

LCB File No. R165-05

**PROPOSED REGULATION OF THE
COMMISSIONER OF INSURANCE**

**NOTICE OF WORKSHOP TO SOLICIT COMMENTS ON
PROPOSED REGULATIONS**

The Department of Business and Industry, Division of Insurance (Division), is proposing new regulations pertaining to claims filed with the Nevada Insurance Guaranty Association. A workshop has been set for 9:00 a.m., on November 16, 2005, at the office of the Division, 788 Fairview Drive, Suite 300, Carson City, Nevada 89701. Interested parties may also participate through a simultaneous video-conference conducted at the Bradley Building, 2501 East Sahara Avenue, Manufactured Housing Division Conference Room, 2nd Floor, Las Vegas, Nevada 89104. The purpose of the workshop is to solicit comments from interested persons on the following general topics addressed in the proposed regulations.

Nevada Insurance Guaranty Association – claims. Nevada Revised Statute (NRS) 687A.100 requires exhaustion of other insurance before the Nevada Insurance Guaranty Association can participate in a claim. The proposed regulations clarify what other insurance must be exhausted before the Association may participate in a claim.

A copy of this notice and the proposed regulations will be on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the proposed regulations will be available at the offices of the Division, 788 Fairview Drive, Suite 300, Carson City, Nevada 89701, and 2501 East Sahara Avenue, Suite 302, Las Vegas, Nevada 89104, and in all counties in which an office of the agency is not maintained, at the main public library, for inspection and copying by members of the public during business hours. Copies will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

This Notice of Workshop to Solicit Comments on Proposed Regulations has been sent to all persons on the agency's mailing list for administrative regulations and posted at the following locations:

Department of Business and Industry
Division of Insurance
788 Fairview Drive, Suite 300
Carson City, NV 89701

Department of Business and Industry
Division of Insurance
2501 East Sahara Avenue, Suite 302
Las Vegas, NV 89104

Legislative Counsel Bureau
Capitol Complex
Carson City, NV 89710

Blasdel Building
Capitol Complex
Carson City, NV 89710

State Capitol
Capitol Complex
Carson City, NV 89710

Capitol Press Room
State Capitol Basement
Carson City, NV 89710

County Clerk
Courthouse
Carson City, NV 89710

Nevada State Library & Archives
Capitol Complex
Carson City, NV 89710

Carson City Library
900 North Roop Street
Carson City, NV 89701

Churchill County Library
553 South Maine Street
Fallon, NV 89406

Las Vegas Library
833 Las Vegas Blvd. North
Las Vegas, NV 89101

Douglas County Library
1625 Library Lane
P.O. Box 337
Minden, NV 89423

Elko County Library
720 Court Street
Elko, NV 89801

Goldfield Public Library
Fourth & Cook Street
P.O. Box 430
Goldfield, NV 89013

Eureka Branch Library
10190 Monroe Street
P.O. Box 293
Eureka, NV 89316

Humboldt County Library
85 East 5th Street
Winnemucca, NV 89445

Battle Mountain Branch Library
P.O. Box 141
Battle Mountain, NV 89820

Lincoln County Library
93 Main Street
P.O. Box 330
Pioche, NV 89043

Lyon County Library
20 Nevin Way
Yerington, NV 89447

Mineral County Library
First & A Street
P.O. Box 1390
Hawthorne, NV 89415

Tonopah Public Library
171 Central Street
P.O. Box 449
Tonopah, NV 89049

Pershing County Library
1125 Central Avenue
P.O. Box 781
Lovelock, NV 89419

Storey County Library
95 South R Street
P.O. Box 14
Virginia City, NV 89440

Washoe County Library
ATTN: Reference
P.O. Box 2151
Reno, NV 89505-2151

White Pine County Library
950 Campton Street
Ely, NV 89301

Clark County Library
1401 East Flamingo Road
Las Vegas, NV 89119

Members of the public who are disabled and require special accommodations or assistance at the hearing are requested to notify the Commissioner's secretary in writing at 788 Fairview Drive, Suite 300, Carson City, Nevada 89701, or by calling no later than 5 working days prior to the hearing, (775) 687-4270, extension 260.

NOTICE OF INTENT TO ACT UPON REGULATIONS

Notice of Hearing for the Adoption of Regulations of the Department of Business and Industry, Division of Insurance

The Department of Business and Industry, Division of Insurance (Division), will hold a public hearing at 9:30 a.m., on November 16, 2005, immediately following a public workshop, at the offices of the Division, 788 Fairview Drive, Suite 300, Carson City, Nevada 89701. Interested persons may also participate through a simultaneous video-conference conducted at the Bradley Building, 2501 East Sahara Avenue, Manufactured Housing Division Conference Room, 2nd Floor, Las Vegas, Nevada 89104. The purpose of the hearing is to receive comments from all interested persons regarding the adoption of:

REGULATION REGARDING EXHAUSTION OF REMEDIES PRIOR TO THE NEVADA INSURANCE GUARANTY ASSOCIATION'S OBLIGATION ON A CLAIM

The following information is provided pursuant to the requirements of NRS 233B.0603:

1. **The proposed regulation is to clarify the obligations of a person submitting a claim to the Nevada Insurance Guaranty Association (Association).**
2. This regulation amends Chapter 687A of the Nevada Administrative Code (NAC) by clarifying existing statutory requirements to exhaust other insurance covering any portion of a claim submitted to the Association.
3. Estimated economic effect of the regulation:

On the business, which is to be regulated: Every insurer, as a condition of obtaining a Certificate of Authority to write insurance in Nevada, must be a member of the Association. Since a portion of the monies paid for claim-related loss and expense payments made by the Association comes from assessments on member companies, it may have a positive effect on the businesses regulated by reducing amounts paid by the Association and, therefore, reducing assessments on member companies.

On the public: Minimal. A person submitting a claim to the Association must first exhaust all other insurance applicable to the claim. This regulation clarifies existing statutory requirements to exhaust other insurance covering any portion of a claim submitted to the Association.

4. A statement identifying the methods used by the agency in determining the impact on a small business prepared pursuant to subsection 3 of NRS 233B.0608. The direct impact of the regulation would be on insurers, not on any business insured, including small business.
5. The Division will not incur any costs.
6. The Division is not aware of any overlap or duplication of the regulation with any state, local

or federal regulation.

7. This regulation is not pursuant to federal law.
8. There are no federal regulations regarding these activities.
9. This regulation does not require a new fee or increase of an existing fee.

Persons wishing to comment upon the proposed action of the Division may appear at the scheduled public hearing or may address their comments, data, views or arguments, in written form, to the Division, 788 Fairview Drive, Suite 300, Carson City, Nevada 89701. Written submissions must be received by the Division on or before November 9, 2005. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Division may proceed immediately to act upon any written submissions.

A copy of this notice and the proposed regulation will be on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the proposed regulation will be available at the offices of the Division, 788 Fairview Drive, Suite 300, Carson City, Nevada 89701, and 2501 East Sahara Avenue, Suite 302, Las Vegas, Nevada 89104, and in all counties in which an office of the agency is not maintained, at the main public library, for inspection and copying by members of the public during business hours. This notice and the text of the proposed regulation are also available in the **State of Nevada Register of Administrative Regulations** which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653 and on the Internet at <http://www.leg.state.nv.us>. Copies will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

Upon adoption of any regulation, the agency, if requested to do so by an interested person, either before adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption, and incorporate therein its reason for overruling the consideration urged against its adoption.

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788 Fairview Drive, Suite 300
Carson City, NV 89701

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Reno, NV 89505-2151

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LCB File No. R165-05

**PROPOSED REGULATION OF THE
COMMISSIONER OF INSURANCE**

**PROPOSED REGULATION REGARDING EXHAUSTION OF REMEDIES
PRIOR TO THE ASSOCIATION'S OBLIGATION ON A CLAIM**

Authority: NRS 679B.130

Section 1. Chapter 687A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 5 of this regulation.

Sec. 2. *Any person asserting a covered claim under chapter 687A of NRS, including a claim that involves allegations of continuing loss, whether the person asserting the claim is a claimant or an insured of an insolvent insurer, has the burden to establish that he has exhausted all rights under each and every policy of insurance providing coverage for any portion of that claim, and that any such rights, including but not limited to a right to defense or right to indemnity in whole or in part, are no longer available or payable or being undertaken by any solvent insurer.*

Sec. 3. *As used in this section, "claim" is defined as any claim, loss, lawsuit, legal proceeding or occurrence.*

Sec. 4. *The requirement to exhaust other insurance applies to any policy of insurance covering any portion of the claim and includes, but is not limited to:*

- 1. Primary insurance;*
- 2. Additional insurance;*
- 3. Excess insurance;*
- 4. Insurance of any party who has a contractual obligation with the insured of an insolvent*

insurer to provide insurance coverage for the subject loss; or

5. Insurance of a person who by operation of the law is responsible for acts or conduct of the insured of an insolvent insurer.

Sec. 5. *If any insurer has coverage which may be applicable to the claim or is participating in the claim, there is no exhaustion of the policyholder's rights under that insurer's policy. Participation includes, but is not limited to, an investigation into the claim, provision of coverage under a reservation of rights, and provision of a defense only.*