

**ADOPTED REGULATION OF THE
COMMISSIONER OF INSURANCE**

LCB File No. R161-06

Effective January 1, 2007

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

AUTHORITY: §§1, 2 and 4, NRS 685A.210; §3, NRS 685A.075 and 685A.210.

A REGULATION relating to surplus lines insurance; revising provisions concerning the duty of brokers to file an affidavit and report of coverage; revising provisions concerning the duty of a nonprofit organization of surplus line brokers to file a survey of insurance transactions; revising the fee for a review of surplus lines coverage; and providing other matters properly relating thereto.

Section 1. NAC 685A.240 is hereby amended to read as follows:

685A.240 1. The following provisions apply to the broker's affidavit and report of coverage:

(a) Except as otherwise provided in subsection 3, the affidavit and report of coverage must bear the original signature of the broker.

(b) The affidavit and report constitutes the broker's statement of compliance with NRS 685A.040, 685A.070, 685A.080 and 685A.090.

(c) A separate affidavit and report of coverage must be filed with the broker's organization upon any renewal *or extension of coverage* of a contract of insurance.

(d) An amended affidavit and report of coverage must be filed with the broker's organization for each cancellation and each endorsement which changes the named insured, the description or location of the subject of insurance, or the coverage, conditions, terms, premium, or participating insurers.

~~(e) If all the information which is required to be stated on the affidavit and report of coverage is not available within 90 days after the insurance becomes effective, an affidavit and report of coverage listing all the information which is available must be filed with the broker's organization. An amended affidavit and report of coverage listing any information which was previously omitted must be filed with the broker's organization within 30 days after the initial filing.~~

~~(f)~~ The broker shall exercise due care in accounting for the premium, including any inspection fee charged as part of the premium, and for the premium tax on each affidavit and report of coverage. The premium tax must be computed upon the total premium or deposit premium, plus the fee allowed by NRS 685A.155, minus any return premium. The premium must include policy, membership, and other fees and assessments charged by the insurer as considerations for the insurance.

~~(g)~~ (f) If a type of coverage is on the list of open lines eligible for export which is approved by the Commissioner, statements of declinations from admitted insurers pursuant to subsection 1 of NAC 685A.215 are not required on the affidavit and report of coverage.

~~(h)~~ (g) The Commissioner may require a broker to file with the broker's organization a complete copy of the policy, certificate, or cover note to substantiate information which he has provided in an affidavit or report of coverage.

2. The annual statement must:

(a) Except as otherwise provided in subsection 3, bear the original signature of the broker;

(b) Include the total direct premiums written on surplus lines coverage, calculated in the same manner as premiums are calculated pursuant to NRS 685A.180;

(c) Include a report, in a form prescribed by the Commissioner, showing the allocation of premiums as required by NRS 680B.030; and

(d) Include a calculation of the premium taxes due to each state or other jurisdiction.

3. If a broker's affidavit and report of coverage or an annual statement is filed electronically, the broker's affidavit and report of coverage or the annual statement must be signed with an electronic signature of the broker pursuant to the provisions of chapter 719 of NRS.

Sec. 2. NAC 685A.350 is hereby amended to read as follows:

685A.350 An organization shall:

1. Establish and maintain an office in this State to carry out the applicable provisions of this chapter and chapter 685A of NRS.

2. Maintain a plan of operation which ensures that the members of the organization and all associated surplus lines insurance transactions comply with the provisions of title 57 of NRS and all other applicable rules and regulations adopted by the Commissioner.

3. Require each broker who is a member of the organization to file with the organization:

(a) The broker's affidavit and report of coverage required by NRS 685A.050 and NAC 685A.240;

(b) A copy of the broker's cover note, declarations page, or certificate;

(c) A copy of the annual statement required by NRS 685A.170; and

(d) A copy of the quarterly tax report required by NRS 685A.175.

4. Maintain each document filed with the organization pursuant to subsection 3.

5. Distribute to the members of the organization the current list of eligible surplus lines insurers and open lines eligible for export.

6. Prepare and submit to the Commissioner on or before May 1 of each year a report summarizing the premiums written in this State as of December 31 of the previous year through eligible surplus lines insurers. The report must identify for each premium written:

(a) The name of the insurer, including the identification number issued to the insurer by the National Association of Insurance Commissioners;

(b) The broker; and

(c) The line of coverage provided.

7. Cooperate with the Commissioner to resolve inquiries concerning the availability of coverage with admitted insurers and provide assistance in the placement of coverage with an eligible surplus lines insurer.

8. ~~Perform an annual survey of surplus lines~~ *If requested by the Commissioner, perform a survey of* insurance transacted in this State that reflects coverage placed in this State which involves major risks. The organization shall submit the results of the survey to the Commissioner with the report required by subsection 6.

9. Hold a meeting at least annually.

Sec. 3. NAC 685A.370 is hereby amended to read as follows:

685A.370 Each broker who is a member of an organization shall pay to the organization a fee for the review of surplus lines coverage. The fee must be paid within 30 days after the broker receives an invoice from the organization. The fee for each policy ~~[, regardless of whether the policy is a new policy or a renewal of a policy, is \$25 or one-half of 1 percent of the premium, whichever is greater.]~~ *is 0.4 percent of the amount subject to tax pursuant to NRS 685A.180.*

Sec. 4. This regulation becomes effective on January 1, 2007.

**NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R161-06**

The Commissioner of Insurance adopted regulations assigned LCB File No. R161-06 which pertain to chapter 685A of the Nevada Administrative Code.

INFORMATIONAL STATEMENT

A workshop and hearing were held on August 7, 2006, at the offices of the Department of Business and Industry, Division of Insurance (“Division”), 788 Fairview Drive, Suite 300, Carson City, Nevada 89701, with a simultaneous video-conference conducted at the Bradley Building, 2501 E. Sahara Avenue, Real Estate Division Conference Room, 2nd Floor, Las Vegas, Nevada 89104, on the proposed regulation relating to surplus lines insurance; revising provisions concerning the duty of brokers to file an affidavit and report of coverage; revising provisions concerning the duty of a nonprofit organization of surplus lines brokers to file a survey of insurance transactions; revising the fee for a review of surplus lines coverage; and providing other matters properly relating thereto.

Public comment was solicited by posting notice of the hearing in the following public locations: the Division’s Carson City Office, Legislative Counsel Bureau, Capitol Building Lobby, Blasdel Building, Carson City Courthouse, State Library, Capitol Press Room, and the Division’s Las Vegas Office.

The Division maintains a general list of interested parties, comprised mainly of insurance companies, agencies and other persons regulated by the Division. These persons were also notified of the hearing and that copies of the regulation could be obtained from or examined at the offices of the Division in Carson City.

The hearing was attended by three interested parties in Carson City and one interested party in Las Vegas. The Division received one written comment on the proposed regulation from James L. Wadhams, Esq., representing the Nevada Surplus Lines Association.

During the workshop and hearing, the majority of testimony concerned the proposed language regarding the calculation of the premium tax. The parties who testified suggested that an example illustrating the calculation be included in the proposed regulation. Hearing Officer, Commissioner Alice A. Molasky-Arman, agreed that the illustration would be beneficial. However, the Commissioner indicated that the Legislative Counsel Bureau (LCB) may ultimately reject inclusion of such an illustration and, therefore, the proposed regulation may have to include a formula only.

As a result of the hearing, the following revisions were made to paragraphs (e), (f) and (g) of subsection 1 of section 1 of the proposed regulation, LCB File No. R161-06, as follows:

~~*(e) If all the information which is required to be stated on the affidavit and report of coverage is not available within 90 days after the insurance becomes effective, an affidavit and*~~

~~report of coverage listing all the information which is available must be filed with the broker's organization]. [An amended affidavit and report of coverage listing any information which was previously omitted must be filed with the broker's organization within 30 days after the initial filing.]~~

~~(f)~~ (e) The broker shall exercise due care in accounting for the premium, including any inspection fee charged as part of the premium, and for the premium tax on each affidavit and report of coverage. The premium tax must be computed upon the total premium or deposit premium, plus the fee allowed by NRS 685A.155, minus any return premium. The premium must include policy, membership, and other fees and assessments charged by the insurer as considerations for the insurance. *The following formula shall be used to perform the computation:*

$$((A-B+C)/.8)=(D \times .035)+(D \times .004) + D = E$$

(A) is the amount invoiced by the wholesaler as premium or charge for the coverage.

(B) is the deduction of the other commission allowed to the Producer (up to 7%).

(C) is the addition of other fees payable to the wholesaler or insurer including policy fees, membership fees, and inspection fees.

(D) is the premium as defined in NRS 685A.180.

(E) is the total permissible charge to the insured.

~~(g)~~ (f) If a type of coverage is on the list of open lines eligible for export which is approved by the Commissioner, statements of declinations from admitted insurers pursuant to subsection 1 of NAC 685A.215 are not required on the affidavit and report of coverage.

~~(h)~~ (g) The Commissioner may require a broker to file with the broker's organization a complete copy of the policy, certificate, or cover note to substantiate information which he has provided in an affidavit or report of coverage.

2. The annual statement must:

- (a) Except as otherwise provided in subsection 3, bear the original signature of the broker;
- (b) Include the total direct premiums written on surplus lines coverage, calculated in the same manner as premiums are calculated pursuant to NRS 685A.180;
- (c) Include a report, in a form prescribed by the Commissioner, showing the allocation of premiums as required by NRS 680B.030; and
- (d) Include a calculation of the premium taxes due to each state or other jurisdiction.

After considering the testimony presented during the hearing, the Commissioner has issued an order adopting the proposed regulation, LCB File No. R161-06, as further amended, as a permanent regulation of the Division.

The economic impact of the regulation is as follows:

- (a) On the business it is to regulate: The proposed regulation will not have an adverse impact upon industry.
- (b) On small businesses: The proposed regulation will not have an adverse impact upon small businesses.
- (c) On the public: The proposed regulation will benefit the public by requiring more accurate reporting, as well as clarifying a broker's due care. The cost reduction set

forth in the proposed regulation will also benefit the public such that the cost of purchasing the insurance product should be less.

The Division will not incur additional expense to enforce the proposed regulation. The Division is not aware of any overlap or duplication of the regulation with any state, local or federal regulation.

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INSURANCE

IN THE MATTER OF THE

**PROPOSED REGULATION REGARDING
SURPLUS LINES INSURANCE
CONCERNING THE DUTY OF BROKERS
TO REPORT; REVISION CONCERNING
SURVEYS; REVISION OF THE FEE FOR A
REVIEW OF SURPLUS LINES COVERAGE.**

CAUSE NO. **06.515**
LCB File No. **R161-06**

**SUMMARY OF PROCEEDINGS
AND ORDER**

SUMMARY OF PROCEEDINGS

A public workshop, as required by Nevada Revised Statute (“NRS”) 233B.061, on the proposed regulation relating to surplus lines insurance; revising provisions concerning the duty of brokers to file an affidavit and report of coverage; revising provisions concerning the duty of a nonprofit organization of surplus lines brokers to file a survey of insurance transactions; revising the fee for a review of surplus lines coverage; and providing other matters properly relating thereto, was held before Alice A. Molasky-Arman, Commissioner of Insurance, on August 7, 2006, in Carson City, Nevada, and video-conferenced to the Bradley Building in Las Vegas, Nevada. A public hearing on the proposed regulation was also held before the Commissioner of Insurance, on August 7, 2006, in Carson City, Nevada, and video-conferenced to the Bradley Building in Las Vegas, Nevada. The regulation is proposed under the authority of NRS 685A.075 and NRS 685A.210.

Stephen L. Wright, representing the Department of Business and Industry, Division of Insurance (“Division”), presented the regulation. Mr. Wright testified that the proposed language in paragraph (a) of subsection 1 of section 1 clarifies when the broker’s affidavit must be filed. Concerning paragraphs (d) and (e) of subsection 1 of section 1, Mr. Wright explained that, for the purposes of reporting and in light of the additional revisions to the proposed regulation,

paragraph (e) could be deleted in its entirety as it was no longer necessary. Mr. Wright also testified that the proposed changes to the existing regulation are needed to clarify a broker's exercise of due care in calculating the premium tax and how the amount of tax is to be calculated. To that end, Mr. Wright testified that adding an example illustrating the computation would be helpful. Mr. Wright next explained that the new language in subsection 8 of section 2 makes performance of the survey, currently required pursuant to that subsection, now at the Commissioner's discretion. Finally, Mr. Wright testified that the proposed language in Section 3 of the proposed regulation would reduce fees sustained by industry through the Nevada Surplus Lines Association by reducing the frequency of surveys and reporting.

James Wadhams, Esq., representing the Nevada Surplus Lines Association, provided testimony in favor of the proposed regulation. Mr. Wadhams supported the addition of an example illustrating the premium tax calculation to the proposed regulation. Mr. Wadhams also supported the elimination of paragraph (e) of subsection 1 of section 1 in its entirety. No additional comments from the public were received.

Hearing Officer, Commissioner Alice A. Molasky-Arman, agreed that the illustration would be beneficial. However, the Commissioner indicated that the Legislative Counsel Bureau (LCB) may ultimately reject inclusion of such an illustration and, therefore, the proposed regulation may have to include a formula only.

Based upon testimony received, section 1 of the proposed regulation, LCB File No. R161-06, is further revised as follows:

Section 1. NAC 685A.240 is hereby amended to read as follows:

685A.240 1. The following provisions apply to the broker's affidavit and report of coverage:

(a) Except as otherwise provided in subsection 3, the affidavit and report of coverage must bear the original signature of the broker.

(b) The affidavit and report constitutes the broker's statement of compliance with NRS 685A.040, 685A.070, 685A.080 and 685A.090.

(c) A separate affidavit and report of coverage must be filed with the broker's organization upon any renewal **or extension of coverage** of a contract of insurance.

(d) An amended affidavit and report of coverage must be filed with the broker's organization for each cancellation and each endorsement which changes the named insured, the description or location of the subject of insurance, or the coverage, conditions, terms, premium, or participating insurers.

~~[(e) If all the information which is required to be stated on the affidavit and report of coverage is not available within 90 days after the insurance becomes effective, an affidavit and report of coverage listing all the information which is available must be filed with the broker's organization].~~ **[An amended affidavit and report of coverage listing any information which was previously omitted must be filed with the broker's organization within 30 days after the initial filing.]**

~~[(f)]~~ (e) The broker shall exercise due care in accounting for the premium, including any inspection fee charged as part of the premium, and for the premium tax on each affidavit and report of coverage. The premium tax must be computed upon the total premium or deposit premium, plus the fee allowed by NRS 685A.155, minus any return premium. The premium must include policy, membership, and other fees and assessments charged by the insurer as considerations for the insurance. *The following formula shall be used to perform the computation:*

$$((A-B+C)/.8)=(D x .035)+(D x .004) + D = E$$

(A) is the amount invoiced by the wholesaler as premium or charge for the coverage.

(B) is the deduction of the other commission allowed to the Producer (up to 7%).

(C) is the addition of other fees payable to the wholesaler or insurer including policy fees, membership fees, and inspection fees.

(D) is the premium as defined in NRS 685A.180.

(E) is the total permissible charge to the insured.

~~(g)~~ (f) If a type of coverage is on the list of open lines eligible for export which is approved by the Commissioner, statements of declinations from admitted insurers pursuant to subsection 1 of NAC 685A.215 are not required on the affidavit and report of coverage.

~~(h)~~ (g) The Commissioner may require a broker to file with the broker's organization a complete copy of the policy, certificate, or cover note to substantiate information which he has provided in an affidavit or report of coverage.

2. The annual statement must:

- (a) Except as otherwise provided in subsection 3, bear the original signature of the broker;
- (b) Include the total direct premiums written on surplus lines coverage, calculated in the same manner as premiums are calculated pursuant to NRS 685A.180;
- (c) Include a report, in a form prescribed by the Commissioner, showing the allocation of premiums as required by NRS 680B.030; and
- (d) Include a calculation of the premium taxes due to each state or other jurisdiction.

3. If a broker's affidavit and report of coverage or an annual statement is filed electronically, the broker's affidavit and report of coverage or the annual statement must be signed with an electronic signature of the broker pursuant to the provisions of chapter 719 of NRS.

The Hearing Officer closed the hearing and directed Stephen L. Wright to prepare the informational statement letter and order.

ORDER OF THE COMMISSIONER

Having reviewed the record in this matter, it is hereby ordered that the proposed regulation regarding surplus lines insurance, LCB File No. R161-06, be adopted, as amended, as a permanent regulation of the Division.

SO ORDERED this _____ day of November, 2006.

ALICE A. MOLASKY-ARMAN
Commissioner of Insurance