

**PROPOSED REGULATION OF THE
COMMISSIONER OF INSURANCE**

LCB File No. R076-02

June 27, 2002

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

AUTHORITY: §§1-18, NRS 679B.130 and 680A.265.

Section 1. Chapter 680A of NAC is hereby amended by adding thereto a new section to read as follows:

1. Upon the written application of an insurer, the commissioner may grant an exemption from compliance with the requirements set forth in NAC 680A.172 to 680A.204, inclusive, that the insurer use an independent certified public accountant, if the commissioner finds, upon review of the application, that compliance with those requirements would constitute a financial or organizational hardship on the insurer. The commissioner may grant such an exemption at any time and from time to time for one or more specified periods.

2. If the commissioner denies the written application of an insurer for an exemption pursuant to subsection 1, the insurer may, within 10 days after the denial, request in writing a hearing on the application. The hearing will be held in accordance with the provisions of NAC 679B.161 to 679B.480, inclusive.

Sec. 2. NAC 680A.004 is hereby amended to read as follows:

680A.004 “Annual audited financial report” means ~~{the}~~ :

1. The report which must be filed with the commissioner in accordance with NRS 680A.265.

2. For an insurer domiciled in Canada or Great Britain, the annual statement of total business on the form filed by the insurer with its domiciliary supervision authority, duly audited by a chartered accountant.

Sec. 3. NAC 680A.006 is hereby amended to read as follows:

680A.006 ~~["Certified"]~~ *"Accountant" or "independent certified* public accountant" means:

1. An independent certified public accountant or accounting firm in good standing with the American Institute of Certified Public Accountants and in all states in which the accountant or accounting firm is licensed to practice.

2. For an insurer domiciled in Canada or Great Britain, a chartered accountant.

Sec. 4. NAC 680A.018 is hereby amended to read as follows:

680A.018 "Workpaper" means the record kept by ~~fa]~~ *an independent* certified public accountant of the procedure followed, the test performed, the information obtained and the conclusion reached pertinent to his examination of the financial statements of an insurer. A workpaper includes, but is not limited to, an audit planning document, a work program, an analysis, a memorandum, a letter of confirmation and representation, an abstract of company documents and a schedule or commentary which are prepared or obtained by the *independent* certified public accountant in the course of his examination of the financial statements of an insurer and which support his opinion thereof.

Sec. 5. NAC 680A.172 is hereby amended to read as follows:

680A.172 For the purposes of NRS 680A.265, the commissioner will find that good cause exists for the exemption of an insurer from the requirements of NRS 680A.265 *for the year* if, at the end of the most previous calendar year, the insurer has direct premiums written in this state in

an amount which is less than \$1,000,000 and has less than 1,000 policyholders or certificate holders of directly written policies in the United States unless:

1. The commissioner makes a specific finding that compliance by that insurer is necessary for the commissioner to carry out his statutory responsibilities; or
2. The insurer has assumed premiums pursuant to contracts or treaties of reinsurance in an amount of \$1,000,000 or more.

Sec. 6. NAC 680A.178 is hereby amended to read as follows:

680A.178 1. The commissioner may require an insurer to file its annual audited financial report earlier than June 1 upon notice to the insurer by the commissioner made at least 90 days before the earlier filing date.

2. The commissioner may grant one or more 30-day extensions of the filing date as determined in accordance with NRS 680A.265 and subsection 1 upon a showing by the insurer and its *independent* certified public accountant of good cause for the extension. A request for a 30-day extension must be submitted in writing not less than 10 days before the date on which the annual audited financial report is to be filed and must contain sufficient detail to permit the commissioner to make an informed decision with respect to the requested extension.

Sec. 7. NAC 680A.180 is hereby amended to read as follows:

680A.180 1. The annual audited financial report must include a report of the financial position of the insurer as of the end of the most recent calendar year and the results of the insurer's operations, cash flows and changes in capital and surplus for that year.

2. The annual audited financial report of an insurer must include:

- (a) A report of the *independent* certified public accountant;

(b) A balance sheet which reports the admitted assets, liabilities, capital and surplus of the insurer;

(c) A statement of operations;

(d) A statement of cash flows;

(e) A statement of changes in capital and surplus;

(f) Any notes to financial statements required by the appropriate instructions for annual statements of the National Association of Insurance Commissioners, and any other notes required by generally accepted accounting principles;

(g) A reconciliation of the differences, if any, between the ~~audited~~ annual *audited* financial report and the annual statement filed with the commissioner pursuant to NRS 680A.270, with a written description of the nature of ~~these~~ *those* differences; and

(h) A summary of the ownership and relationships of the insurer and each of its affiliated companies, if any.

3. A financial statement included in an annual audited financial report must be prepared in a form which uses language and groupings that are substantially similar to the relevant sections of the annual statement of the insurer filed with the commissioner pursuant to NRS 680A.270. The financial statement must include comparative data as of December 31 of the two most previous calendar years, except that, in the first year in which an insurer is required to file an annual audited financial report, the insurer may include only the data from the most previous calendar year.

Sec. 8. NAC 680A.182 is hereby amended to read as follows:

680A.182 1. An insurer required by NRS 680A.265 and NAC 680A.172 to 680A.204, inclusive, to file an annual audited financial report shall , *within 60 days after becoming subject*

to the requirement, register with the commissioner in writing the name and address of ~~[its]~~ *the independent* certified public accountant ~~[as follows:~~

~~—(a) If, as of May 23, 1996, the insurer is required to file an annual audited financial report and the insurer has retained a certified public accountant, not later than 60 days after May 23, 1996.~~

~~—(b) If, as of May 23, 1996, the insurer is required to file an annual audited financial report, but has not retained a certified public accountant, before January 1 of the year in which the insurer must file its next annual audited financial report in accordance with NRS 680A.265 and NAC 680A.172 to 680A.204, inclusive.~~

~~—(c) If, as of May 23, 1996, the insurer is not required to file an annual audited financial report, before January 1 of the first year in which the insurer must file an annual audited financial report in accordance with NRS 680A.265 and NAC 680A.172 to 680A.204, inclusive.]~~ *who will audit the report.*

2. The insurer shall obtain a letter from ~~[its]~~ *the independent* certified public accountant and file a copy of the letter with the commissioner which:

(a) States that the accountant is aware of the provisions of Title 57 of NRS, and the regulations adopted pursuant thereto, that relate to accounting and financial matters ~~[; and~~

~~—(b) Affirms]~~, *and affirms* that the accountant will express his opinion on the financial statements in terms of their conformity to the statutory accounting practices prescribed or otherwise permitted by Title 57 of NRS, and the regulations adopted pursuant thereto, specifying such exceptions as he deems appropriate ~~[; and~~

(b) For an insurer domiciled in Canada or Great Britain, states that the accountant is aware of the requirements relating to the annual audited financial report filed with the

commissioner pursuant to NRS 680A.265 and NAC 680A.172 to 680A.204, inclusive, and affirms that the opinion expressed is in conformity with those requirements.

Sec. 9. NAC 680A.184 is hereby amended to read as follows:

680A.184 1. If the *independent* certified public accountant who was the accountant for the most recent filing of the annual audited financial report of an insurer is dismissed or resigns, the insurer shall:

(a) Not later than 5 business days after the dismissal or resignation, notify the commissioner of the dismissal or resignation; and

(b) Not later than 10 business days after notifying the commissioner of the dismissal or resignation of the accountant, file with the commissioner a separate letter which sets forth:

(1) Each disagreement which occurred during the 24 months immediately preceding the dismissal or resignation between the accountant and the insurer on any matter of accounting principles or practices, disclosure on a financial statement or the scope or procedure of the audit; and

(2) Which disagreements, if not resolved to the satisfaction of the accountant, caused him to make a reference to the subject matter of the disagreement in his opinion filed with the annual ~~audit~~ *audited* financial report of the insurer.

2. The disagreements required to be reported pursuant to this section include both those resolved to the former accountant's satisfaction and those which have not been resolved to the former accountant's satisfaction. The insurer shall request in writing that the former accountant furnish a letter addressed to the insurer stating ~~whether~~ :

(a) *Whether* the accountant agrees with the statements contained in the insurer's letter filed pursuant to subsection 1 and, if not, stating the reasons he does not agree ~~[-]~~ ; *and*

(b) If the insurer is domiciled in Canada or Great Britain, that the accountant is aware of the requirements relating to the annual audited financial report filed with the commissioner pursuant to NRS 680A.265 and NAC 680A.172 to 680A.204, inclusive, and affirming that the opinion of the accountant is expressed in conformity with those requirements.

3. Upon receipt of the accountant's response letter, the insurer shall file with the commissioner a copy of the response letter from the former accountant and any written response of the insurer to the accountant's response letter.

~~3.~~ 4. For the purposes of this section, a disagreement between the insurer and its accountant is a disagreement which occurs between the insurer and the accountant at the decision-making level and includes, without limitation, a disagreement between the personnel of the insurer responsible for preparation of the financial statements of the insurer and the personnel of the *independent* certified public accountant responsible for rendering its opinion on those statements.

Sec. 10. NAC 680A.186 is hereby amended to read as follows:

680A.186 1. Except as otherwise provided in *subsection 2 and* NAC 680A.188 and 680A.190, the commissioner will recognize ~~an~~ *an independent* certified public accountant as a qualified *independent* certified public accountant if the *independent* certified public accountant conforms to the standards contained in the Code of Professional Ethics of the American Institute of Certified Public Accountants, and the Rules of Professional Conduct and the regulations of the Nevada state board of accountancy, or other similar code . ~~[of the state or country in which the accountant is certified, licensed or chartered.]~~

2. The commissioner will not recognize as a qualified *independent* certified public accountant ~~an~~ *an independent* certified public accountant who:

(a) Is not in good standing with the American Institute of Certified Public Accountants and in all states in which the *independent* certified public accountant is licensed or certified to practice;

~~or~~

(b) For an insurer domiciled in Canada or Great Britain, is not a chartered accountant or accounting firm ~~or~~; *or*

(c) Has either directly or indirectly entered into an agreement of indemnity or release from liability with respect to an audit of the insurer if the intent or effect of the agreement or release is to shift or limit in any manner the potential liability of the accountant for failure to adhere to applicable auditing or professional standards, whether or not resulting in part from a knowing or other misrepresentation made by the insurer or its representatives.

Sec. 11. NAC 680A.188 is hereby amended to read as follows:

680A.188 1. Except as otherwise provided in this section, ~~an~~ *an independent* certified public accountant who is responsible for rendering an annual audited financial report for an insurer may act in that capacity for a period of not more than 7 consecutive years, which begins to run from the date on which the insurer registers the accountant with the commissioner pursuant to NAC 680A.182. At the end of the 7-year period, the *independent* certified public accountant is disqualified from acting in that or a similar capacity for the same insurer or any insurance subsidiary or affiliate of the insurer for a period of at least 2 years.

2. An insurer may apply to the commissioner for permission for ~~an~~ *an independent* certified public accountant to continue in his capacity in the rendering of the annual audited financial report of the insurer for more than 7 consecutive years, or to return to a position which would be responsible for rendering an annual audited financial report for the insurer and its subsidiary or affiliate in less than 2 years, upon a showing of unusual circumstances. The

commissioner will consider the following factors, without limitation, in determining if the relief should be granted:

- (a) If the *independent* certified public accountant is an accounting firm, the number of partners within the *independent* certified public accountant and the expertise of those partners;
- (b) The number of insurers who are clients of the accountant;
- (c) The volume of premiums of the insurer; or
- (d) The number of jurisdictions in which the insurer transacts business.

Sec. 12. NAC 680A.190 is hereby amended to read as follows:

680A.190 The commissioner will not recognize as a qualified *independent* certified public accountant, ~~nor~~ *or* accept any annual audited financial report prepared in whole or in part by, any natural person who:

1. Has been convicted of fraud, bribery, a violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961 to 1968, inclusive, or any dishonest conduct or practices under federal or state law;
2. Has been found to have violated any provision of Title 57 of NRS, or any regulation adopted pursuant thereto, with respect to any previous annual audited financial report submitted pursuant to NRS 680A.265 and NAC 680A.172 to 680A.204, inclusive; *or*
3. Has demonstrated a pattern or practice of ~~negligently~~ failing to detect or disclose material information in previous annual audited financial reports filed pursuant to NRS 680A.265 and NAC 680A.172 to 680A.204, inclusive.

Sec. 13. NAC 680A.192 is hereby amended to read as follows:

680A.192 The commissioner will, if he deems it necessary, hold a hearing to determine whether ~~a~~ *an independent* certified public accountant is qualified for the purposes of NRS

680A.265 and NAC 680A.172 to 680A.204, inclusive. If, based on the evidence presented, the commissioner determines that the accountant is not qualified, the commissioner will:

1. Rule that the accountant is not qualified for purposes of expressing his opinion on the financial statements in the annual audited financial report to be made pursuant to NRS 680A.265 and NAC 680A.172 to 680A.204, inclusive, and require the insurer to replace the accountant with ~~an~~ *an independent* certified public accountant who is so qualified; or
2. Take any other action determined to be necessary by the commissioner.

Sec. 14. NAC 680A.196 is hereby amended to read as follows:

680A.196 An examination of the insurer's financial statements by ~~an~~ *an independent* certified public accountant for the purposes of NRS 680A.265 and NAC 680A.172 to 680A.204, inclusive, must be conducted in accordance with:

1. Generally accepted auditing standards; and
2. Such other procedures set forth in the "Financial Condition Examiners Handbook," which composes Volume One of the *Examiners Handbook* published by the National Association of Insurance Commissioners, as adopted by reference in NAC 679B.033, as the *independent* certified public accountant deems necessary.

Sec. 15. NAC 680A.198 is hereby amended to read as follows:

680A.198 1. ~~A~~ *An independent* certified public accountant of an insurer required to furnish an annual audited financial report shall report to the board of directors or audit committee of the insurer each determination by the accountant that the insurer:

- (a) Has materially misstated its financial condition as reported to the commissioner as of the date of the balance sheet currently under examination; or

(b) Does not, as of that date, meet the minimum requirements for capital and surplus as set forth in chapter 680A of NRS.

FLUSH The report must be in writing and provided to the insurer not later than 5 business days after the accountant makes such a determination.

2. An insurer who receives a report from its *independent* certified public accountant pursuant to this section shall, not later than 5 business days after the date on which it receives the report from the accountant:

(a) Forward a copy of the report to the commissioner; and

(b) Provide the *independent* certified public accountant who made the report with evidence that the insurer has forwarded a copy of the report to the commissioner. If the *independent* certified public accountant does not, within the 5-business day period, receive evidence from the insurer that the insurer has forwarded a copy of the report to the commissioner in accordance with this section, the *independent* certified public accountant shall file with the commissioner a copy of its report within the next 5 business days.

3. ~~[A]~~ *An independent* certified public accountant is not liable in any manner to any person for any statement made in connection with this section if the statement is made in good faith in compliance with this section.

4. If the *independent* certified public accountant, after the annual audited financial report reviewed by the accountant has been filed pursuant to NRS 680A.265 and NAC 680A.172 to 680A.204, inclusive, becomes aware of any facts which affect his report, the accountant shall take such action as prescribed in Volume 1, Section AU 561 of the Professional Standards of the American Institute of Certified Public Accountants, which is hereby adopted by reference. A

copy of the Professional Standards may be obtained from the American Institute of Certified Public Accountants:

(a) By mail at The American Institute of Certified Public Accountants, AICPA/CPA2Biz, Customer Service Center, P.O. Box 2209, Jersey City, New Jersey 07303-2209;

(b) By telephone at 1-888-777-7077; or

(c) On the Internet at <<http://www.cpa2biz.com>>,

FLUSH at a cost of \$145.

Sec. 16. NAC 680A.200 is hereby amended to read as follows:

680A.200 If, following the audit of the financial statements of an insurer, ~~[a]~~ *an independent* certified public accountant notes any significant deficiency in the insurer's structure for internal control, the insurer shall, not later than 60 days after the date on which the annual audited financial report is filed with the commissioner, file a written report which provides a description of the deficiency and of the remedial actions taken or proposed to correct the significant deficiency, if those actions are not otherwise described in the accountant's report filed with the annual audited financial ~~[statement.]~~ *report.*

Sec. 17. NAC 680A.202 is hereby amended to read as follows:

680A.202 ~~[A]~~ *An independent* certified public accountant shall furnish the insurer in connection with, and for inclusion in, the filing of the annual audited financial report, a letter which states:

1. That the accountant is independent of the insurer and that he conforms to the standards of his profession as contained in the *Code of Professional Ethics* and pronouncements of the American Institute of Certified Public Accountants, and the *Rules of Professional Conduct* and

the regulations of the Nevada state board of accountancy, or other similar code . ~~[of the state or country in which the accountant is licensed, certified or chartered.]~~

2. The background and experience of the accountant in general and the experience of the staff of the accountant in auditing insurers, and whether each member of that staff which will audit the insurer is an independent certified public accountant. The provisions of NAC 680A.172 to 680A.204, inclusive, will not be construed as prohibiting the accountant from utilizing such staff as he deems necessary if that use of staff is consistent with the standards prescribed by generally accepted auditing standards.

3. That the accountant understands that the annual audited financial report and his opinion thereon will be filed in compliance with NRS 680A.265 and NAC 680A.172 to 680A.204, inclusive, and that the commissioner will be relying on this information to monitor and regulate the financial position of the insurer.

4. That the accountant consents to make his workpapers available for review by the commissioner or his designated agent in accordance with NAC 680A.204.

5. That the accountant is properly licensed, certified or chartered by the appropriate licensing authority in the state or country in which the accountant is licensed, certified or chartered, and that the accountant is a member in good standing in the American Institute of Certified Public Accountants.

6. That the accountant is in compliance with the requirements for a qualified *independent* certified public accountant as set forth in NAC 680A.186, 680A.188 and 680A.190.

Sec. 18. NAC 680A.204 is hereby amended to read as follows:

680A.204 1. The *independent* certified public accountant of an insurer required to file an annual audited financial report pursuant to NRS 680A.265 shall make available for review by the

commissioner or his designated agent all of the workpapers prepared by the accountant in the conduct of his examination and any communications related to the audit between the accountant and the insurer at the offices of the insurer, at the insurance division of the department of business and industry, or at any other reasonable place designated by the commissioner. The *independent* certified public accountant shall retain the workpapers and communications pertaining to its audit of the financial statements of an insurer for 7 years ~~from~~ *after* the date of the report by the accountant on the annual audited financial report or until the insurance division has completed its examination of the annual audited financial report, whichever occurs first.

2. In the conduct of their examination of an annual audited financial report, the examiners of the division may make a photocopy of any pertinent workpapers relating to the audit which will be retained by the division. The examination by the examiners is considered to be an investigation, and all workpapers and communications obtained during the course of such an investigation will be afforded the same confidentiality as other working papers relating to the examination which are generated by the division.