

**ADOPTED REGULATION OF THE
COMMISSIONER OF INSURANCE**

LCB File No. R090-03

Effective October 30, 2003

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

AUTHORITY: §§1-7, NRS 679B.130 and 685A.210.

Section 1. Chapter 685A of NAC is hereby amended by adding thereto a new section to read as follows:

1. Immediately following the statement required pursuant to NRS 685A.090, every insurance contract procured and delivered as a surplus lines coverage pursuant to chapter 685A of NRS must bear the original signature and the license number of the broker who procured the insurance contract.

2. As used in this section, “license number” means the number of the license issued by the Commissioner to the broker.

Sec. 2. NAC 685A.230 is hereby amended to read as follows:

685A.230 1. ~~[A communications fee may be charged on surplus lines business only for the purpose of defraying the expenses of communications. Records of actual expenses must be maintained if a communications fee of more than \$50 is charged.~~

~~—2.]~~ The broker may pass on an inspection fee to the insured and may collect the fee from him *as a part of the premium* if the fee is directly related to an independent inspection required by insurers for insurance. The broker shall maintain a copy of each inspection report and each invoice or statement related to the report in his files.

~~[3. A communications or]~~

2. *An* inspection fee that is charged to the insured must be ~~[-]~~

~~—(a) Shown]~~ *shown* as a separate item on the broker's certificate, the cover note, or both. ~~[-]~~
and

~~—(b) Stated separately from the premium in any statement to the insured.]~~

Sec. 3. 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) ~~[The]~~ *Except as otherwise provided in subsection 3, the* affidavit and report of coverage must bear the original signature of the broker. ~~[-, and the]~~

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

~~[(b)]~~ (c) A separate affidavit and report of coverage must be filed with the broker's organization upon any renewal of a contract of insurance.

~~[(e)]~~ (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.

~~[(d)]~~ (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.

~~[(e)]~~ (f) The broker shall exercise due care in accounting for the premium, ~~[for any communications fee,]~~ *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 premium must not include the amount of any communications fee or any independent inspection fee.]~~

~~—[(f)]~~ (g) 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.

~~[(g)]~~ (h) 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) ~~[Include a report of premium volume, categorized by the line and class of insurance and by insurers which are not admitted insurers;]~~

~~—(b) Bear]~~ *Except as otherwise provided in subsection 3, bear* the original signature of the broker;

~~[(e)]~~ (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;

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

~~[(e)]~~ (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. 4. NAC 685A.250 is hereby amended to read as follows:

685A.250 1. In addition to the records required by NRS 685A.160, the broker shall maintain complete copies of affidavits and reports of coverage, including any amendment to a report, which have been filed with the Commissioner or the broker's organization.

2. The broker shall maintain a complete log of all surplus lines insurance which he has placed during the calendar year, specifying the name of the insured, policy number, name of the insurer, line of coverage, premium, ~~communications fee,~~ inspection fee, broker fee, premium tax ~~and~~ and type of transaction.

3. The broker's files, accounts, logs ~~and~~ and other records of surplus lines transactions:

(a) Must ~~not be removed from this state;~~ *be maintained in the office of the broker;* and

(b) Must be open to examination by the Commissioner at any reasonable time.

4. The broker shall maintain the files, accounts, logs ~~and~~ and other records of surplus lines transactions separately from any other records in his place of business . ~~in this state.~~

5. Premium taxes collected by the broker must be deposited in a fiduciary account. The broker shall establish a fiduciary account for the conduct of his business of insurance and

maintain the account in a commercial bank or other financial institution depository ~~in Nevada.~~
~~The account must be~~ *which is* insured by an agency of the Federal Government.

Sec. 5. 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 ~~upon filing the broker's affidavit and report of coverage pursuant to NAC 685A.350.]~~ *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 ~~per policy or endorsement,]~~ or one-half of 1 percent of the premium, whichever is greater.

Sec. 6. NAC 685A.390 is hereby amended to read as follows:

685A.390 1. The books and *financial* records of an organization must be open to inspection by members of the general public upon *written* request, excluding records of investigations that are confidential pursuant to NRS 679B.190.

2. All forms and other documents that a broker files with his organization shall be deemed the records of the Division.

Sec. 7. NAC 685A.400 is hereby amended to read as follows:

685A.400 1. The money maintained by an organization must be ~~maintained]~~ :

(a) Deposited in a bank ~~in]~~ *chartered by* this state ~~];~~ ;

(b) Deposited in a bank that is a member of the United States Federal Reserve System;

(c) Invested in public obligations as described in NRS 682A.060; or

(d) Invested in federal agency securities as described in NRS 682A.070.

2. The board of directors shall engage a certified public accountant to audit the accounts of the organization and prepare an audit report before the annual meeting of the board, or more often if necessary or required by the Commissioner.

NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R090-03

The Commissioner of Insurance adopted regulations assigned LCB File No. R090-03 which pertain to chapter 685A of the Nevada Administrative Code on October 10, 2003.

Notice date: 7/24/2003
Hearing date: 8/26/2003

Date of adoption by agency: 10/10/2003
Filing date: 10/30/2003

INFORMATIONAL STATEMENT

A hearing was held on August 26, 2003, in Carson City, Nevada regarding the adoption of the regulation concerning surplus lines insurance.

Public comment was solicited by posting notice of the hearing in the following public locations: 788 Fairview Drive, Legislative Counsel Bureau, Capitol Building Lobby, Blasdel Building, Carson City Courthouse, State Library, Clark County Library, Capitol Press Room and the Division's Las Vegas Office.

In addition, the Department of Business and Industry, Division of Insurance (Division), maintains a list of interested parties, comprised mainly of insurance companies, agencies and other persons regulated by the Division. These persons were 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 five members of the public. Oral testimony in the form of concerns and suggested changes was provided by three people at the hearing and two written comments were received. Copies of any comments received by the Division can be obtained from the Division at 788 Fairview Drive, Suite 300, Carson City, Nevada 89701, (775) 687-4270.

In consideration of the written comments and the comments by those attending the hearing, several revisions were made to the proposed regulation. The revisions were incorporated into the Proposed Regulation of the Commissioner of Insurance, LCB File No. R090-03, dated August 12, 2003. The Commissioner has issued an order adopting the regulation, as amended, as a permanent regulation of the Division.

Based upon the comments received at the hearing, the regulation was changed from the proposed regulation as follows:

1. Paragraph (a) of subsection 3 of section 4 has been amended to read as follows: "Must ~~[not]~~ be ~~[removed from the state where]~~ *maintained in the office of* the broker ~~[resides]~~ *identified in section 1*; and"

2. Subsection 5 of section 4 has been amended to read as follows: “Premium taxes collected by the broker must be deposited in a fiduciary account. The broker shall establish a fiduciary account for the conduct of his business of insurance and maintain the account in a commercial bank or other financial institution depository, ~~[in the state where the broker resides. The account must be]~~ *which is* insured by an agency of the Federal Government.”
3. Section 8 has been amended to read as follows: “This regulation becomes effective ~~[on October 1, 2003, or]~~ upon filing with the Secretary of State~~;~~ ~~whichever occurs later].”~~

The economic impact of the regulation is as follows:

- (a) On the business it is to regulate:
 - (1) The regulation will have a slight beneficial impact on the business (surplus lines brokers) by reducing the filing fee schedule to be paid.
 - (2) The regulation will have a beneficial impact on the Nevada Surplus Lines Association by allowing them greater flexibility in managing their funds and allowing the use of electronic signatures on the brokers filings.
- (b) On the public: The regulation will have only a minimal impact on the citizens of Nevada.

The Division anticipates a nominal 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 & INDUSTRY
DIVISION OF INSURANCE

IN THE MATTER OF

CAUSE NO. **03.677**
LCB File No. **R090-03**

**REGULATION CONCERNING SURPLUS
LINES INSURANCE.**

**SUMMARY OF PROCEEDINGS
AND ORDER**

SUMMARY OF PROCEEDINGS

A public workshop, as required by NRS 233B.061, on the proposed regulation concerning surplus lines insurance was held before Alice A. Molasky-Arman, Commissioner of Insurance, on August 26, 2003, 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 Commissioner Molasky-Arman on August 26, 2003, in Carson City, Nevada, and video-conferenced to the Bradley Building in Las Vegas, Nevada. The regulation is proposed under the authority of NRS 679B.130 and 685A.210.

The Department of Business and Industry, Division of Insurance (Division) did receive two written comments and oral comments from three members of the public. The hearing was attended by 10 individuals, including five members of the Division staff. The following persons provided testimony before the Hearing Officer: Tom Canfield, representing the Division; James Wadhams and Lynn Twaddle, representing the Nevada Surplus Lines Association; and Kay Lockhart, representing the Nevada Independent Insurance Agents.

The written comments came from David H. Lee, Chairman of the Nevada Surplus Lines Association, regarding the requirement in section 1 that each surplus lines contract include the signature and license number of the surplus lines broker. The other written

comment came from Mike Koziol, Senior Director and Counsel for the National Association of Independent Insurers regarding section 2 which covers reporting requirements for premium which now includes any inspection fee as part of premium when computing the premium tax. Mr. Wadhams provided oral comments regarding section 4 which covers the maintenance of records and fiduciary accounts for non-resident surplus lines brokers.

Tom Canfield testified that the intent of the regulation was to modify the current regulation to conform to statute changes made in the legislative sessions and to modify the regulatory oversight of the Nevada Surplus Lines Association. Each of the sections was discussed in detail during the workshop and hearing resulting in recommended changes for sections 4 and 8.

Based upon the comments received at the hearing, the regulation was changed from the proposed regulation as follows:

1. Paragraph (a) of subsection 3 of section 4 has been amended to read as follows: “Must ~~[not]~~ be ~~[removed from the state where]~~ *maintained in the office of* the broker ~~[resides]~~ *identified in section 1*; and”

2. Subsection 5 of section 4 has been amended to read as follows: “Premium taxes collected by the broker must be deposited in a fiduciary account. The broker shall establish a fiduciary account for the conduct of his business of insurance and maintain the account in a commercial bank or other financial institution depository, ~~[in the state where the broker resides. The account must be]~~ *which is* insured by an agency of the Federal Government.”

3. Section 8 has been amended to read as follows: “This regulation becomes effective ~~[on October 1, 2003, or]~~ upon filing with the Secretary of State~~[, whichever occurs later].”~~

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ORDER OF THE COMMISSIONER

Having reviewed the record in this matter, it is hereby ordered that the proposed regulation concerning surplus lines insurance, LCB File No. R090-03, as amended, be adopted as a permanent regulation of the Division.

SO ORDERED this _____ day of October, 2003.

ALICE A. MOLASKY-ARMAN
Commissioner of Insurance