

**PROPOSED REGULATION OF THE DIVISION OF INSURANCE
OF THE DEPARTMENT OF BUSINESS AND INDUSTRY**

LCB File No. R112-04

June 18, 2004

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

AUTHORITY: §§1-7, NRS 616B.446 and 679B.130.

A REGULATION relating to industrial insurance; establishing the requirements for an association of self-insured employers to request approval of a declaration of a dividend and a distribution of a dividend; revising the requirements for deposits by a self-insured employer; revising the scope of reporting requirements applicable to a self-insured employer and an association of self-insured employers; and providing other matters properly relating thereto.

Section 1. Chapter 616B of NAC is hereby amended by adding thereto a new section to read as follows:

1. An association must submit a request for approval of a declaration of a dividend to the Commissioner not less than 30 days before the proposed date of the declaration of the dividend.

2. An association must submit a request for approval of a distribution of a dividend to the Commissioner not less than 30 days before the proposed date of the distribution of the dividend.

3. A request for approval of a distribution of a dividend submitted by an association pursuant to subsection 2 must include:

(a) An actuarial analysis of loss reserves that was prepared by a member of the American Academy of Actuaries not more than 90 days before the date that the request is submitted pursuant to subsection 2;

(b) An analysis of the assets and obligations of the association by fund year that was prepared by the association on a form approved by the Commissioner and includes a detail of the unrealized gains and losses of the association;

(c) The proposed date of the distribution of the dividend;

(d) The amount of the dividend by fund year;

(e) A copy of the most recent financial statements of the association;

(f) Any other information or report that the Commissioner determines to be necessary to evaluate the request; and

(g) If an association has a deficit in any fund year, a plan for making up the deficit of the association that meets the requirements of NRS 616B.422.

4. As used in this section:

(a) "Dividend" means any distribution of earnings or retained earnings, in the form of money or property, from an association to the members of the association.

(b) "Fund year" means the fiscal year used by an association for the purposes of financial reporting.

Sec. 2. NAC 616B.433 is hereby amended to read as follows:

616B.433 1. To determine the tangible net worth of a self-insured employer, he shall submit to the Commissioner all financial statements and accompanying footnotes, including an independent auditor's opinion. Each statement must be audited. In determining the tangible net worth of a self-insured employer, the following items are disallowed as assets:

- (a) Accounts receivable, if they are factored or collateralized.
- (b) An inventory, except one held for resale and not collateralized.
- (c) A prepaid expense.
- (d) An unqualified investment.
- (e) An allocated bond fund.
- (f) An investment in an affiliate.
- (g) A restricted fund.
- (h) A reserve.
- (i) A security cost, such as a capitalized bond cost.
- (j) A cash equivalent, unless it is described in the footnotes for the balance sheet by item, and for investments, by duration and nature. A cash flow statement is not a sufficient description.
- (k) A contingency or commitment, including any estimated cost.
- (l) Any book adjustment caused by a change in an accounting policy or a restatement.
- (m) Goodwill or excess cost over the fair market value of assets.
- (n) Any other items listed in the assets that are deemed unacceptable by the Commissioner because they cannot be justified or because they do not directly support the insurer's ability to pay a claim.

2. The following factors must be used to review the audited financial statements:

- (a) The auditor's opinion.
- (b) The various financial ratios, including working capital and cash flow.
- (c) Any footnotes related to:
 - (1) A contingency or commitment;
 - (2) A party;

(3) A bad debt; or

(4) The restructuring of an operation.

3. If any of the factors in subsection 2 are deemed material, the Commissioner may deny certification.

4. If, after the adjustments are made pursuant to subsection 1, the employer's statement demonstrates a strong financial position and meets the tests in subsection 2, the Commissioner may accept ~~[an irrevocable letter of credit]~~ *as an additional deposit any instrument described in NAC 616B.436* in the amount of \$2,500,000 in lieu of the requirement set forth in subsection 1 of NAC 616B.424. ~~[If such a letter of credit is used, the deposit described in subsection 3 of NAC 616B.424 may not be in the form of a letter of credit.]~~ *The deposit described in this subsection must be separate from the deposit required pursuant to NRS 616B.300.*

Sec. 3. NAC 616B.436 is hereby amended to read as follows:

616B.436 1. Except as otherwise provided in subsection 3 of NRS 616B.300, a self-insured employer shall meet the deposit requirement of the self-insured program of workers' compensation by depositing with the Commissioner:

(a) Cash.

(b) A certificate of deposit, from a financial institution in this State that is insured federally, made payable to the Commissioner of Insurance and the employer.

(c) The following securities, if they have a date of maturity that is not more than 1 year:

(1) Any obligation guaranteed by the full faith and credit of the United States, including:

(I) United States treasury notes;

(II) United States treasury bills; and

(III) Internal money market funds related to United States treasury notes or treasury bills, if the account is maintained with a financial institution in this State and does not exceed \$10,000; or

(2) Any obligation of an agency of the United States, including the Federal National Mortgage Association, Federal Home Loan Bank Board and Federal Home Loan Mortgage Corporation, that is guaranteed by the full faith and credit of the United States. If the obligation is an internal money market fund related to the Federal National Mortgage Association, Federal Home Loan Bank Board or Federal Home Loan Mortgage Corporation, the account must be maintained with a financial institution in this State and may not exceed \$10,000.

↪ The securities deposited in compliance with this paragraph must have a fair market value of not less than 105 percent of the employer's expected annual incurred cost of claims, unless reduced by excess insurance in an amount approved by the Commissioner.

(d) A surety bond, if it is:

(1) Written by a company authorized and licensed to transact the business of surety insurance in this State; and

(2) Countersigned by a resident agent licensed in this State.

(e) ~~[Unless a]~~ A letter of credit ~~[has been used to establish tangible net worth pursuant to NAC 616B.433, a letter of credit]~~ that meets the standards set forth in NAC 616B.439.

(f) Any combination of cash, certificates of deposit, securities guaranteed by the full faith and credit of the United States, surety bonds or letters of credit. Priority of payment in case of loss must be in the order stated in this paragraph.

2. Securities guaranteed by the full faith and credit of the United States that are deposited in accordance with this section will be held in trust and administered by the Commissioner of Insurance, unless:

(a) The self-insured employer elects to use the services of a custodial financial institution in this State for trust investments;

(b) The custodial financial institution holds and administers the securities on behalf of the Commissioner under an agreement approved by the Commissioner; and

(c) The custodial financial institution provides monthly statements of the account to the Division of Insurance. The accuracy of each such statement must be certified monthly by a trust officer of the financial institution.

↪ A deposit made pursuant to this subsection may not be withdrawn except upon written order of the Commissioner. A deposit must be revised on or before June 30 each year or as the Commissioner determines to be appropriate and necessary.

3. If necessary, the Commissioner may select a competent specialist to make an evaluation:

(a) Before accepting for deposit any security of the United States or asset; or

(b) At any time after the security of the United States or asset is deposited with the Commissioner or held by a custodial financial institution in this State.

↪ The self-insured employer shall pay the cost of any such evaluation.

Sec. 4. NAC 616B.469 is hereby amended to read as follows:

616B.469 Each self-insured employer must submit to the Division of Insurance the following interim reports as a condition for the continuance of his certificate of authority to self-insure:

1. Any injury or disease expected to result in the payment of at least ~~[\$50,000]~~ **\$100,000** for medical costs or indemnity, or which will trigger excess insurance coverage, must be reported to the Commissioner of Insurance within 30 days after the actual occurrence of the claim or the projection of the reserve. The report must contain:

- (a) The name of the claimant and the date and type of injury;
- (b) The amount paid to date for medical costs and indemnity;
- (c) The projected amount of reserves that have been established; and
- (d) The amount paid, or anticipated to be paid, by excess insurance.

2. Any injury involving five or more employees for the same accident must be reported to the Commissioner of Insurance within 30 days after the actual occurrence. The report must contain:

- (a) The names of the claimants and the dates and types of injuries;
- (b) The amount paid to date for medical costs and indemnity;
- (c) The projected amounts of reserves that have been established; and
- (d) The amount anticipated to be paid by excess insurance.

Sec. 5. NAC 616B.510 is hereby amended to read as follows:

616B.510 As used in NAC 616B.510 to 616B.612, inclusive, *and section 1 of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 616B.513 to 616B.522, inclusive, have the meanings ascribed to them in those sections.

Sec. 6. NAC 616B.570 is hereby amended to read as follows:

616B.570 1. An association shall submit to the Commissioner a report on any injury or disease expected to result in the payment of at least ~~[\$50,000]~~ **\$100,000** for medical costs or indemnity or to trigger the need for excess insurance coverage. The report must be submitted

within 30 days after the actual occurrence of the claim or the projection of the reserve, and must contain:

- (a) The name of the claimant and the date and type of injury;
- (b) The amount paid to date for medical costs and indemnity;
- (c) The projected amount of reserves that have been established; and
- (d) The amount paid, or anticipated to be paid, by excess insurance.

2. An association shall submit to the Commissioner a report on any accident which is fatal to one or more employees or results in the hospitalization of ~~three~~ *five* or more employees. The report must be submitted within 30 days after the actual occurrence, and must contain:

- (a) The names of the claimants and the dates and types of injuries;
- (b) The amount paid to date for medical costs and indemnity;
- (c) The projected amounts of reserves that have been established; and
- (d) The amount anticipated to be paid by excess insurance.

3. The Commissioner may withdraw the certification of an association that fails timely to submit the reports required by subsections 1 and 2.

Sec. 7. NAC 616B.609 is hereby amended to read as follows:

616B.609 1. The audited statement of the financial condition of an association required by NRS 616B.404 must be:

(a) Prepared in accordance with generally accepted accounting principles of the United States, stated in United States dollars, and must contain the footnotes and opinions of the independent certified public accountant who prepared it.

(b) Accompanied by a statement, prepared by the independent certified public accountant who prepared the audited statement, certifying that the combined tangible net worth of all

members of the association satisfies the requirements of NRS 616B.353 and that all members meet the financial requirements for membership that are established by law, the bylaws of the association or the underwriting plan of the association.

2. In addition to the statements and schedules required by law, the association shall submit the following exhibits and schedules from the *Property/Casualty Insurance Annual Statement Blanks* published by the National Association of Insurance Commissioners:

- (a) Exhibit 1 - Analysis of ~~Assets~~;
- ~~(b) Exhibit 2 - Analysis of Non-Admitted Assets;~~
- ~~(c) Nonadmitted Assets and Related Items;~~
- (b) Schedule A - Real Estate;
- ~~(d)~~ (c) Schedule B - Mortgage Loans;
- ~~(e)~~ (d) Schedule BA - Other Long-Term Invested Assets;
- ~~(f) Schedule C - Collateral Loans;~~
- ~~(g)~~ (e) Schedule D - Bonds and Stocks;
- ~~(h)~~ (f) Schedule DA - Short-Term Investments;
- ~~(i)~~ (g) Schedule DB - Derivative Instruments;
- ~~(j) Schedule DC - Insurance Futures Options;~~
- ~~(k)~~ (h) Schedule DM - Aggregate Statement and Market Values of Bonds and Preferred Stock; ~~;~~
- ~~(l)~~ and
- (i) Schedule P - Parts 1 through 4 - Analysis of Losses and Loss Expenses . ~~;~~ and
- ~~(m) Schedule X - Unlisted Assets.]~~

↳ The exhibits must be prepared in accordance with the *Annual Statement Instructions Manual for Property and Casualty* published by the National Association of Insurance Commissioners.