



DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INSURANCE

788 Fairview Drive, Suite 300
Carson City, Nevada 89701-5491
(775) 687-4270 • Fax (775) 687-3937
Website: doi.state.nv.us
E-mail: insinfo@doi.state.nv.us

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NEVADA'S COUNTERSIGNATURE REQUIREMENT OF NRS 680A.300 AFTER THE NINTH CIRCUIT'S DECISION IN COUNCIL OF INSURANCE AGENTS & BROKERS V. MOLASKY-ARMAN, 522 F.3D 295 (9TH CIR. 2008)

The purpose of this Bulletin is to clarify the requirement of Nevada Revised Statute ("NRS") 680A.300 with regard to the court's decision in Council of Insurance Agents & Brokers v. Molasky-Arman, 522 F.3d 295 (9th Cir. 2008).

The Ninth Circuit Court of Appeals affirmed, at least in part, the lower court's October 12, 2004 Order by holding that NRS 680A.300 violates the Privileges and Immunities Clause of the United States Constitution because it discriminates against Nevada licensed nonresident insurance producers by denying them the same rights and privileges afforded to Nevada-licensed resident producers.

On August 11, 2008, the Nevada Division of Insurance filed a Motion for Relief by Modification of the October 12, 2004 Order ("Motion"), which sought to clarify whether the entire statute, NRS 680A.300, was ruled unconstitutional. On August 15, 2008, the court granted the Division's Motion and stated that, "*only the portions of the statute that discriminate against nonresident licensed insurance agents and brokers are unconstitutional.*" Order at p. 2, ll. 6-7. Additionally, the court ordered that the October 12, 2004 Order be clarified by replacing the word "because" in paragraph 2 of the document with the phrase "insofar as." Consequently, paragraph 2 now reads: "2. It is hereby declared that § 680A.300 of the Nevada Revised Statutes violates the Privileges and Immunities Clause . . . *insofar as* it denies to Nevada-licensed nonresident insurance agents the same rights and privileges that are afforded to Nevada-licensed resident agents." Order at p. 2, ll. 15-17 (emphasis added).

Therefore, pursuant to the Ninth Circuit's decision, effective May 8, 2008, the requirement of NRS 680A.300 that authorized insurers must have policies that are produced by Nevada licensed *nonresident* brokers/producers be countersigned by a Nevada licensed *resident* broker/producer is unconstitutional and unenforceable by the Nevada Division of Insurance.

Further, the requirement of NRS 680A.300 that a commission must be paid to countersigning resident brokers/producers is also unconstitutional and unenforceable.

However, Nevada law remains unchanged regarding the requirement that an authorized insurer may only make, place or renew an insurance policy covering Nevada risks through a Nevada licensed and duly appointed producer. *In other words, 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 all policies covering Nevada risks be countersigned by a Nevada licensed and appointed producer is consistent with provisions of Chapter 683A of the NRS. That Chapter requires, among other things, that producers be licensed and, if acting as an agent, be appointed by an insurer to lawfully engage in the business of insurance in Nevada and be paid commissions.

BETTY C. BAKER
Acting Commissioner of Insurance