owned by an assignee under qualified assignment.

Sec. 12. NAC 688A.455 is hereby amended to read as follows:

688A.455 1. Except as otherwise provided in subsection ~~[2, before an insurer or a producer of insurance recommends]~~ *3, in recommending* to a ~~[person]~~ *consumer* the purchase of an annuity, or the exchange of an annuity that results in ~~[the purchase or exchange of an annuity in accordance with the recommendation, the insurer or]~~ *another insurance transaction or series of insurance transactions, a* producer of insurance ~~[must make reasonable efforts to obtain:~~
~~—(a) The financial and tax status of the person;~~

~~—(b) The investment objectives of the person; and~~

~~—(c) Any other information that the insurer or producer of insurance determines would be useful in making such a recommendation.~~

~~—2.] or, in circumstances under which no producer of insurance is involved, an insurer shall only make a recommendation that furthers the insurance needs and financial objectives, and is in the best interest, of the consumer at the time the recommendation is made based on the facts which the consumer discloses as to his or her investments, other insurance products and financial situation and needs, including, without limitation, his or her suitability information.~~

2. Before recommending an annuity, a producer of insurance or, in circumstances under which no producer of insurance is involved, an insurer shall:

(a) Make reasonable efforts to obtain the suitability information of the consumer;

(b) Evaluate the types of financial products which:

(1) Correspond to the suitability information disclosed by the consumer; and

(2) Address the financial objectives of the consumer; and

(c) Provide disclosure of the following information to the consumer:

(1) The scope of services which may be provided by the producer of insurance or insurer, as applicable;

(2) The scope of the licenses of the producer of insurance, if applicable;

(3) Material conflicts of interest arising from financial incentives that are associated with the recommendation, including, without limitation, any direct interest or ownership which the producer of insurance or an immediate family member of the producer of insurance has in the insurer whose product is being recommended; and

(4) The sources and types of compensation which the producer of insurance will or may receive as a result of the recommended transaction.

3. Before an insurer or a producer of insurance recommends to a person the purchase of a variable annuity, or the exchange of a variable annuity that results in any additional insurance transaction, the insurer or producer of insurance must make reasonable efforts to : ~~{obtain:}~~

(a) ~~{The information described in subsection 1;}~~ *Comply with the provisions of subsections 1 and 2; or*

(b) ~~{The}~~ *Obtain the* information described in ~~{Conduct Rule 2310 of the National Association of Securities Dealers.~~

~~—3.}~~ *the requirements pertaining to suitability as established by the Financial Industry Regulatory Authority or its successor entity, including, without limitation, Rule 2111 of that body.*

4. *In recommending to a consumer the purchase of an annuity, or the exchange of an annuity that results in another insurance transaction or series of transactions, a producer of insurance or, in circumstances under which no producer of insurance is involved, an insurer must have a reasonable basis to believe:*

(a) *The consumer has been reasonably informed of various features of the annuity, including, without limitation:*

(1) Any potential surrender period and surrender charge;

(2) Any potential tax penalty if the consumer sells, exchanges, surrenders or annuitizes the annuity;

(3) Mortality risk;

- (4) Expense fees;*
- (5) Investment advisory fees;*
- (6) Features of, and any potential charges for, riders;*
- (7) Limitations on interest returns;*
- (8) Insurance and investment components; and*
- (9) Market risk.*

(b) The consumer would benefit from certain features of the annuity, including, without limitation:

- (1) Tax-deferred growth;*
- (2) Annuitization; and*
- (3) Death benefits and living benefits.*

(c) The annuity as a whole, the underlying subaccounts to which funds are allocated at the time of purchase or exchange of the annuity and riders and similar product enhancements, if any, further the insurance needs and financial objectives, and are in the best interest, of that consumer based on his or her suitability information;

(d) In the case of an exchange or replacement of an annuity, the exchange or replacement and the transaction as a whole further the insurance needs and financial objectives, and are in the best interest, of that consumer based on his or her suitability information, taking into consideration whether the consumer:

- (1) Will:*
 - (I) Incur a surrender charge;*
 - (II) Be subject to the commencement of a new surrender period;*

(III) Lose existing benefits, including, without limitation, death benefits, living benefits or other contractual benefits; or

(IV) Be subject to increased fees, advisory fees or charges for riders and similar product enhancements;

(2) Would benefit from product enhancements and improvements, and the replacing product would provide a substantial financial benefit to the consumer over the life of the product; and

(3) Has transacted another exchange or replacement, particularly within the preceding 60 months.

5. At the time of sale of an annuity, the producer of insurance or responsible representative of the insurer, as applicable, shall:

(a) Make a record of any recommendation and the basis or bases of the recommendation;

(b) If the consumer decides to enter into a transaction for an annuity that is not based on a recommendation by the producer of insurance or insurer, obtain a statement, signed by the consumer, in which the consumer acknowledges that the transaction for the annuity is not recommended by the producer of insurance or insurer; and

(c) If the consumer refuses to provide suitability information, obtain a statement, signed by the consumer, which documents that refusal.

6. Except as otherwise provided in subsection 7, an insurer shall not issue an annuity which is recommended to a consumer unless the insurer has a reasonable basis to believe, based on the suitability information of the consumer, that the annuity furthers the insurance needs and financial objectives, and is in the best interest, of the consumer.

7. *An insurer is not obligated to determine whether an annuity furthers the insurance needs and financial objectives, and is in the best interest, of a consumer if:*

(a) *A producer of insurance makes no recommendation regarding a transaction for an annuity to the consumer;*

(b) *A producer of insurance makes a recommendation but the recommendation is later found to have been made based on materially inaccurate information which was provided by the consumer;*

(c) *The consumer refuses to provide relevant suitability information and a producer of insurance does not recommend a transaction for an annuity; or*

(d) *The consumer decides to enter into a transaction for an annuity that is not based on a recommendation of the insurer or a producer of insurance.*

↪ *The insurer must instead determine whether the annuity is reasonable based on the circumstances actually known to the insurer at the time the annuity is to be issued.*

8. *The requirements of this section are in addition to any applicable duties and requirements with which a producer of insurance must comply pursuant to NRS 90.575.*

9. *An insurer is responsible for compliance with this section.* Except as otherwise provided in subsection ~~[4,]~~ 10, if ~~[an insured is harmed financially]~~ *a violation of this section occurs because of any action or inaction of an insurer or a producer of insurance, ~~[failed to comply with subsection 1 or 2,]~~ the Commissioner may ~~[require]~~ :*

(a) *Require* the insurer ~~[or producer of insurance]~~ to take *reasonably appropriate* corrective action ~~[~~

~~—4.]~~ *for any consumer who is harmed by the violation by the insurer or producer of insurance for that insurer;*

(b) Require the producer of insurance or an agency which is licensed to sell insurance in this State to take reasonably appropriate corrective action for any consumer who is harmed by the violation by the producer of insurance; and

(c) Impose penalties and sanctions.

10. An insurer or a producer of insurance is not responsible for any financial damages incurred by an insured relating to the purchase or exchange of an annuity that was recommended by the insurer or producer of insurance if the insured:

(a) Refused to provide to the insurer or producer of insurance the information described in subsection ~~[1 or 2;]~~ **2 or 3;**

(b) Provided to the insurer or producer of insurance information that was incomplete or inaccurate; or

(c) Entered into an insurance transaction that was not based on the recommendation of the insurer or producer of insurance.

11. *The provisions of this section do not replace the requirements of NAC 686A.573 and 686A.577.*

Sec. 13. NAC 688A.460 is hereby amended to read as follows:

688A.460 1. An insurer shall ~~[provide for]~~ **establish** a system ~~[to supervise recommendations]~~ **of supervision** which is reasonably designed to ~~[comply]~~ **achieve the compliance of the insurer and its producers of insurance** with the provisions of this chapter . ~~[and which is established and maintained pursuant to subsections 3, 4 and 5.]~~ The system must

~~[include,]~~ *require the insurer to*, without limitation ~~[, a process for maintaining written procedures and a process for reviewing records which is reasonably designed to detect and prevent violations of the provisions of this chapter.]~~ :

(a) Provide product-specific training and training materials which explain all material features of its annuities to its producers of insurance.

(b) Incorporate the requirements of NAC 688A.400 to 688A.475, inclusive, and sections 3 to 9, inclusive, of this regulation into relevant materials for the training of producers of insurance.

(c) Establish standards for training producers of insurance on the insurer's products.

(d) Establish and maintain reasonable procedures to:

(1) Inform its producers of insurance of the requirements of NAC 688A.400 to 688A.475, inclusive, and sections 3 to 9, inclusive, of this regulation.

(2) Require its producers of insurance to comply with the requirements of NAC 688A.455.

(3) Review each recommendation relating to an annuity before issuing the annuity. The procedures:

(I) Must be designed to ensure that there is a reasonable basis to determine that the recommendations furthers the insurance needs and financial objectives, and is in the best interest, of a consumer.

(II) May provide for reviews to be accomplished electronically or through other means, including, without limitation, physical review.

(III) May apply a system of screening to identify selected transactions for additional review and may be designed to require additional review of only those transactions which are identified by certain selection criteria.

(4) Detect recommendations that do not further the insurance needs and financial objectives, and are not in the best interest, of consumers. The procedures may include, without limitation:

(I) Confirmation of the suitability information of a consumer;

(II) Systematic surveys of consumers;

(III) Interviews of consumers;

(IV) Confirmation letters to consumers; and

(V) Programs of internal monitoring.

↳ Nothing in this subparagraph prevents an insurer from complying with this subparagraph by applying sampling procedures or by confirming suitability information after the issuance or delivery of an annuity.

(5) Supervise the performance of functions for which the insurer has contracted with a third party pursuant to subsection 3. The procedures must include, without limitation:

(I) Monitoring and, as appropriate, conducting audits of the third party to ensure that the functions are properly performed; and

(II) Annually obtaining a certification from a senior manager of the third party who has the responsibility for the functions that the manager has a reasonable basis to represent, and does so represent, that the third party is properly performing the functions.

(6) Provide to its senior management, including, without limitation, the senior manager who is responsible for audit functions, an annual report which details:

(I) A review of the system of supervision, with appropriate testing which is reasonably designed to determine the effectiveness of that system;

(II) Any exceptions found; and

(III) Corrective action which taken or recommended, if any.

2. A producer of insurance shall ~~[provide for]~~ *establish* a system ~~[to supervise recommendations]~~ *of supervision* which is reasonably designed to ~~[comply]~~ *achieve the compliance of the producer of insurance and his or her insurer* with the provisions of this chapter . ~~[and which is established and maintained pursuant to subsections 3, 4 and 5.]~~ The system must ~~[include,]~~ *require the producer of insurance to*, without limitation ~~[, a process for maintaining written procedures and a process for reviewing records which is reasonably designed to detect and prevent violations of the provisions of this chapter.]~~ , *establish and maintain reasonable procedures to:*

(a) Review each recommendation relating to an annuity before issuing the annuity. The procedures:

(1) Must be designed to ensure that there is a reasonable basis to determine that the recommendations furthers the insurance needs and financial objectives, and is in the best interest, of a consumer.

(2) May provide for reviews to be accomplished electronically or through other means, including, without limitation, physical review.

(3) May apply a system of screening to identify selected transactions for additional review and may be designed to require additional review of only those transactions which are identified by certain selection criteria.

(b) Detect recommendations that do not further the insurance needs and financial objectives, and are not in the best interest, of consumers. The procedures may include, without limitation:

(1) Confirmation of the suitability information of a consumer;

(2) Systematic surveys of consumers;

(3) Interviews of consumers;

(4) Confirmation letters to consumers; and

(5) Programs of internal monitoring.

↪ Nothing in this paragraph prevents a producer of insurance from complying with this paragraph by applying sampling procedures or by confirming suitability information after the issuance or delivery of an annuity.

3. An insurer may contract with a third party ~~[, including, without limitation, a producer of insurance, to establish and maintain a system to supervise recommendations pursuant to the provisions of]~~ *for the performance of a function required by* subsection 1 ~~[with respect to producers of insurance under contract with or employed by the third party.]~~, *including, without limitation, the establishment and maintenance of procedures required by that subsection. The insurer is responsible for taking appropriate corrective actions and may be subject to sanctions and penalties regardless of whether the insurer:*

(a) Contracts with a third party; or

(b) Complies with the requirements of subparagraph (5) of paragraph (d) of subsection 1.

~~4. [An insurer shall make a reasonable inquiry to ensure that a third party with whom the insurer contracts pursuant to subsection 3 complies with the provisions of subsection 1 and shall take reasonable action to enforce the contractual obligation to comply with the provisions of subsection 1. An insurer may comply with its obligation to make a reasonable inquiry by:~~

~~—(a) Obtaining a certification that the third party is complying with the provisions of subsection 1 from a senior manager of the third party who has responsibility for complying with the provisions of subsection 1; and~~

~~—(b) Periodically reviewing the performance of the third party to determine whether the third party is complying with the provisions of subsection 1. The insurer shall use reasonable procedures in conducting the review.~~

~~—5.]~~ The provisions of subsections 1 and 2 do not require an insurer or a producer of insurance to:

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

or

(b) Include in its system to supervise recommendations advice given to consumers by a producer of insurance concerning products other than the annuities offered by the insurer or producer of insurance.

~~[6.]~~ **5.** A producer of insurance contracting with an insurer pursuant to subsection 3, when requested by an insurer pursuant to *subparagraph (5) of paragraph (d) of subsection* ~~[4.]~~ **1**, shall provide to the insurer a certification as described in ~~[subsection 4]~~ *that subparagraph* or a clear

statement that the producer of insurance is unable to meet the criteria for certification within 10 days after the producer of insurance receives the request from the insurer.

~~[7.]~~ **6.** A person may not provide a certification pursuant to *subparagraph (5) of* paragraph ~~[(a)]~~ *(d)* of subsection ~~[4]~~ **1** unless:

(a) The person is a senior manager with responsibility for complying with the provisions of subsection 1; and

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

~~[8.—Compliance]~~

7. *A sale of an annuity that is made in compliance* with ~~[Conduct Rule 2310 of the National Association of Securities Dealers]~~ **Rule 2111**, pertaining to suitability, *and Rule 3110, pertaining to supervision, of the Financial Industry Regulatory Authority* satisfies the requirements of this section. ~~[for the recommendation of variable annuities.~~

~~—9.]~~ *This subsection also applies to the sale of an annuity by a broker-dealer who is registered with the Financial Industry Regulatory Authority if:*

(a) *The standards for suitability and supervision which are applicable to that sale are similar to the standards which are applicable to the sale of a variable annuity by the broker-dealer; and*

(b) *The insurer:*

(1) Monitors the broker-dealer using information which is collected in the normal course of an insurer's business; and

(2) Provides the broker-dealer with information and reports that are reasonably appropriate to assist the broker-dealer in maintaining the broker-dealer's system of supervision.

↪ Nothing in this subsection shall be construed to limit the ability of the Commissioner to enforce the provisions of this chapter.

8. An insurer that contracts with a third party *for the performance of a function* pursuant to subsection 3 and that complies with the requirements set forth in *subparagraph (5) of paragraph (d) of subsection [4] I* shall be deemed to have complied with the provisions of subsection 1 [4] *as they relate to that function.*

Sec. 14. 1. A producer of insurance who holds a line of authority which includes annuities on the effective date of this regulation must successfully complete a course of training in annuities pursuant to section 6 of this regulation not later than 6 months after the effective date of this regulation.

2. Notwithstanding the provisions of section 8 of this regulation, an insurer is not required to verify that a producer of insurance has successfully completed a course of training in annuities pursuant to section 6 of this regulation if:

(a) The producer of insurance holds a line of authority which includes annuities on the effective date of this regulation; and

(b) A period of 6 months has not elapsed since the effective date of this regulation.