

**PROPOSED REGULATION OF THE
COMMISSIONER OF INSURANCE**

LCB File No. R246-03

January 29, 2004

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

AUTHORITY: §§1-5, NRS 679B.130 and 694C.170.

Section 1. NAC 694C.090 is hereby amended to read as follows:

694C.090 The Commissioner hereby adopts the following publications by reference:

1. The ~~Property/Casualty Insurance~~ *Annual Statement Blanks* and the *Annual Statement Instructions*, ~~for the Property/Casualty Manual,~~ published by the National Association of Insurance Commissioners. A copy of these publications may be purchased from ~~NAIC Publications, P.O. Box 87-7870,~~ *the National Association of Insurance Commissioners, Publications Department, 2301 McGee Street, Suite 800*, Kansas City, Missouri ~~64187-7870,~~ *64108-2662, on the Internet at <<http://www.naic.org>>* or by telephone at ~~816.374.7259, for \$125 and \$175,~~ *816.783.8300, for \$200 and \$225*, respectively.

2. The *AICPA Professional Standards*, published by the American Institute of Certified Public Accountants. A copy of this publication may be obtained from the American Institute of Certified Public Accountants, Order Department, P.O. Box 2209, Jersey City, New Jersey ~~07303-2209,~~ *07311, on the Internet at <<http://www.cpa2biz.com>>* or by telephone at 888.777.7077 ~~for \$95,~~ *for \$129* for members of the American Institute of Certified Public Accountants and ~~\$119,~~ *\$161.25* for nonmembers.

3. *Original Pronouncements* and *Current Text*, published by the Financial Accounting Standards Board. A copy of:

(a) The *Original Pronouncements* may be obtained:

(1) For members of the American Institute of Certified Public Accountants, from the American Institute of Certified Public Accountants, Order Department, P.O. Box 2209, Jersey City, New Jersey ~~[07303-2209,]~~ 07311, on the Internet at <http://www.cpa2biz.com> or by telephone at 888.777.7077, for ~~[\$95.]~~ \$129.

(2) For all others, from John Wiley and Sons, Inc., Distribution Center, 1 Wiley Drive, Somerset, New Jersey 08875-1272, on the Internet at <http://www.wiley.com> or by telephone at 800.225.5945, for ~~[\$44.95.]~~ \$109.95.

(b) The *Current Text* may be obtained:

(1) For members of the American Institute of Certified Public Accountants, from the American Institute of Certified Public Accountants, Order Department, P.O. Box 2209, Jersey City, New Jersey ~~[07303-2209,]~~ 07311, on the Internet at <http://www.cpa2biz.com> or by telephone at 888.777.7077, for ~~[\$95.]~~ \$119.

(2) For all others, from John Wiley and Sons, Inc., Distribution Center, 1 Wiley Drive, Somerset, New Jersey 08875-1272, on the Internet at <http://www.wiley.com> or by telephone at 800.225.5945, for ~~[\$44.95.]~~ \$109.95.

Sec. 2. NAC 694C.200 is hereby amended to read as follows:

694C.200 1. A report of financial condition filed by an association captive insurer, an agency captive insurer or a rental captive insurer pursuant to NRS 694C.400 must be verified by the oath of two executive officers of the captive insurer ~~;~~

~~—2.— A captive insurer shall file with the Commissioner an audited statement of its financial condition. The audited statement must be:~~

~~—(a) Prepared] and must include:~~

(a) A complete set of financial statements, including the balance sheet, statement of income, statement of cash flows and statement of changes in owner's equity, which must be prepared in accordance with generally accepted accounting principles in the United States and stated in United States dollars, and must contain the *applicable* footnotes ~~[and opinions of the independent certified public accountant who prepared the statement;]~~ *for the presentation of the statements;* and

~~(b) [Accompanied by a statement, prepared by the independent certified public accountant who prepared the audited statement, certifying that all financial requirements established by law and the articles of incorporation, bylaws and the business plan of the captive insurer have been met.~~

~~—3.— In addition to any other statements and schedules which the captive insurer is required by law to file, the captive insurer shall submit to the Commissioner the] *The* following exhibits and schedules from the ~~[Property/Casualty Insurance]~~ *applicable* *Annual Statements Blanks*, published by the National Association of Insurance Commissioners, which is adopted by reference in NAC 694C.090:~~

~~[(a)] (1) Exhibit 1 - Analysis of Nonadmitted Assets and Related Items;~~

~~[(b)] (2) Schedule A - Real Estate;~~

~~[(e)] (3) Schedule B - Mortgage Loans;~~

~~[(d)] (4) Schedule BA - Other Long-Term Invested Assets;~~

~~[(e)] (5) Schedule D - Bonds and Stocks;~~

~~[(f)]~~ (6) Schedule DA - Short-Term Investments; ~~and~~

~~—(g)]~~ (7) Schedule P - Parts 1 through 4 - Analysis of Losses and Loss Expenses ~~[(h)]~~; *and*

(8) Underwriting and Investment Exhibit, Part 2.

↪ The exhibits and schedules must be prepared in accordance with the *Annual Statement Instructions*, ~~[for Property/Casualty Manual,]~~ published by the National Association of Insurance Commissioners, which is adopted by reference in NAC 694C.090.

~~[4.]~~ 2. A report of financial condition filed by a pure captive insurer pursuant to NRS 694C.400 must be verified by the oath of two executive officers of the pure captive insurer. The report must be on the form prescribed by the Commissioner known as “Captive Annual Statement: Pure.”

3. Unless exempted by the Commissioner, in addition to subsection 1, a domestic association captive insurer formed pursuant to chapter 695E of NRS shall:

(a) File with the Commissioner an annual statement that:

(1) Conforms to the format prescribed by the National Association of Insurance Commissioners in:

(I) The Annual Statement Instructions for the year in which the organization files the statement; and

(II) The Accounting Practices and Procedures Manual; and

(2) Contains exhibits and schedules that follow the specifications developed by the National Association of Insurance Commissioners.

(b) File the annual statement:

(1) Pursuant to the specifications adopted by the National Association of Insurance Commissioners for filing information in an electronic format;

(2) At the central office of the National Association of Insurance Commissioners, 2301 McGee Street, Suite 800, Kansas City, Missouri 64108-2662; and

(3) On or before March 1 of each year.

(c) Submit the annual statement to the Commissioner on the most recent form adopted by the National Association of Insurance Commissioners for the type of insurer reporting. Each insurer filing the form shall follow the instructions adopted by the National Association of Insurance Commissioners for the type of annual statement to be filed. The forms may be obtained from the National Association of Insurance Commissioners, Publications Department, 2301 McGee Street, Suite 800, Kansas City, Missouri 64108-2662 and are adopted by reference pursuant to NAC 694C.090.

4. Unless exempted by the Commissioner, in addition to subsection 1, a domestic association captive insurer formed pursuant to Chapter 695E of NRS shall file with the Commissioner a quarterly statement that is:

(a) Filed on the most recent form adopted by the National Association of Insurance Commissioners for the type of insurer reporting;

(b) Completed in accordance with the instructions accompanying that form; and

(c) Filed with the National Association of Insurance Commissioners in an electronic format.

↪ The forms may be obtained from the National Association of Insurance Commissioners, Publications Department, 2301 McGee Street, Suite 800, Kansas City, Missouri 64108-2662 and are adopted by reference pursuant to NAC 694C.090.

Sec. 3. NAC 694C.210 is hereby amended to read as follows:

694C.210 1. A captive insurer shall have an annual audit by an independent certified public accountant who is authorized by the Commissioner to conduct the audit. The captive insurer shall file the audited financial report with the Commissioner on or before June ~~30~~ 1 for the year ending on the immediately preceding December 31.

2. The Commissioner will deem the annual audit conducted pursuant to this section to be a part of the annual report of financial condition of the captive insurer which is filed pursuant to NRS 694C.400.

3. The annual audit required by this section must include:

(a) The opinion of the independent certified public accountant who conducted the audit which states that the financial statements of the captive insurer were examined in accordance with generally accepted auditing standards, as determined by the American Institute of Certified Public Accountants and included in the publication *AICPA Professional Standards*, which is adopted by reference in NAC 694C.090. The opinion must:

(1) Cover all years presented in the audit;

(2) Be addressed to the captive insurer on stationery of the accountant; and

(3) Include the address of the accountant issuing the opinion, original manual signatures and the date on which the opinion was issued.

(b) A report of an evaluation of the internal controls of the captive insurer relating to:

(1) The methods and procedures used in the securing of assets; and

(2) The reliability of the financial records of the captive insurer, including, without limitation, the controls for the system of authorization and approval, and the separation of duties.

(c) A letter from the independent certified public accountant which includes:

(1) A statement that the accountant is independent with respect to the captive insurer and that he conforms to the standards of his profession as set forth in the *AICPA Professional Standards*, published by the American Institute of Certified Public Accountants, and adopted by reference in NAC 694C.090, and the pronouncements of the Financial Accounting Standards Board;

(2) A general description of the background and experience of the staff of the accountant engaged in the audit, including the experience of the staff in auditing captive insurers and other insurance companies;

(3) A statement that the accountant understands that the audited annual report and his opinions thereon will be filed with the Commissioner pursuant to this section;

(4) A statement that the accountant will comply with NAC 694C.230 and that he consents and agrees to make his work papers available for review by the Commissioner or his designee; and

(5) A statement that the accountant is properly licensed by the appropriate state licensing authority and that he is a member in good standing of the American Institute of Certified Public Accountants.

(d) Financial statements, including:

- (1) A balance sheet;
- (2) A statement of gain or loss from operations;
- (3) A statement of changes in financial position;
- (4) A statement of changes in paid-up capital, gross paid-in contributed surplus and unassigned money or assets; and

(5) Notes to financial statements required by generally accepted accounting principles, including:

(I) A reconciliation of differences, if any, between the audited financial report and the report filed with the Commissioner pursuant to NRS 694C.400, if the captive insurer is reporting on a statutory accounting basis;

(II) A summary of ownership and relationships of the company and all affiliated corporations or companies insured by the captive insurer; and

(III) A narrative explanation of all material transactions and balances with the captive insurer.

(e) An annual actuarial certification of loss reserves and loss expense reserves which includes an opinion of the adequacy of the loss reserves and loss expense reserves of the captive insurer, in a format acceptable to the Commissioner. The person who certifies the adequacy of the reserves must be approved by the Commissioner and must be a Fellow of the Casualty Actuarial Society, a member in good standing of the American Academy of Actuaries or a person who has otherwise demonstrated his competence in the evaluation of loss reserves to the Commissioner. The annual actuarial certification must be in such form as the Commissioner determines appropriate.

Sec. 4. NAC 694C.230 is hereby amended to read as follows:

694C.230 1. A captive insurer shall ensure that its independent certified public accountant makes available for review by the Commissioner or his designee the work papers of the accountant prepared in the conduct of the audit of the captive insurer. The captive insurer shall ensure that the accountant retains the audit work papers for not less than ~~5~~ 7 years after the ~~period reported upon in the audit.~~ *date of the report by the accountant on the annual audited*

financial report or until the Division of Insurance of the Department of Business and Industry has completed its examination of the annual audited financial report, whichever occurs first.

2. A review by the Commissioner of the work papers of an independent certified public accountant is considered to be an examination of the captive insurer, and all work papers obtained during the course of such an examination are confidential. The captive insurer shall ensure that the independent certified public accountant provides to the Division of Insurance ~~of the Department of Business and Industry~~ photocopies of any of the work papers which the Division considers relevant. The Division may retain any copies of work papers provided to it pursuant to this subsection.

Sec. 5. NAC 694C.280 is hereby amended to read as follows:

694C.280 1. Within 30 days after any change in the executive officers and directors of a captive insurer, the captive insurer shall report the change to the Commissioner. The ~~report~~ *information reported* must include a statement of the business and professional affiliations of the new executive officer or director ~~as~~ *reported on the Biographical Affidavit Form that may be obtained from the Division of Insurance, on the Internet at <<http://www.doi.state.nv.us>> or by phone at 775.687.4270.* The new executive officer or director must meet the same standards that were indicated in the initial application of the captive insurer for that officer or director position.

2. A director, an officer or an employee of a captive insurer shall not, except on behalf of the captive insurer, accept or be the beneficiary of any fee, brokerage, gift or other emolument because of any investment, loan, deposit, purchase, sale, payment or exchange made by or for the captive insurer, but such a person may receive reasonable compensation for necessary services rendered to the captive insurer in his usual private, professional or business capacity.

3. Any profit or gain received by or on behalf of any person in violation of this section is recoverable by the captive insurer.