

LCB FILE NO. R102-09

PROPOSED REGULATION OF THE COMMISSIONER OF INSURANCE

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

Authority: NRS 679B.130

A REGULATION that removes reference to previous requirements of NRS 680A.300 that insurers have policies that are produced by **nonresident** Nevada licensed brokers/producers be countersigned by a licensed **resident** broker/producer, to whom a 5% commission was required to be paid. In Council of Insurance Agents & Brokers v. Molasky-Arman, 522 F.3d 925 (9th Cir. 2008), the 9th Circuit found NRS 680A.300, as then written, violative of the Privileges and Immunities Clause of the U.S. Constitution, “insofar as it denies to Nevada-licensed nonresident insurance agents the same rights and privileges that are afforded to Nevada-licensed resident agents.” During the 75th (2009) Legislative Session, NRS 680A.300 was amended in section 7 of SB 426 to clarify that all insurance policies covering Nevada risks must still be countersigned by a duly licensed and appointed Nevada producer; but, both Nevada licensed and appointed resident and nonresident producers may countersign the policy. The requirement that the countersigning resident agent be paid a commission of 5% was also removed.

Section 1. NAC 680A.110 is hereby amended to read as follows:

Insurance companies licensed to do an insurance business in Nevada may merchandise any type of insurance permitted by the Division through any type of vending machine under the following conditions:

1. All policy forms must be filed with, and approved by, the Commissioner in accordance with the filing procedures for other policy forms.
2. Reasonable means, as determined by the Commissioner, must be provided for informing the prospective purchaser of the coverage and restrictions of the policy.
3. The name of the insurer, the location of its home office, the name of the responsible agent and his office address, and the serial number of the machine must be clearly displayed on each machine.

4. Prompt refund of money inserted in a defective machine and for which no insurance, or a lesser amount than paid for, must be provided to the applicant or prospective applicant.

5. Vending machines must be constructed and operated to retain a copy of the application showing the date of application, name and address of the applicant and of the beneficiary and the amount of insurance afforded by each policy issued.

6. All machines must be operated under the supervision of a *Nevada* duly licensed ~~[resident agent]~~ *and appointed producer* of the company issuing the policies.

7. Vending machines must be constructed and operated to affix the facsimile signature of the *Nevada* licensed ~~[resident agent]~~ *and appointed producer* of the company upon all policies issued therefrom, unless the ~~[resident agent]~~ *producer* is on the premises and personally countersigns them.

Sec. 2. NAC 680A.410 is hereby amended to read as follows:

~~[1. Commissions and fees for countersignatures must be paid to a countersigning resident agent on all premiums collected on policies of property and casualty insurance of agents and brokers other than resident agents and brokers which insure risks located in Nevada.~~

~~—(a) The insurer must provide for payment of fees and commissions.~~

~~—(b) Fees and commissions must be paid on premiums developed by audit and on anniversary installments.]~~

2. Countersignature fees and commissions may be negotiated ~~[upwards from the minimum set by law]~~ for additional services required of the countersigning agent ~~[, but may not be negotiated below the legal minimum].~~

3. The countersigning agent shall maintain complete records of countersignature transactions, including daily reports, correspondence, names of nonresident agents and brokers who wrote the policies, and evidence of fees and commissions charged.

4. The countersigning agent shall handle normal problems arising between agents and customers, and is answerable to the Division for complaints and problems relating to policies which he has countersigned.

5. All commissions on property and casualty insurance which was sold by an agent or broker who is not licensed in Nevada and which covers a risk located in Nevada must be paid to the countersigning resident agent.