

**PROPOSED REGULATION OF THE
COMMISSIONER OF INSURANCE**

LCB File No. R155-24

July 21, 2024

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

AUTHORITY: § 1, NRS 616B.300 and 679B.130; §§ 2-6, NRS 616B.309 and 679B.130; §§ 7 and 8 NRS 616B.353, 616B.446 and 679B.130; § 9, NRS 616B.395, 616B.410, 616B.446 and 679B.130; § 10, NRS 616B.446 and 679B.130; § 11, NRS 616B.404, 616B.446 and 679B.130; § 12, NRS 616B.353, as amended by section 4.3 of Senate Bill No. 317, chapter 503, Statutes of Nevada 2025, at pg. 3292, NRS 616B.446 and 679B.130.

A REGULATION relating to industrial insurance; revising the requirements for an insurance policy to provide coverage to self-insured employers and associations of self-insured employers for losses in excess of a certain amount; updating the name of the reserve account from which compensation is paid on behalf an insolvent self-insured employer; revising certain terms to conform to statutory definitions; revising provisions governing the determination of the amount of security an association of self-insured employers is required to deposit with the Commissioner of Insurance; updating the name of a publication adopted by reference; establishing certain factors for consideration by the Commissioner in determining whether to approve a request for approval of a distribution of a dividend by an association of self-insured employers; revising provisions governing the bond a third-party administrator of an association of self-insured employers is required to deposit with the Commissioner; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes the Commissioner of Insurance to adopt reasonable regulations for the administration of existing law governing industrial insurance. (NRS 679B.130) Existing law also: (1) authorizes an employer to qualify for and participate in a program of self-insurance; and (2) requires a self-insured employer to submit to the Commissioner evidence of excess insurance to provide protection against a covered loss. (NRS 616B.300) Under existing regulations, this policy of excess insurance is required to cover losses that exceed the losses that the self-insured employer is required to pay under the policy, but the self-insured employer is required to pay losses of at least \$100,000. (NAC 616B.424) **Section 1** of this regulation establishes that the maximum amount of losses that a self-insured employer may agree to pay under the policy of excess insurance is \$1,000,000.

Existing law authorizes the Commissioner to require self-insured employers to pay an assessment to provide for claims against any insolvent self-insured employer. The Commissioner is required to deposit all money received from such assessments with the State Treasurer to the credit of the Account for Insolvent Self-Insured Employers in the Fund for Workers' Compensation and Safety. (NRS 616B.309) **Sections 2-5** of this regulation update references to this Account.

Section 6 of this regulation changes the term "Commissioner of Insurance" to "Commissioner" because the term "Commissioner" is defined in existing statutes and regulations governing workers' compensation. (NRS 616A.085; NAC 616B.403)

Existing law authorizes a group of five or more employers to act as an association of self-insured public or private employers if the employers are issued a certificate by the Commissioner and comply with certain other requirements, including, without limitation, maintaining a policy of specific and aggregate excess insurance in a form and amount required by the Commissioner. (NRS 616B.350, 616B.353) Under existing regulations, this policy of excess insurance is required to cover losses that exceed the losses that the association agrees to cover, but the association is required to cover at least \$100,000 of losses. (NAC 616B.534) **Section 7** of this regulation requires: (1) the policy of excess insurance to contain the same provisions as a policy of excess insurance issued to a self-insured employer, including, without limitation, a requirement that \$1,000,000 is the maximum amount of losses that an association may agree to cover under the policy; and (2) the association to provide a copy of the policy to the Commissioner in the same manner as a self-insured employer.

Existing law requires an association of self-insured employers to deposit as security with the Commissioner a bond in an amount determined by the Commissioner. (NRS 616B.353) Existing regulations: (1) set forth certain factors on which the Commissioner will base the determination of the amount of the security; and (2) provide that the Commissioner may adjust the amount of security required if changed conditions warrant such an adjustment and the amount of the security is at least \$100,000. (NAC 616B.537) **Section 8** of this regulation: (1) revises the calculation of the amount of security; (2) removes the maximum amount of security; and (3) establishes that the operation of an association at a loss in any year within a 3-year period is a circumstance under which the Commissioner may increase the amount of the required security by a certain amount.

Section 9 of this regulation updates the name of a handbook of the National Association of Insurance Commissioners which a person must use in conducting examinations and audits of associations of self-insured employers.

Existing regulations require an association of self-insured employers to submit to the Commissioner a request for approval of a distribution of a dividend. (NAC 616B.598) **Section 10** of this regulation establishes certain factors which the Commissioner may consider in determining whether to grant such a request, including, without limitation, the level of debt and liquidity of the association, reoccurring net operating losses of the association and any adverse finding from the most recent examination or audit of the association.

Existing regulations require the audited statement of the financial condition of an association of self-insured employers which must be filed with the Commissioner to be accompanied by a statement prepared by an independent certified public accountant, certifying that the members of the association and the combined tangible net worth of those members meet certain requirements. (NAC 616B.609) **Section 11** of this regulation requires the statement to be prepared on a form prescribed by the Commissioner.

Section 4.3 of Senate Bill No. 317 (S.B. 317) of the 2025 Legislative Session eliminated a requirement for a third-party administrator of an association of self-insured employers to deposit with the Commissioner a bond because third-party administrators are required to file a bond under other provisions of existing law. (Section 4.3 of Senate Bill No. 317, chapter 503, Statutes of Nevada 2025, at pg. 3292; NRS 683A.0857) **Section 12** of this regulation repeals existing regulations governing the bond repealed by S.B. 317. (NAC 616B.549, 616B.552)

Section 1. NAC 616B.424 is hereby amended to read as follows:

616B.424 In order to be eligible to establish a program of self-insurance, an employer must:

1. Except as otherwise provided in NAC 616B.427 and 616B.433, be a legally qualified business entity having a tangible net worth of at least \$2,500,000.
2. If other than a governmental employer, be licensed to do business in Nevada.
3. Make the deposit required by NAC 616B.436. If the business has been operated at a loss in any of the past 3 years, the Commissioner may increase the required deposit by a minimum amount of 20 percent of the deposit.
4. Provide a complete copy of a policy of excess insurance to the Commissioner within 60 days after the issuance of the policy as evidence of excess insurance in accordance with NRS 616B.300. The policy must, without limitation:
 - (a) Provide coverage for losses in excess of a self-insured retention of not less than \$100,000 ~~+~~ *and not more than \$1,000,000;*
 - (b) Contain a provision requiring at least 60 days' notice of cancellation; and
 - (c) Contain a provision which states that the bankruptcy or insolvency of the self-insured employer will not relieve the insurer of its duties under the policy and that reimbursement will be made by the insurer as if the self-insured employer had not become bankrupt or insolvent.

5. Present evidence that the business has administrative resources which will enable it to timely report, administer and settle all claims. The resources which are necessary include, without limitation:

(a) The ability of the employer to know and correctly apply the worker's compensation laws and regulations of this State;

(b) A qualified, licensed and competent administrator of the program who is located in Nevada;

(c) An existing and feasible plan for the program of self-insurance which provides for an immediate and personal response to an employee's claim;

(d) A plan for the administration of claims which includes written instructions or examples of how to apply the worker's compensation law to ensure continuity of service to employees as well as ease of audit by company personnel and regulatory agencies;

(e) The ability to communicate the plan for the administration of the program, including, without limitation, such topics as benefits, filing procedures and the right of appeal, to the appropriate managers of the business and to all employees; and

(f) Standards of performance for the administration of the program of self-insurance.

Sec. 2. NAC 616B.475 is hereby amended to read as follows:

616B.475 ~~1.—The Commissioner hereby establishes the Reserve Account to Protect Against the Insolvency of Self-Insured Employers.~~

~~—2.†~~ As a condition of certification, each self-insured employer will be initially assessed 0.5 percent of their expected annual expenditures for claims for deposit in the ~~{Reserve}~~ Account ~~†~~ *for Insolvent Self-Insured Employers created by NRS 616B.309.*

Sec. 3. NAC 616B.478 is hereby amended to read as follows:

616B.478 1. If, during the initial year of self-insurance, the employer adds an activity for which employees are covered by self-insurance, the employer must pay an additional assessment which is equivalent to 0.5 percent of the expected annual expenditures for claims applicable to the activity which was added.

2. Each self-insured employer will be assessed an annual assessment equal to .25 percent of the security deposit established for the self-insured employer on June 30th before the assessment. The Commissioner will provide to each self-insured employer a notice specifying the amount of the assessment and the date that it is due, at least 20 days before that date.

3. The annual assessment established in subsection 2 will not be imposed:

(a) In the fiscal year in which a self-insured employer is first certified; or

(b) If the balance of the ~~Reserve~~ Account *for Insolvent Self-Insured Employers created by NRS 616B.309* exceeds:

(1) Three million dollars; or

(2) An amount equivalent to 20 percent of the aggregate of security deposits required of all self-insured employers,

↪ whichever is the greater amount.

Sec. 4. NAC 616B.481 is hereby amended to read as follows:

616B.481 1. If a self-insured employer fails to pay compensation as a result of being insolvent as provided in NRS 616B.306, the Commissioner may use the ~~Reserve~~ Account ~~§~~ *for Insolvent Self-Insured Employers created by NRS 616B.309* on behalf of that employer to:

(a) Directly pay compensation to the employees of the employer pursuant to chapters 616A to 616D, inclusive, or chapter 617 of NRS; or

(b) Retain an administrator who shall, under the direction of the Commissioner, assume the responsibility for the administration of claims and payment of compensation pursuant to chapters 616A to 617, inclusive, of NRS.

2. A payment of a claim and the administrative cost from the ~~{Reserve}~~ Account *for Insolvent Self-Insured Employers* does not release the self-insured employer or the surety from the employer's responsibility to pay the amounts due under chapters 616A to 617, inclusive, of NRS. The self-insured employer or the surety shall reimburse the ~~{Reserve}~~ Account for any expense incurred in the payment of claims on its behalf.

Sec. 5. NAC 616B.484 is hereby amended to read as follows:

616B.484 1. Except as otherwise provided in subsection 3, if the Commissioner determines that the balance in the ~~{Reserve}~~ Account *for Insolvent Self-Insured Employers created by NRS 616B.309* is insufficient to pay compensation on behalf of an insolvent self-insured employer or if an insolvent self-insured employer fails to reimburse the Account, the Commissioner will assess all employers certified as self-insurers on the date of the assessment, an amount determined by the Commissioner to either pay claims or restore the balance of the ~~{Reserve}~~ Account. After determining the amount necessary for the assessment, the Commissioner will mail, by regular mail, each self-insured employer a notice specifying the amount of the assessment and the date that it is due, at least 20 days before that date.

2. Each self-insured employer shall remit, on the date specified in the notice, to the Commissioner the total amount of the assessment. Failure by a self-insured employer to pay an assessment is prima facie evidence that the employer has intentionally failed to comply with the regulations of the Commissioner and is grounds for the imposition of a fine or the withdrawal of the certification as a self-insured employer pursuant to NRS 616B.318.

3. If:

(a) The ~~{Reserve}~~ Account *for Insolvent Self-Insured Employers* has been used to pay the claims of an insolvent self-insured employer;

(b) That self-insured employer fails to reimburse the ~~{Reserve}~~ Account; and

(c) The Commissioner determines that the balance of the ~~{Reserve}~~ Account is sufficient to pay compensation on behalf of other insolvent self-insured employers,

↪ the Commissioner may decide not to impose an assessment pursuant to this section against employers certified as self-insured employers on that date.

Sec. 6. NAC 616B.487 is hereby amended to read as follows:

616B.487 A self-insured employer may at any time request in writing that his or her certificate to self-insure be cancelled. The Commissioner ~~{of Insurance}~~ will withdraw the certificate after the self-insurer:

1. Establishes a program to the satisfaction of the Commissioner which will discharge all liabilities and responsibilities incurred by him or her during the period the certificate was in force and which is in addition to the deposit retained by the Commissioner as provided by statute; and

2. Surrenders the certificate.

Sec. 7. NAC 616B.534 is hereby amended to read as follows:

616B.534 1. Each association shall maintain a policy of specific and aggregate excess insurance ~~{with}~~ *and provide a complete copy of the policy of excess insurance to the Commissioner not later than 60 days after the date on which the policy is issued as evidence of compliance with the provisions of NRS 616B.353. The policy must, without limitation:*

(a) Provide coverage for losses in excess of a self-insured retention of ~~{no}~~ *not* less than \$100,000 ~~{+}~~ *and not more than \$1,000,000;*

(b) Contain a provision requiring at least 60 days' notice of cancellation; and

(c) Contain a provision which states that the bankruptcy or insolvency of the association will not relieve the insurer of its duties under the policy and that reimbursement will be made by the insurer as if the association had not become bankrupt or insolvent.

2. The Commissioner will review the amount of insurance required for an association and may adjust the amount if he or she determines that changed conditions warrant an adjustment.

Sec. 8. NAC 616B.537 is hereby amended to read as follows:

616B.537 1. The Commissioner will determine the amount of security an association must deposit pursuant to paragraph (d) of subsection 1 of NRS 616B.353 by calculating an amount that is ~~one-half of~~ *equal to* the association's expected annual incurred cost of claims and increasing or decreasing that amount, if necessary, ~~, and within the limitations set forth in subsection 2,~~ based on:

- (a) The past and future experience of the association with losses and expenses;
- (b) The hazard of catastrophic loss for the association or the type of employers who are members of the association;
- (c) The current trends concerning losses within the State;
- (d) The nature of the businesses of the members of the association;
- (e) The financial ability of the association to pay all compensation due under chapters 616A to 617, inclusive, of NRS;
- (f) The probable stability and longevity of the operation of the association; and
- (g) Such other contingencies as the Commissioner deems necessary.

2. ~~Except as otherwise provided in subsection 3, the~~ *The* amount of security required must not be less than \$100,000. ~~and must not exceed an amount equal to the sum of two times the~~

~~amount of the self-insured retention maintained by the association pursuant to its policy of aggregate excess insurance and the annual amount paid out for the administration of claims.]~~

3. *If the association has been operated at a loss for any year of a rolling 3-year period, the Commissioner may increase the amount of security which the association is required to deposit pursuant to this section by not less than 20 percent of the amount otherwise required.*

4. The Commissioner may adjust the amount of security required if he or she determines that changed conditions warrant such an adjustment, except in no case may the amount be less than \$100,000.

Sec. 9. NAC 616B.591 is hereby amended to read as follows:

616B.591 The Commissioner may contract with a person to conduct the examinations and audits of associations required by NRS 616B.395 and 616B.410, respectively. The person appointed shall conduct the examinations and audits in accordance with the provisions of the *Financial **Condition** Examiners Handbook* published by the National Association of Insurance Commissioners and may consult additional resources as needed, but in case of conflict shall follow the provisions of the *Financial **Condition** Examiners Handbook*.

Sec. 10. NAC 616B.598 is hereby amended to read as follows:

616B.598 1. An association must submit a request for approval of a declaration of a dividend to the Commissioner not less than 30 days before the proposed date of the declaration of the dividend.

2. An association must submit a request for approval of a distribution of a dividend to the Commissioner not less than 30 days before the proposed date of the distribution of the dividend.

3. A request for approval of a distribution of a dividend submitted by an association pursuant to subsection 2 must include:

(a) An actuarial analysis of loss reserves that was prepared by a member of the American Academy of Actuaries not more than 90 days before the date that the request is submitted pursuant to subsection 2;

(b) An analysis of the assets and obligations of the association by fund year that was prepared by the association on a form approved by the Commissioner and includes a detail of the unrealized gains and losses of the association;

(c) The proposed date of the distribution of the dividend;

(d) The amount of the dividend by fund year;

(e) A copy of the most recent financial statements of the association;

(f) Any other information or report that the Commissioner determines to be necessary to evaluate the request; and

(g) If an association has a deficit in any fund year, a plan for making up the deficit of the association that meets the requirements of NRS 616B.422.

4. *In determining whether to grant a request for approval of a distribution of a dividend submitted by an association pursuant to subsection 2, the Commissioner may consider the following factors, without limitation:*

(a) The leverage ratio and liquidity ratio of the association;

(b) Any reoccurring losses of the association in the 3 years immediately preceding the date of the request; and

(c) Any adverse findings from the most recent examination or audit of the association.

5. As used in this section:

(a) “Dividend” means any distribution of earnings or retained earnings, in the form of money or property, from an association to the members of the association.

(b) “Fund year” means the fiscal year used by an association for the purposes of financial reporting.

(c) “Leverage ratio” means a financial measure indicative of the level of debt incurred by an association against one or more accounts in its balance sheet, income statement or cash flow statement. The term may include, without limitation:

(1) The ratio of debt to equity, including, without limitation, capital, surplus, policyholders’ surplus or net position;

(2) The ratio of debt to assets;

(3) The ratio of assets to equity, including, without limitation, capital, surplus, policyholders’ surplus or net position; and

(4) The ratio of debt to earnings before interest, taxes, depreciation and amortization.

(d) “Liquidity ratio” means a financial measure indicative of the ability of an association to pay short-term debt obligations. The term may include, without limitation:

(1) The ratio of current assets to current liabilities;

(2) The ratio of cash, accounts receivable and marketable securities to current liabilities; and

(3) The ratio of cash and marketable securities to current liabilities,

↪ including all reserves which have been incurred but not reported and reserves which have been incurred but not paid.

(e) “Reoccurring losses” means 2 or more years of net operating losses, without regard to the frequency or periodicity of those losses.

Sec. 11. NAC 616B.609 is hereby amended to read as follows:

616B.609 The audited statement of the financial condition of an association required by NRS 616B.404 must be:

1. Prepared in accordance with generally accepted accounting principles of the United States, stated in United States dollars, and must contain the footnotes and opinions of the independent certified public accountant who prepared it.

2. Accompanied by a statement, *on a form prescribed by the Commissioner*, prepared by the independent certified public accountant who prepared the audited statement, certifying that the combined tangible net worth of all members of the association satisfies the requirements of NRS 616B.353 and that all members meet the financial requirements for membership that are established by law, the bylaws of the association or the underwriting plan of the association.

Sec. 12. NAC 616B.549 and 616B.552 are hereby repealed.

TEXT OF REPEALED SECTIONS

616B.549 Deposit of bond by third-party administrator of association; maximum amount of bond; filing of statement regarding association's money. (NRS 616B.353, 616B.446, 679B.130)

1. Except as otherwise provided in subsection 2, a third-party administrator of an association shall deposit with the Commissioner a bond in the amount of \$1,000 for each \$100,000, or portion thereof, of the association's money which he or she will control in the next

calendar year, less the amount of any bond that he or she must file pursuant to NRS 683A.0857.

The Commissioner may require a third-party administrator to increase the amount of the bond if there is an increase in the amount of the association's money that he or she controls.

2. The maximum bond required pursuant to this section is \$1,000,000.

3. On or before April 1 of each year, a third-party administrator of an association shall file with the Commissioner a statement of the actual amount of the association's money that he or she controlled in the previous calendar year and the amount of the association's money that he or she expects to control in the next calendar year.

616B.552 Deposit of bond by association's administrator; minimum and maximum amount of bond; filing of statement regarding association's money. (NRS 616B.353, 616B.446, 679B.130)

1. Except as otherwise provided in subsection 2, an association's administrator shall deposit with the Commissioner a bond in the amount of \$1,000 for each \$100,000, or portion thereof, of the association's money which he or she will control.

2. The minimum bond required pursuant to this section is \$100,000. The maximum bond required pursuant to this section is \$1,000,000.

3. On or before April 1 of each year, the association's administrator shall file with the Commissioner a statement of the actual amount of the association's money that he or she controlled in the previous calendar year and the amount of the association's money that he or she expects to control in the next calendar year.