

**ADOPTED REGULATION OF THE
COMMISSIONER OF INSURANCE**

LCB File No. R172-03

Effective February 12, 2004

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

AUTHORITY: §1, NRS 679B.130 and 686B.1781.

Section 1. Chapter 686B of NAC is hereby amended by adding thereto a new section to read as follows:

- 1. An insurer must file its plan for the payment of dividends for a policy of industrial insurance with the Commissioner at least 30 days before the effective date of the plan.*
- 2. The plan for the payment of dividends filed pursuant to subsection 1 must include:*
 - (a) The dividend plan disclosure forms and dividend payment forms used by the insurer;*
 - (b) The conditions under which the insured will be eligible to receive a dividend;*
 - (c) The criteria used by the insurer for determining which plan is applicable for each particular kind of risk; and*
 - (d) Any applicable formula or factor used by the insurer for calculating dividends, including, without limitation:*
 - (1) Loss ratios;*
 - (2) Tax multipliers;*
 - (3) Loss conversion factors; and*
 - (4) Premiums.*

3. A proposal, example, illustration or explanation of dividends presented to or made available to the insured or a potential policyholder must include, without limitation, disclosures including the following information:

(a) The insurer will not declare dividends before the expiration of the policy.

(b) Only the board of directors or other governing body of the insurer, at its sole discretion, may declare and distribute dividends.

(c) Dividends will be paid from the policyholder surplus and not from earned premiums.

(d) Payment of dividends by the insurer is not guaranteed and the actual payment of dividends may differ from the amount of expected dividends.

(e) The insurer will not pay dividends if the Commissioner determines that the payment of dividends would jeopardize the solvency of the insurer or be hazardous to the interests of the general public or the creditors or the policyholders of the insurer.

4. An insurer must file a written description of its plan for the payment of savings, unearned premium deposits or an equivalent abatement for premiums allowed or returned for a policy of industrial insurance with the Commissioner at least 30 days before the effective date of the plan.

5. At the request of the insurer, the Commissioner will keep confidential the information submitted to the Commissioner by the insurer pursuant to paragraph (d) of subsection 2.

NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R172-03

The Commissioner of Insurance adopted regulations assigned LCB File No. R172-03 which pertain to chapter 686B of the Nevada Administrative Code on January 5, 2004.

Notice date: 10/10/2003
Hearing date: 11/13/2003

Date of adoption by agency: 1/5/2004
Filing date: 2/12/2004

INFORMATIONAL STATEMENT

A hearing was held on November 13, 2003, in Carson City, Nevada, and video-conferenced to the Bradley Building in Las Vegas, regarding the adoption of the regulation concerning dividends, savings, unearned premium deposits or an equivalent abatement of premiums allowed or returned for a policy of industrial 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 10 individuals. Oral testimony was provided by Mr. Cliff King, representing the Division; Ms. Kathleen Bissell, representing Liberty Mutual Insurance Company; Mr. Bob Selli, representing Sierra Insurance Group; Mr. Sam Sorch, representing the National Association of Independent Insurers; and Mr. Don Smith, representing Employers Insurance Company of Nevada. Written testimony, in the form of suggested changes, was provided by Mr. Jack Kim of Sierra Insurance Group; Ms. Kathleen Bissell of Liberty Mutual Insurance Company; and Mr. Lenard Ormsby of Employers Insurance Company of Nevada.

There were several revisions recommended and made to the Proposed Regulation, LCB File No. R172-03, dated November 7, 2003. A revised version of the regulation is attached. The revisions pertain to the information that must be filed with the Commissioner and the ability to have proprietary information held confidential if requested by the insurer and approved by the Commissioner. The Commissioner has issued an order adopting the regulation, as revised pursuant to the workshop and hearing, as a permanent regulation of the Division.

Based upon the testimony received at the hearing, the proposed regulation is revised as follows:

1. Subsection 1 of section 1 is amended to read as follows:

1. An insurer must file ~~[a written description of]~~ its plan for the payment of dividends for a policy of industrial insurance with the Commissioner at least 30 days before the effective date of the plan.

2. Subsection 2 of section 1 is amended to read as follows:

2. The plan for the payment of dividends, *filed pursuant to subsection 1*, must include:

- (a) The dividend plan ~~[agreement]~~, ~~[proposal]~~ *disclosure* forms and dividend payment forms used by the insurer;

- (b) The conditions under which the ~~[insurer will issue dividends]~~ *insured would be eligible for a dividend*;

- (c) The criteria used by the insurer for determining ~~[which]~~ *each* plan *that* is applicable for each particular kind of risk;

- (d) Any *applicable* formula or factor used by the insurer for calculating dividends, including, without limitation:

- (1) Loss ratios;

- (2) Tax multipliers;

- (3) Loss conversion factors; and

- (4) Premiums~~[-; and~~

- ~~(e) A pro forma projection of expected dividends.~~

3. Subsection 3 of section 1 is amended to read as follows:

3. A dividend ~~[plan agreement]~~ *proposal, example, illustration or explanation presented to or made available to a potential or current policyholder* must include, without limitation, disclosures including the following information:

- (a) The insurer will not declare dividends before the expiration of the policy.

- (b) Only the board of directors or other governing body of the insurer, *at its sole discretion*, may declare and distribute dividends.

- (c) Dividends will be paid from the policyholder surplus and not from earned premiums.

- (d) Payment of dividends by the insurer is not guaranteed and the actual payment of dividends may differ from the amount of expected dividends.

- (e) The insurer will not pay dividends if the Commissioner determines that the payment of dividends would jeopardize the solvency of the insurer or be hazardous to the interests of the general public or the creditors or the policyholders of the insurer.

4. A new subsection 4 has been added to section 1 to read as follows:

- 4. If requested by the insurer, the information submitted pursuant to paragraph (d) of subsection 2 of section 1 shall be deemed to have been*

submitted on the condition that the information remain confidential by the Commissioner pursuant to NRS 679B.190(5) and the Commissioner shall classify such information as confidential.

5. Subsection 4 of section 1 is renumbered as *section 5*.

The economic impact of the regulation is as follows:

- (a) On the business it is to regulate: Each insurer must file any plan calling for a dividend, savings, unearned premium deposits or an equivalent abatement of premiums allowed or returned for a policy of industrial insurance with the Commissioner at least 30 days before the effective date of the plan. The filing of dividend plans and other such plans will help preserve administered pricing as defined in chapter 686B of NRS.
- (b) On the public: The regulation will have a negligible economic impact on the public; however, the disclosures of such plans should assist consumers in their purchasing decisions.

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 AND INDUSTRY
DIVISION OF INSURANCE

IN THE MATTER OF

CAUSE NO. **03.727**
LCB FILE NO. **R172-03**

**REGULATION FOR THE WORKERS'
COMPENSATION DIVIDENDS, SAVINGS,
UNEARNED PREMIUM DEPOSITS OR
AN EQUIVALENT ABATEMENT OF
PREMIUMS ALLOWED OR RETURNED
FOR A POLICY OF INDUSTRIAL INSURANCE.**

**SUMMARY OF PROCEEDINGS
AND ORDER**

SUMMARY OF PROCEEDINGS

A public workshop, as required by NRS 233B.061, on the proposed regulation relating to the workers' compensation dividends, savings, unearned premium deposits or an equivalent abatement of premiums allowed or returned for a policy of industrial insurance, was held before Alice A. Molasky-Arman, Commissioner of Insurance (Commissioner), on November 13, 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 November 13, 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.

The hearing was attended by 10 individuals. The following persons provided testimony before the Hearing Officer: Mr. Cliff King, representing the Division; Ms. Kathleen Bissell, representing Liberty Mutual Insurance Company; Mr. Bob Selli, representing Sierra Insurance Group; Mr. Sam Sorich, representing the National Association of Independent Insurers (NAII); and Mr. Don Smith, representing Employers Insurance Company of Nevada (EICN). Written

comments were provided by Mr. Lenard Ormsby of EICN; Mr. Jack Kim of Sierra Insurance Group; and Ms. Kathleen Bissell of Liberty Mutual Insurance Company.

Cliff King testified that the intent of the regulation was to provide the insurers with instructions on filing their dividend plans, in accordance with section 48 of Assembly Bill 453 (AB 453), wherein insurers are required to file such programs at least 30 days prior to the effective date.

The first change was recommended in writing by Mr. Ormsby of EICN. Subsection 1 of section 1 states that: "An insurer must file a written description of its plan for the payment of dividends. . . ." Section 48 of AB 453 states, in part, "the plan shall be deemed approved unless the Commissioner disapproves the plan within 30 days after it is filed and received by the Commissioner." The plan itself must be submitted in order to gain approval.

Ms. Bissell recommended the deletion of paragraph (b) of subsection 2 of section 1 in its entirety. This change was supported by Mr. Smith of EICN. This section requires that the insurer state "the conditions under which the insurer will issue dividends." She contended that: (a) the conditions may be confidential and not in the best interest of the company to make public; and (b) the provisions of section 3 state that only the board of directors or other governing body may declare dividends and the conditions under which dividends may be declared are in constant change. Therefore, it would be unreasonable to state, in advance, those conditions under which an insurer would declare dividends. Mr. Selli of Sierra Insurance Group stated that he understood that this provision was intended to explain the conditions the insured must meet to be eligible for a dividend. There was general agreement that such a position is reasonable. Based on that information, paragraph (b) of subsection 2 of section 1 was re-worded to express that intent.

Ms. Bissell requested another amendment to the proposed regulation. This issue was primarily concerned with specific language in the regulation that could potentially conflict with Liberty Mutual's normal dividend policy. At her suggestion, the Division has added a new

section 4 which allows insurers to request that the "formula or factors" used to calculate the dividends be considered confidential, in accordance with NRS 679B.190(5), if requested by the insurer and granted by the Commissioner. There was concern that such information could harm an insurer if a competitor gained access to those formulas or factors. This position was supported by Mr. Smith of EICN and Mr. Sorich of the NAIL. For that reason, a new section 4 has been added providing confidentiality under those circumstances to that part of the filing only; the other parts of the filing, specifically the plan and the forms, are not confidential.

Based upon the testimony received at the hearing, the proposed regulation is revised as follows:

1. Subsection 1 of section 1 is amended to read as follows:
 1. An insurer must file ~~[a written description of]~~ its plan for the payment of dividends for a policy of industrial insurance with the Commissioner at least 30 days before the effective date of the plan.
2. Subsection 2 of section 1 is amended to read as follows:
 2. The plan for the payment of dividends, *filed pursuant to subsection 1*, must include:
 - (a) The dividend plan ~~[agreement]~~, ~~[proposal]~~ *disclosure* forms and dividend payment forms used by the insurer;
 - (b) The conditions under which the ~~[insurer will issue dividends]~~ *insured would be eligible for a dividend*;
 - (c) The criteria used by the insurer for determining ~~[which]~~ *each* plan *that* is applicable for each particular kind of risk;
 - (d) Any *applicable* formula or factor used by the insurer for calculating dividends, including, without limitation:
 - (1) Loss ratios;
 - (2) Tax multipliers;

(3) Loss conversion factors; and

(4) Premiums~~;~~ and

~~(e) A pro forma projection of expected dividends].~~

3. Subsection 3 of section 1 is amended to read as follows:

3. A dividend ~~[plan agreement]~~ *proposal, example, illustration or explanation presented to or made available to a potential or current policyholder* must include, without limitation, disclosures including the following information:

(a) The insurer will not declare dividends before the expiration of the policy.

(b) Only the board of directors or other governing body of the insurer, *at its sole discretion*, may declare and distribute dividends.

(c) Dividends will be paid from the policyholder surplus and not from earned premiums.

(d) Payment of dividends by the insurer is not guaranteed and the actual payment of dividends may differ from the amount of expected dividends.

(e) The insurer will not pay dividends if the Commissioner determines that the payment of dividends would jeopardize the solvency of the insurer or be hazardous to the interests of the general public or the creditors or the policyholders of the insurer.

4. A new subsection 4 has been added to section 1 to read as follows:

4. If requested by the insurer, the information submitted pursuant to paragraph (d) of subsection 2 of section 1 shall be deemed to have been submitted on the condition that the information remain confidential by the Commissioner pursuant to NRS 679B.190(5) and the Commissioner shall classify such information as confidential.

5. Subsection 4 of section 1 is renumbered as **section 5**.

ORDER OF THE COMMISSIONER

Having reviewed the record in this matter, it is hereby ordered that the proposed regulation concerning workers' compensation dividends, savings, unearned premium deposits or an equivalent abatement of premiums allowed or returned for a policy of industrial insurance, LCB File No. R172-03, be adopted, as amended, as a permanent regulation of the Division.

SO ORDERED this _____ day of December, 2003.

ALICE A. MOLASKY-ARMAN
Commissioner of Insurance