

PROHIBITIONS AGAINST THE SALE OF FIXED AND VARIABLE
ANNUITIES BY BANKS AND BANK HOLDING COMPANIES

NRS 683A.110 states in part that no bank or bank holding company or its parent, subsidiaries or affiliates may directly or indirectly be licensed to sell insurance in this state except as to credit insurance and credit property insurance, or be licensed or admitted as an insurer. It defines a bank as any institution that accepts deposits that the depositor has a legal right to withdraw on demand. It also requires the Commissioner of Insurance to define such terms as "bank holding company", "company", "parent", "subsidiary" and "affiliate." See, NAC 683A.080 to 683A.094, inclusive.

Like many other states, Nevada views the sale of annuities as the business of insurance and thus, pursuant to the McCarran-Ferguson Act, USC 15 ? 1011 et seq., the regulation of such sales are governed by state law. As a result, Chapter 688A of NRS and the regulations contained in Chapter 688A of NAC set out a comprehensive scheme for regulating the sale of annuities pursuant to the Nevada Insurance Code, Title 57 of NRS.

In a series of interpretive letters issued by the United States Comptroller of Currency over the period of the last several years, the Comptroller's office has taken the position that banks and bank holding companies may offer fixed and variable annuities for sale. See, Comptroller of Currency letters #475 and #499. The crux of the Comptroller's argument is that annuities are comparable to securities and are therefore not the business of insurance for purposes of the McCarran-Ferguson Act.

Although annuities may also be regulated as securities in some instances, thereby creating dual regulation in the sense that both insurance and securities regulations are involved in monitoring their sales, as outlined above, the Nevada Division of Insurance has consistently regulated the sale of annuities as insurance products. Viewed from this perspective, and pursuant to the prohibition contained in NRS 683A.110, it is the Division's position that neither banks nor bank holding companies may offer fixed or variable annuities for sale in this state. The Division will continue to vigorously enforce this prohibition and subject violators to the disciplinary sanctions provided in Chapter 683A of NRS for unauthorized insurers.

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Commissioner of Insurance