

**APPROVED REGULATION OF
THE COMMISSIONER OF INSURANCE**

LCB File No. R109-23

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

AUTHORITY: §§ 1-28, NRS 679B.130.

A REGULATION relating to insurance; revising provisions governing the duties of producers of insurance and insurers when recommending and selling annuities; requiring a producer of insurance to act in the best interest of the consumer when making a recommendation for the purchase, exchange or replacement of an annuity; establishing the obligations that a producer of insurance is required to satisfy to act in the best interest of the consumer; establishing training requirements for producers of insurance who sell or solicit the sale of annuities; revising the requirement for an insurer to have a system to supervise the recommendation and sale of annuities; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law authorizes the Commissioner of Insurance to regulate the sale of annuities. (NRS 679B.130, Chapter 688A of NRS) Under existing regulations, before making a recommendation that a person purchase or exchange an annuity, an insurer or producer of insurance is required to obtain from that person certain financial and other information that is useful in making such a recommendation. (NAC 688A.455) Existing regulations also: (1) require an insurer to establish and maintain a system to supervise recommendations for the purchase or exchange of an annuity that is reasonably designed to detect and prevent violations of existing regulations governing the sale of annuities; and (2) authorize an insurer to contract with a third party to establish and maintain the system of supervision. (NAC 688A.460) **Section 28** of this regulation repeals these existing regulations governing recommendations for the purchase and exchange of an annuity, and **sections 3-27** of this regulation replace these regulations with the provisions of the “The Suitability in Annuity Transaction Model Regulation” adopted by the National Association of Insurance Commissioners and revised in February of 2020.

Sections 3-13 of this regulation define terms. **Section 11** of this regulation provides that the obligations and duties imposed on producers of insurance by **sections 3-27** apply to the insurer when no producer is involved in the transaction.

Section 14 of this regulation provides that the standards set forth in **sections 3-27** do not apply to certain types of annuities, including, without limitation, annuities used to fund: (1) pension plans regulated under the federal Employee Retirement Income Security Act of 1974 (ERISA); (2) deferred compensation plans offered by employers under the federal Internal

Revenue Code; (3) settlements or assumptions of liabilities associated with personal injury litigation or other claim or dispute resolution processes; and (4) formal prepaid funeral contracts.

Section 15 of this regulation establishes a standard that requires a producer of insurance, when making a recommendation to purchase, exchange or replace an annuity, to act in the best interest of the consumer under the circumstances known at the time the recommendation is made, without placing the financial interest of the producer or insurer ahead of the consumer's interest. **Sections 16-19** of this regulation establish the obligations that a producer of insurance is required to satisfy to comply with the requirement to act in the best interest of the consumer when making a recommendation to purchase, exchange or replace an annuity. **Section 12** of this regulation: (1) defines the term "recommendation" for the purposes of determining the types of communications to which these obligations apply; and (2) establishes that these obligations do not apply when a producer of insurance communicates to the public in general, provides generalized customer services assistance or administrative support, or provides general educational information and tools, prospectuses, or other product and sales material.

Section 16 of this regulation requires a producer of insurance, in making a recommendation, to exercise reasonable diligence, care and skill to: (1) know the financial situation, insurance needs and financial objectives of the consumer; (2) understand the available options after making a reasonable inquiry into such options; (3) have a reasonable basis to believe the recommended option effectively addresses the financial situation, insurance needs and financial objectives of the consumer; and (4) communicate the basis or bases for the recommendation.

Section 17 of this regulation requires that, before making a recommendation or sale of an annuity, a producer of insurance must prominently disclose certain information on a form approved by the Commissioner. Under **section 17**, the producer of insurance is required to disclose: (1) certain information about the nature of the producer's relationship with the consumer; (2) the role of the producer; (3) the products which the producer is licensed and authorized to sell; (4) the insurers for which the producer is able to sell insurance products; (5) the source and type of cash compensation and non-cash compensation, as defined in **sections 5 and 9** of this regulation, respectively, to be received by the producer; and (6) the right of the consumer to request additional information regarding the cash compensation to be received by the producer.

Section 18 of this regulation requires a producer of insurance to identify and avoid or reasonably manage and disclose material conflicts of interest. **Section 8** of this regulation defines the circumstances that constitute a material conflict of interest for the purposes of **section 18**.

Section 19 of this regulation requires a producer of insurance, at the time of making a recommendation or sale of an annuity, to make a written record of any recommendation and the basis for the recommendation. **Section 19** further requires a producer of insurance to obtain a statement signed by the consumer on a form approved by the Commissioner if the consumer: (1) refuses to provide information on which the producer may base a recommendation or provides insufficient information on which to base a recommendation; or (2) decides to enter into an annuity transaction that is not based on the recommendation of the producer.

Section 20 of this regulation: (1) makes the obligations for acting in the best interest of the consumer under **sections 15-19** applicable to any producer of insurance who has material control or influence in the making of a recommendation and has received direct compensation as a result of the recommendation or sale, even if the producer did not have direct contact with the consumer; and (2) provides that the requirement to act in the best interest of the consumer under

sections 15-19 does not apply to a producer whose activities are limited to providing or delivering marketing or educational materials, product wholesaling or other back office product support, or general supervision of another producer.

Section 21 of this regulation provides that the obligations of a producer to act in the best interest of the consumer under **sections 15-19** do not apply if: (1) no recommendation is made; (2) a recommendation is made but is found to have been prepared based on materially inaccurate information provided by the consumer; (3) a consumer refused to provide relevant information and the annuity transaction is not recommended; or (4) the consumer decided to enter into an annuity transaction that is not based on the recommendation of the producer.

Section 22 of this regulation prohibits an insurer from issuing an annuity recommended to a consumer unless there is a reasonable basis to believe that the annuity would effectively address the particular financial situation, insurance needs and financial objectives of the consumer based on the information provided by the consumer. **Section 22** also replaces the requirements of existing regulations repealed by **section 28** for the system to supervise recommendations concerning annuities which insurers are required to establish and maintain. (NAC 688A.460) Specifically, **section 22**: (1) establishes new requirements for training producers of insurance concerning certain specific annuity products of an insurer; (2) revises procedures for the review of recommendations and the monitoring of compliance, including the oversight of required functions which are contracted by the insurer to third parties; and (3) requires annual reporting to the senior management of insurers.

Section 23 of this regulation prohibits a producer of insurance or an insurer from dissuading, or attempting to dissuade, a consumer from: (1) truthfully responding to a request from an insurer to confirm the information from the consumer that formed a basis for a producer's recommendation to purchase, exchange or replace an annuity; (2) filing a complaint; or (3) cooperating with the investigation of a complaint.

Section 24 of this regulation provides that recommendations and sales of annuities by certain financial professionals that comply with standards that are comparable to the standards set forth in **sections 3-27** will satisfy the requirements of those sections.

Section 25 of this regulation establishes requirements for the training of producers of insurance who sell, or solicit the sale of, annuities. **Section 25** prohibits a producer of insurance from selling, or soliciting the sale of, an annuity unless the producer has adequate knowledge of the product to recommend the annuity and is in compliance with the insurer's requirements for training concerning the product. Additionally, **section 25** requires a producer of insurance, before engaging in the solicitation or sale of annuities, to successfully complete a course of training in annuities that: (1) consists of not less than 4 hours of instruction; and (2) includes information on certain required subjects. **Section 25** 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. Finally, **section 25** requires an insurer to verify that a producer of insurance has successfully completed the required course of training in annuities before allowing the producer of insurance to sell an annuity for the insurer.

Section 26 of this regulation provides that an insurer is responsible for compliance with **sections 3-27** and establishes the penalties that the Commissioner may impose on an insurer for a violation by the insurer or its producer.

Section 27 of this regulation requires insurers, general agents, independent agencies and producers of insurance to maintain certain records for 5 years and make those records available to the Commissioner.

Existing regulations impose certain duties on insurers and producers of insurance with respect to the replacement of life insurance policies. (NAC 686A.510-686A.577) **Section 1** of this regulation revises the definition establishing the transactions which constitute the replacement of a life insurance policy to match the definition set forth in **section 13** of this regulation for the replacement of an annuity. (NAC 686A.526)

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 ~~or~~ *or for which benefits would be paid;*

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 ~~or~~; *or*

6. *Used in a financed purchase.*

Sec. 2. Chapter 688A of NAC is hereby amended by adding thereto the provisions set forth as sections 3 to 27, inclusive, of this regulation.

Sec. 3. *As used in sections 3 to 27, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 4 to 13, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 4. *“Annuity” has the meaning ascribed to it in NRS 688A.020.*

Sec. 5. *“Cash compensation” means any discount, concession, fee, service fee, commission, sales charge, loan, override, or cash benefit received by a producer in connection with the recommendation or sale of an annuity from an insurer, intermediary, or directly from the consumer.*

Sec. 6. *“Consumer profile information” means information that is reasonably appropriate to determine whether a recommendation addresses the financial situation, insurance needs and financial objectives of a consumer, including, at a minimum, the following:*

- 1. The age of the consumer;*
- 2. The annual income of the consumer;*
- 3. The financial situation and needs of the consumer, including debts and other obligations;*
- 4. The financial experience of the consumer;*
- 5. The insurance needs of the consumer;*
- 6. The financial objectives of the consumer;*
- 7. The intended use of the annuity;*
- 8. The financial time horizon of the consumer;*
- 9. The existing assets and financial products of the consumer, including, without limitation, holdings of investments and insurance;*
- 10. The liquidity needs of the consumer;*
- 11. The liquid net worth of the consumer;*

12. The risk tolerance of the consumer, including, without limitation, the willingness of the consumer to accept changes in non-guaranteed elements;

13. 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

14. The tax status of the consumer.

Sec. 7. “Intermediary” means an entity contracted directly with an insurer or with another entity contracted with an insurer to facilitate the sale of the insurer’s annuities by producers.

Sec. 8. “Material conflict of interest” means a financial interest of the producer in the sale of an annuity that a reasonable person would expect to influence the impartiality of a recommendation. The term does not include cash compensation or non-cash compensation.

Sec. 9. “Non-cash compensation” means any form of compensation that is not cash compensation, including, without limitation, health insurance, office rent, office support and retirement benefits.

Sec. 10. “Non-guaranteed elements” means the premiums, credited interest rates (including any bonus), benefits, values, dividends, 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. 11. “Producer” means a producer of insurance, as defined in NRS 679A.117. For the purposes of sections 3 to 27, inclusive, of this regulation, the term includes an insurer where no producer is involved.

Sec. 12. *“Recommendation” means advice provided by a producer to an individual consumer that was intended to result or does result in a purchase, an exchange or a replacement of an annuity in accordance with that advice. The term does not include general communication to the public, generalized customer services assistance or administrative support, general educational information and tools, prospectuses, or other product and sales material.*

Sec. 13. *“Replacement” has the meaning ascribed to it in NAC 686A.526.*

Sec. 14. *Unless otherwise specifically included, sections 3 to 27, inclusive, of this regulation shall not apply to transactions involving:*

1. Direct response solicitations where there is no recommendation based on information collected from the consumer pursuant to sections 3 to 27, inclusive, of this regulation;

2. Contracts used to fund:

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

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

(c) A government or church plan defined in 26 U.S.C. § 414, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax-exempt organization under 26 U.S.C. § 457; or

(d) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

3. Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or

4. Formal prepaid funeral contracts.

Sec. 15. A producer, when making a recommendation of an annuity, shall act in the best interest of the consumer under the circumstances known at the time the recommendation is made, without placing the financial interest of the producer or insurer ahead of the interest of the consumer. A producer has acted in the best interest of the consumer if they have satisfied the obligations regarding care set forth in section 16 of this regulation, the obligations regarding disclosure set forth in section 17 of this regulation, the obligations regarding conflicts of interest set forth in section 18 of this regulation and the obligations regarding documentation set forth in section 19 of this regulation.

Sec. 16. 1. The producer, in making a recommendation, shall exercise reasonable diligence, care and skill to:

(a) Know the financial situation, insurance needs and financial objectives of the consumer;

(b) Understand the available recommendation options after making a reasonable inquiry into options available to the producer;

(c) Have a reasonable basis to believe the recommended option effectively addresses the financial situation, insurance needs and financial objectives of the consumer over the life of the product, as evaluated in light of the consumer profile information; and

(d) Communicate the basis or bases of the recommendation.

2. The requirements under subsection 1 include making reasonable efforts to obtain consumer profile information from the consumer prior to the recommendation of an annuity.

3. The requirements under subsection 1 require a producer to consider the types of products the producer is authorized and licensed to recommend or sell that address the

financial situation, insurance needs and financial objectives of the consumer. This does not require analysis or consideration of any products outside the authority and license of the producer or other possible alternative products or strategies available in the market at the time of the recommendation. Producers shall be held to standards applicable to producers with similar authority and licensure.

4. The requirements under sections 16 to 19, inclusive, of this regulation do not create a fiduciary obligation or relationship and only create a regulatory obligation as established by sections 3 to 27, inclusive, of this regulation.

5. The consumer profile information, characteristics of the insurer, and product costs, rates, benefits and features are those factors generally relevant in making a determination whether an annuity effectively addresses the financial situation, insurance needs and financial objectives of the consumer, but the level of importance of each factor under this section may vary depending on the facts and circumstances of a particular case. However, each factor may not be considered in isolation.

6. The requirements under subsection 1 include having a reasonable basis to believe the consumer would benefit from certain features of the annuity, such as annuitization, death or living benefit or other insurance-related features.

7. The requirements under subsection 1 apply to the particular annuity as a whole and the underlying subaccounts to which funds are allocated at the time of purchase or exchange of an annuity, and riders and similar product enhancements, if any.

8. The requirements under subsection 1 do not mean the annuity with the lowest one-time or multiple occurrence compensation structure shall necessarily be recommended.

9. The requirements under subsection 1 do not mean the producer has ongoing monitoring obligations under the care obligation set forth in this section, although such an obligation may be separately owed under the terms of a fiduciary, consulting, investment advising or financial planning agreement between the consumer and the producer.

10. In the case of an exchange or replacement of an annuity, the producer shall consider the whole transaction, which includes taking into consideration whether:

(a) The consumer will incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits, such as death, living or other contractual benefits, or be subject to increased fees, investment advisory fees or charges for riders and similar product enhancements;

(b) The replacing product would substantially benefit the consumer in comparison to the replaced product over the life of the product; and

(c) The consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding 60 months.

11. Nothing in sections 3 to 27, inclusive, of this regulation should be construed to require a producer to obtain any license other than a producer license with the appropriate line of authority to sell, solicit or negotiate insurance in this State, including, without limitation, any securities license, in order to fulfill the duties and obligations contained in sections 3 to 27, inclusive, of this regulation, provided the producer does not give advice or provide services that are otherwise subject to securities laws or engage in any other activity requiring other professional licenses.

Sec. 17. 1. *Prior to the recommendation or sale of an annuity, the producer shall prominently disclose the following information to the consumer on a form approved by the Commissioner:*

(a) A description of the scope and terms of the relationship with the consumer and the role of the producer in the transaction;

(b) An affirmative statement on whether the producer is licensed and authorized to sell the following products:

(1) Fixed annuities;

(2) Fixed indexed annuities;

(3) Variable annuities;

(4) Life insurance;

(5) Mutual funds;

(6) Stocks and bonds; and

(7) Certificates of deposit;

(c) An affirmative statement describing the insurers the producer is authorized, contracted or appointed, or otherwise able to sell insurance products for, using the following descriptions:

(1) From one insurer;

(2) From two or more insurers; or

(3) From two or more insurers although primarily contracted with one insurer;

(d) A description of the sources and types of cash compensation and non-cash compensation to be received by the producer, including whether the producer is to be compensated for the sale of a recommended annuity by commission as part of premium or

other remuneration received from the insurer, intermediary or other producer or by fee as a result of a contract for advice or consulting services; and

(e) A notice of the right of the consumer to request additional information regarding cash compensation described in subsection 2.

2. Upon request of the consumer or the designated representative of the consumer, the producer shall disclose:

(a) A reasonable estimate of the amount of cash compensation to be received by the producer, which may be stated as a range of amounts or percentages; and

(b) Whether the cash compensation is a one-time or multiple occurrence amount and, if the cash compensation is a multiple occurrence amount, the frequency and amount of the occurrence, which may be stated as a range of amounts or percentages.

3. Prior to or at the time of the recommendation or sale of an annuity, the producer shall have a reasonable basis to believe the consumer has been informed of various features of the annuity, such as the potential surrender period and surrender charge, potential tax penalty if the consumer sells, exchanges, surrenders or annuitizes the annuity, mortality and expense fees, investment advisory fees, any annual fees, potential charges for and features of riders or other options of the annuity, limitations on interest returns, potential changes in non-guaranteed elements of the annuity, insurance and investment components and market risk.

4. The requirements of this section are intended to supplement and not replace any other requirement of the laws of this State to provide information or disclosures to a consumer purchasing an annuity, including, without limitation, the requirements set forth in NAC 686A.573, 686A.577, 688A.470 and 688A.475.

Sec. 18. *A producer shall identify and avoid or reasonably manage and disclose material conflicts of interest, including material conflicts of interest related to an ownership interest.*

Sec. 19. *At the time of the recommendation or sale of an annuity, the producer shall:*

1. Make a written record of any recommendation and the basis for the recommendation subject to sections 3 to 27, inclusive, of this regulation;

2. If the consumer refuses to provide or provides insufficient consumer profile information, obtain a statement, on a form prescribed by the Commissioner, signed by the consumer, which documents that refusal or insufficiency and states that the consumer understands the ramifications of not providing or providing insufficient consumer profile information; and

3. If the consumer decides to enter into an annuity transaction that is not recommended by the producer, obtain a statement, on a form prescribed by the Commissioner, signed by the consumer, in which the consumer acknowledges that the annuity transaction is not recommended.

Sec. 20. *Any requirement applicable to a producer under sections 15 to 20, inclusive, of this regulation shall apply to every producer who has exercised material control or influence in the making of a recommendation and has received direct compensation as a result of the recommendation or sale, regardless of whether the producer has had any direct contact with the consumer. Activities such as providing or delivering marketing or educational materials, product wholesaling or other back office product support, and general supervision of a producer do not, in and of themselves, constitute material control or influence.*

Sec. 21. 1. *Except as otherwise provided in subsection 2, a producer shall have no obligation to a consumer under sections 15 to 20, inclusive, of this regulation related to an annuity transaction if:*

(a) No recommendation is made;

(b) A recommendation was made and was later found to have been prepared based on materially inaccurate information provided by the consumer;

(c) A consumer refuses to provide relevant consumer profile information and the annuity transaction is not recommended; or

(d) A consumer decides to enter into an annuity transaction that is not based on a recommendation of the producer.

2. *An insurer's issuance of an annuity subject to subsection 1 shall be reasonable under all the circumstances actually known to the insurer at the time the annuity is issued.*

Sec. 22. 1. *Except as otherwise provided in section 21 of this regulation, an insurer may not issue an annuity which is recommended to a consumer unless there is a reasonable basis to believe the annuity would effectively address the particular consumer's financial situation, insurance needs and financial objectives based on the consumer profile information of the consumer.*

2. *An insurer shall establish and maintain a supervision system that is reasonably designed to achieve the compliance of the insurer and its producers with sections 3 to 27, inclusive, of this regulation. As part of the supervision system, the insurer shall, without limitation:*

(a) Establish and maintain reasonable procedures to inform its producers of the requirements of sections 3 to 27, inclusive, of this regulation and shall incorporate the

requirements of sections 3 to 27, inclusive, of this regulation into relevant producer training manuals.

(b) Establish and maintain standards for producer product training and shall establish and maintain reasonable procedures to require its producers to comply with the requirements of section 25 of this regulation.

(c) Provide product-specific training and training materials which explain all material features of its annuity products to its producers.

(d) Establish and maintain procedures for the review of each recommendation prior to the issuance of an annuity that are designed to ensure there is a reasonable basis to determine that the recommended annuity would effectively address the particular financial situation, insurance needs and financial objectives of the consumer. Such review procedures may apply a screening system for the purpose of identifying selected transactions for additional review and may be accomplished electronically or through other means, including, without limitation, physical review. Such an electronic or other system may be designed to require additional review only of those transactions identified for additional review by the selection criterion.

(e) Establish and maintain reasonable procedures to detect recommendations that are not in compliance with sections 15 to 24, inclusive, of this regulation. This may include, without limitation, confirmation of the consumer profile information of the consumer, systematic customer surveys, producer and consumer interviews, confirmation letters, producer statements or attestations and programs of internal monitoring. Nothing in this paragraph prevents an insurer from complying with this paragraph by applying sampling procedures, or

by confirming consumer profile information or other required information under sections 15 to 24, inclusive, of this regulation after issuance or delivery of the annuity.

(f) Establish and maintain reasonable procedures to assess, prior to or upon issuance or delivery of an annuity, whether a producer has provided to the consumer the information required to be provided under sections 15 to 24, inclusive, of this regulation.

(g) Establish and maintain reasonable procedures to identify and address suspicious consumer refusals to provide consumer profile information.

(h) Establish and maintain reasonable procedures to identify and eliminate any sales contests, sales quotas, bonuses, and non-cash compensation that are based on the sales of specific annuities within a limited period of time. The requirements of this paragraph are not intended to prohibit the receipt of health insurance, office rent, office support, retirement benefits or other employee benefits by employees as long as those benefits are not based upon the volume of sales of a specific annuity within a limited period of time.

(i) Annually provide a written report to senior management, including, without limitation, to the senior manager responsible for audit functions, which details a review, with appropriate testing, reasonably designed to determine the effectiveness of the supervision system, the exceptions found, and corrective action taken or recommended, if any.

3. Nothing in this section restricts an insurer from contracting for performance of a function, including, without limitation, maintenance of procedures, required under this section. An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties pursuant to section 26 of this regulation regardless of whether the insurer contracts for performance of a function and regardless of the insurer's compliance with subsection 4.

4. An insurer's supervision system under this section shall include supervision of contractual performance under this section. This includes, without limitation, the following:

(a) Monitoring and, as appropriate, conducting audits to ensure that the contracted function is properly performed; and

(b) Annually obtaining a certification from a senior manager who has responsibility for the contracted function that the manager has a reasonable basis to represent, and does represent, that the function is properly performed.

5. An insurer is not required to include in its system of supervision:

(a) The recommendations of a producer to consumers of products other than the annuities offered by the insurer; or

(b) Consideration of or comparison to options available to the producer or compensation relating to those options other than annuities or other products offered by the insurer.

Sec. 23. *Neither a producer nor an insurer shall dissuade, or attempt to dissuade, a consumer from:*

1. Truthfully responding to an insurer's request for confirmation of the consumer profile information;

2. Filing a complaint; or

3. Cooperating with the investigation of a complaint.

Sec. 24. *1. Recommendations and sales of annuities made in compliance with comparable standards shall satisfy the requirements of sections 3 to 27, inclusive, of this regulation. This section applies to all recommendations and sales of annuities made by financial professionals in compliance with business rules, controls and procedures that satisfy a comparable standard even if such standard would not otherwise apply to the product or*

recommendation at issue. However, nothing in this section shall limit the ability of the Commissioner to investigate and enforce the provisions of sections 3 to 27, inclusive, of this regulation.

2. Nothing in subsection 1 shall limit the obligations of an insurer to comply with subsection 1 of section 22 of this regulation, although the insurer may base its analysis on information received from either the financial professional or the entity supervising the financial professional.

3. For subsection 1 to apply, an insurer shall:

(a) Monitor the relevant conduct of the financial professional seeking to rely on subsection 1 or the entity responsible for supervising the financial professional, such as the financial professional's broker-dealer or an investment advisor registered under federal or state securities laws, using information collected in the normal course of the business of the insurer; and

(b) Provide to the entity responsible for supervising the financial professional seeking to rely on subsection 1, such as the financial professional's broker-dealer or investment advisor registered under federal or state securities laws, information and reports that are reasonably appropriate to assist such entity to maintain its supervision system.

4. As used in this section:

(a) "Comparable standards" means:

(1) With respect to broker-dealers and registered representatives of broker-dealers, applicable rules of the Securities and Exchange Commission, or its successor, or the Financial Industry Regulatory Authority, or its successor, pertaining to best interest obligations and supervision of annuity recommendations and sales, including, without

limitation, Rules 2111 and 3110 of the Financial Industry Regulatory Authority, and any amendments or successors to such Rules, and Regulation Best Interest of the Securities and Exchange Commission, and any amendments or successor regulations thereto;

(2) With respect to investment advisers registered under federal or state securities laws or investment adviser representatives, the fiduciary duties and all other requirements imposed on such investment advisers or investment adviser representatives by contract or under the federal Investment Advisors Act of 1940 or NRS 90.575 or any other applicable laws or regulations of this State relating to securities, including, without limitation, the Form ADV of the Securities and Exchange Commission and interpretations; and

(3) With respect to plan fiduciaries or fiduciaries, the duties, obligations, prohibitions and all other requirements attendant to such status under the federal Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001 et seq., or the Internal Revenue Code and any amendments or successor statutes thereto.

(b) “Financial professional” means a producer that is regulated and acting as:

(1) A broker-dealer registered under federal or state securities laws or a registered representative of a broker-dealer;

(2) An investment adviser registered under federal or state securities laws or an investment adviser representative associated with the federal or state registered investment adviser; or

(3) A plan fiduciary under section 3(21) of the federal Employee Retirement Income Security Act of 1974 or fiduciary under section 4975(e)(3) of the Internal Revenue Code or any amendments or successor statutes thereto.

Sec. 25. 1. A producer shall not solicit the sale of an annuity product unless the producer has adequate knowledge of the product to recommend the annuity and the producer is in compliance with the insurer's standards for product training. A producer may rely on product-specific training standards and materials provided by the insurer to comply with this subsection.

2. Before engaging in the solicitation or sale of an annuity, a producer must complete a one-time four credit training course approved pursuant to NAC 683A.335 by the Commissioner or a designated representative. A producer who holds a life insurance line of authority on the effective date of this section and who desires to sell annuities shall complete the requirements of this subsection not later than 6 months after the effective date of this section. An individual who obtains a life insurance line of authority on or after the effective date of this section may not engage in the sale of annuities until the annuity training course required under this subsection has been completed. A producer who has completed an annuity training course approved by the Commissioner or a designated representative prior to the effective date of this section shall, within 6 months after the effective date of this section, complete either:

(a) A new four credit training course approved by the Commissioner or a designated representative pursuant to NAC 683A.335 after the effective date of this section; or

(b) An additional one-time one credit training course approved by the Commissioner or a designated representative pursuant to NAC 683A.335 on appropriate sales practices, replacement and disclosure requirements under sections 3 to 27, inclusive, of this regulation.

3. The minimum length of the training required under subsection 2 shall be sufficient to qualify for at least 4 hours of continuing education credits but may be longer.

4. The training required under subsection 2 shall include information on the following topics:

- (a) The types of annuities and various classifications of annuities;*
- (b) Identification of the parties to an annuity;*
- (c) How product-specific annuity contract features affect consumers;*
- (d) The application of income taxation on qualified and non-qualified annuities; and*
- (e) Appropriate standards of conduct, sales practices, replacement and disclosure requirements.*

5. A provider of a course intended to comply with the training requirements under subsection 2 shall cover all topics listed in the prescribed outline and shall not present any marketing information or provide training on sales techniques or provide specific information about the products of a particular insurer. Additional topics may be offered in conjunction with and in addition to the required outline.

6. A provider of an annuity training course intended to comply with the training requirements under subsection 2 shall comply with the rules and guidelines applicable to continuing education courses as set forth in NAC 683A.335, 683A.337 and 683A.340.

7. An annuity training course required by subsection 2 may be conducted and completed by classroom or self-study methods.

8. A provider of an annuity training course required by subsection 2 shall comply with the reporting requirements and shall issue certificates of completion in accordance with subsection 1 of NAC 683A.340.

9. The satisfaction of the training requirements of another state that are substantially similar to the provisions of this section shall be deemed to satisfy the training requirements of this section in this State.

10. The satisfaction of the components of the training requirements of any course or courses with components substantially similar to the provisions of this section, including, without limitation, a course which satisfies the requirements for contents of continuing education established by Rule 1240 of the Financial Industry Regulatory Authority, or any amendment or successor to such Rule, shall be deemed to satisfy the training requirements of this section in this State.

11. An insurer shall verify that a producer has completed the annuity training course required under this section before allowing the producer to sell an annuity product for that insurer. An insurer may satisfy its responsibility under this subsection by obtaining certificates of completion of the training course or obtaining reports provided by Commissioner-sponsored database systems or vendors or from a reasonably reliable commercial database vendor that has a reporting arrangement with approved insurance education providers.

Sec. 26. 1. An insurer is responsible for compliance with sections 3 to 27, inclusive, of this regulation. If a violation of sections 3 to 27, inclusive, occurs, either because of the action or inaction of the insurer or its producer, the Commissioner may order any or all of the following:

(a) An insurer to take reasonably appropriate corrective action approved in advance by the Commissioner for any consumer harmed by a failure to comply with sections 3 to 27, inclusive, of this regulation by the insurer, an entity contracted to perform the insurer's supervisory duties or by the producer.

(b) A general agency, independent agency or the producer to take reasonably appropriate corrective action approved by the Commissioner for any consumer harmed by the producer's violation of sections 3 to 27, inclusive, of this regulation.

(c) Any person to cease and desist from any activity in violation of sections 3 to 27, inclusive, of this regulation, following notice and a hearing on the violation.

(d) Any person who violates a provision of sections 3 to 27, inclusive, of this regulation to pay a monetary penalty of not more than \$2,000 for each violation.

(e) Suspend or revoke the license of an insure or producer.

2. Any applicable penalty for a violation of sections 3 to 27, inclusive, of this regulation may be reduced or eliminated if corrective action for the consumer was taken promptly after a violation was discovered or the violation was not part of a pattern or practice.

3. The authority to enforce compliance with sections 3 to 27, inclusive, of this regulation is vested exclusively with the Commissioner.

Sec. 27. 1. Insurers, general agents, independent agencies and producers shall maintain or be able to make available to the Commissioner records of the information collected from the consumer, disclosures made to the consumer, including summaries of oral disclosures, and other information used in making the recommendations that were the basis for insurance transactions for 5 years after the insurance transaction is completed by the insurer. An insurer is permitted, but shall not be required, to maintain documentation on behalf of a producer.

2. Records required to be maintained by sections 3 to 27, inclusive, of this regulation may be maintained in paper, photographic, micro-process, magnetic, mechanical or electronic media or by any process that accurately reproduces the actual document.

Sec. 28. NAC 688A.455, 688A.460 and 688A.465 are hereby repealed.

TEXT OF REPEALED SECTIONS

688A.455 Recommendations: Responsibilities of insurer or producer of insurance; corrective action. (NRS 679B.130)

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 the purchase or exchange of an annuity in accordance with the 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.

2. 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; or
- (b) The information described in Conduct Rule 2310 of the National Association of Securities Dealers.

3. Except as otherwise provided in subsection 4, if an insured is harmed financially because 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.

4. 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;

(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.

**688A.460 Establishment and maintenance of system to supervise recommendations.
(NRS 679B.130)**

1. An insurer shall provide for a system to supervise recommendations which is reasonably designed to comply with the provisions of this chapter and which is established and maintained pursuant to subsections 3, 4 and 5. The system must include, 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.

2. A producer of insurance shall provide for a system to supervise recommendations which is reasonably designed to comply with the provisions of this chapter and which is established and maintained pursuant to subsections 3, 4 and 5. The system must include, 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.

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 subsection 1 with respect to producers of insurance under contract with or employed by the third party.

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. A producer of insurance contracting with an insurer pursuant to subsection 3, when requested by an insurer pursuant to subsection 4, shall provide to the insurer a certification as described in subsection 4 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. A person may not provide a certification pursuant to paragraph (a) of subsection 4 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 with Conduct Rule 2310 of the National Association of Securities Dealers pertaining to suitability satisfies the requirements of this section for the recommendation of variable annuities.

9. An insurer that contracts with a third party pursuant to subsection 3 and that complies with the requirements set forth in subsection 4 shall be deemed to have complied with the provisions of subsection 1.

688A.465 Maintenance and availability of records or information regarding purchaser of recommended annuity. (NRS 679B.130, 679B.137)

1. If a person purchases an annuity that was recommended to him or her by an insurer or producer of insurance, the insurer or producer of insurance that made the recommendation shall:

(a) Maintain all records or information that it obtained from the person for making the recommendation for at least 7 years after the date on which the annuity was purchased; and

(b) Make the records or information described in paragraph (a) available to the Commissioner, upon request, during that period.

2. The records and information that are described in subsection 1 may be maintained by an insurer or producer of insurance on paper, on photographic, microprocessed, magnetic, mechanical or electronic media or by any other process that accurately maintains the records and information.