

**ADOPTED REGULATION OF THE
COMMISSIONER OF INSURANCE**

LCB File No. R064-06

Effective September 18, 2006

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

AUTHORITY: §§1-7, NRS 679B.130, 694C.170 and 694C.400; §§8-11, NRS 679B.130 and 694C.170.

A REGULATION relating to captive insurers; revising provisions governing accountants who are employed by or who have contracted with such insurers; revising provisions concerning certain publications applicable to such insurers; revising provisions governing the examination of an applicant for a certificate of authority; and providing other matters properly relating thereto.

Section 1. Chapter 694C of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 7, inclusive, of this regulation.

Sec. 2. *“Accountant,” “certified public accountant” or “independent certified public accountant” means an independent certified public accountant or accounting firm in good standing with the American Institute of Certified Public Accountants and with all states in which the accountant or accounting firm is licensed to practice.*

Sec. 3. 1. *Except as otherwise provided in subsection 2, the Commissioner will recognize an independent certified public accountant as a qualified independent certified public accountant if the independent certified public accountant conforms to the standards contained in the Code of Professional Conduct of the American Institute of Certified Public Accountants, and the Rules of Professional Conduct adopted by reference in NAC 628.500 and the regulations of the Nevada State Board of Accountancy, or other similar code.*

2. The Commissioner will not recognize as a qualified independent certified public accountant an independent certified public accountant who:

(a) Is not in good standing with the American Institute of Certified Public Accountants and in all states in which the independent certified public accountant is licensed or certified to practice;

(b) Has either directly or indirectly entered into an agreement of indemnity or release from liability with respect to an audit of a captive insurer if the intent or effect of the agreement or release is to shift or limit in any manner the potential liability of the accountant for failure to adhere to applicable auditing or professional standards, whether or not resulting in part from a knowing or other misrepresentation made by the captive insurer or its representatives;

(c) Has been convicted of fraud, bribery, a violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961 to 1968, inclusive, or any other dishonest conduct or practices under federal or state law;

(d) Has been found to have violated any provision of title 57 of NRS, or any regulation adopted pursuant thereto, with respect to any previous annual audited financial report submitted pursuant to NRS 694C.400 and NAC 694C.200 and 694C.210; or

(e) Has demonstrated a pattern or practice of failing to detect or disclose material information in previous annual audited financial reports filed pursuant to NRS 694C.400 and NAC 694C.200 and 694C.210.

Sec. 4. 1. The Commissioner will, if he deems it necessary, hold a hearing to determine whether an independent certified public accountant is qualified for the purposes of NRS 694C.400 and NAC 694C.200 and 694C.210. If, based on the evidence presented, the Commissioner determines that the accountant is not qualified, the Commissioner will:

(a) Rule that the accountant is not qualified for purposes of expressing his opinion on the financial statements in the annual audited financial report to be made pursuant to NRS 694C.400 and NAC 694C.200 and 694C.210, and require the captive insurer to replace the accountant with an independent certified public accountant who is so qualified; or

(b) Take any other action determined to be necessary by the Commissioner.

2. If the Commissioner determines, without a hearing, that the accountant is not qualified, the accountant may request a hearing pursuant to NRS 679B.310.

Sec. 5. 1. *An independent certified public accountant of a captive insurer required to furnish an annual audited financial report shall report to the board of directors or audit committee of the captive insurer each determination by the accountant that the captive insurer:*

(a) Has materially misstated its financial condition as reported to the Commissioner as of the date of the balance sheet currently under examination; or

(b) Does not, as of that date, meet the minimum requirements for capital and surplus as set forth in chapter 694C of NRS.

↪ The report must be in writing and provided to the captive insurer not later than 5 business days after the accountant makes such a determination.

2. A captive insurer who receives a report from its independent certified public accountant pursuant to this section shall, not later than 5 business days after the date on which it receives the report from the accountant:

(a) Forward a copy of the report to the Commissioner; and

(b) Provide the independent certified public accountant who made the report with evidence that the captive insurer has forwarded a copy of the report to the Commissioner. If the

independent certified public accountant does not, within the 5-business-day period, receive evidence from the captive insurer that the captive insurer has forwarded a copy of the report to the Commissioner in accordance with this section, the independent certified public accountant shall file with the Commissioner a copy of its report within the next 5 business days.

3. If the independent certified public accountant, after the annual audited financial report reviewed by the accountant has been filed pursuant to NRS 694C.400 and NAC 694C.200 and 694C.210, becomes aware of any facts which affect his report, the accountant shall take such action as prescribed in Volume 1, Section AU 561 of the AICPA Professional Standards, which is adopted by reference in NAC 694C.090.

Sec. 6. If, following the audit of the financial statements of a captive insurer, an independent certified public accountant notes any significant deficiency in the captive insurer's structure for internal control, the captive insurer shall, not later than 60 days after the date on which the annual audited financial report is filed with the Commissioner, file a written report which provides a description of the deficiency and of the remedial actions taken or proposed to correct the significant deficiency, if those actions are not otherwise described in the accountant's report filed with the annual audited financial report.

Sec. 7. 1. If the independent certified public accountant who was the accountant for the most recent filing of the annual audited financial report of a captive insurer is dismissed or resigns, the captive insurer shall:

(a) Not later than 5 business days after the dismissal or resignation, notify the Commissioner of the dismissal or resignation; and

(b) Not later than 10 business days after notifying the Commissioner of the dismissal or resignation of the accountant, file with the Commissioner a separate letter which sets forth:

(1) Each disagreement which occurred during the 24 months immediately preceding the dismissal or resignation between the accountant and the captive insurer on any matter of accounting principles or practices, disclosure on a financial statement or the scope or procedure of the audit; and

(2) Which disagreements, if not resolved to the satisfaction of the accountant, caused him to make a reference to the subject matter of the disagreement in his opinion filed with the annual audited financial report of the captive insurer.

2. The disagreements required to be reported pursuant to this section include both those resolved to the former accountant's satisfaction and those which have not been resolved to the former accountant's satisfaction.

3. The captive insurer shall request in writing that the former accountant furnish a letter addressed to the captive insurer stating whether the accountant agrees with the statements contained in the captive insurer's letter filed pursuant to subsection 1 and, if not, stating the reasons he does not agree.

4. Upon receipt of the accountant's response letter, the captive insurer shall file with the Commissioner a copy of the response letter from the former accountant and any written response of the captive insurer to the accountant's response letter.

5. For the purposes of this section, a disagreement between the captive insurer and its accountant is a disagreement which occurs between the captive insurer and the accountant at the decision-making level and includes, without limitation, a disagreement between the personnel of the captive insurer responsible for preparation of the financial statements of the captive insurer and the personnel of the independent certified public accountant responsible for rendering its opinion on those statements.

Sec. 8. NAC 694C.010 is hereby amended to read as follows:

694C.010 As used in this chapter, unless the context otherwise requires, the words and terms defined in NAC 694C.030 and 694C.080 *and section 2 of this regulation* have the meanings ascribed to them in those sections.

Sec. 9. 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 (ASB-PU)* and the *Annual Statement Instructions for the Property/Casualty Manual* ~~[]~~ *(ASI-PU)*, published by the National Association of Insurance Commissioners. A copy of these publications may be purchased from NAIC ~~[Publications, P.O. Box 87-7870,]~~ *Insurance Products and Services Division, 2301 McGee Street, Suite 800*, Kansas City, Missouri ~~[64187-7870, or]~~ *64108-2662*, by telephone at ~~[(816) 374-7259, for \$125 and \$175, respectively.]~~ *(816) 783-8300*, by fax at *(816) 460-7593* or by *electronic mail at prodserv@naic.org*, at a cost of \$200 for ASB-PU and \$225 for ASI-PU.

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, ~~[or]~~ by telephone at (888) 777-7077, ~~[for \$95 for members of the American Institute of Certified Public Accountants and \$119]~~ by fax at *(800) 362-5066* or at the Internet address <https://www.cpa2biz.com/default.htm>, at a cost of \$103.50 for members of the AICPA or \$129.38 for nonmembers.

3. *Original Pronouncements* and *Current Text*, published by the Financial Accounting Standards Board. A copy of ~~[:]~~ *each of these publications may be obtained at the Internet address <http://www.fasb.org> or by telephone at (800) 748-0659. The cost 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, or by telephone at 888.777.7077, for \$95.~~

~~——(2) For all others, from John Wiley and Sons, Inc., Distribution Center, 1 Wiley Drive, Somerset, New Jersey 08875-1272, or by telephone at 800.225.5945, for \$44.95.] is \$125.~~

(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, or by telephone at 888.777.7077, for \$95.~~

~~——(2) For all others, from John Wiley and Sons, Inc., Distribution Center, 1 Wiley Drive, Somerset, New Jersey 08875-1272, or by telephone at 800.225.5945, for \$44.95.] is \$110.~~

(c) Both publications purchased as a set is \$215.

Sec. 10. NAC 694C.100 is hereby amended to read as follows:

694C.100 ~~[In addition to the processing of an application of a captive insurer for licensure, the]~~ *The* Commissioner may perform a qualifying investigation or examination of ~~[the]~~ *an* applicant *either* before *or after* the applicant ~~may receive the license.] is issued a certificate of authority.~~ Such an investigation or examination may consist of a general survey of the corporate records of the applicant, including:

1. The charter, bylaws and minute books of the applicant;

2. Verification of the principal place of business of the applicant;
3. A determination of the assets and liabilities of the applicant;
4. A review of the accounting systems and rules for underwriting of the applicant; and
5. A review of such other factors as the Commissioner deems necessary.

Sec. 11. NAC 694C.220 is hereby amended to read as follows:

694C.220 **1.** A captive insurer shall report to the Commissioner in writing the name and address of the independent certified public accountant whom the captive insurer has retained to conduct the annual audit required to be filed pursuant to NAC 694C.210 ~~;~~

~~1. Within] *within* 90 days after becoming subject to chapter 694C of NRS . ~~;~~ and~~

~~2. If the captive insurer changes its independent certified public accountant, within 90 days after making that change.]~~

2. *The captive insurer shall:*

(a) Obtain a letter from the independent certified public accountant which states that the accountant is aware of the provisions of title 57 of NRS, and the regulations adopted pursuant thereto, that relate to accounting and financial matters, and which affirms that the accountant will express his opinion on the financial statements of the captive insurer in terms of their conformity to the accounting practices prescribed or otherwise permitted by NRS 694C.400, and the regulations adopted pursuant thereto, specifying such exceptions as he deems appropriate; and

(b) File a copy of the letter with the Commissioner.

NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R064-06

The Commissioner of Insurance adopted regulations assigned LCB File No. R064-06 which pertain to chapter 694C of the Nevada Administrative Code on July 15, 2006.

Notice date: 3/29/2006
Hearing date: 5/4/2006

Date of adoption by agency: 7/15/2006
Filing date: 9/18/2006

INFORMATIONAL STATEMENT

A workshop and hearing was held on June 7, 2006, at the offices of the Department of Business and Industry, Division of Insurance (Division), 788 Fairview Drive, Suite 300, Carson City, Nevada 89701, with a simultaneous video-conference conducted at the Bradley Building, 2501 E. Sahara Avenue, Manufactured Housing Division Conference Room, 2nd Floor, Las Vegas, Nevada 89104, regarding the adoption of the regulation concerning captive insurers domiciled in Nevada.

Public comment was solicited by posting notice of the hearing in the following public locations: the Division's Carson City Office, Legislative Counsel Bureau, Capitol Building Lobby, Blasdel Building, Carson City Courthouse, State Library, Capitol Press Room, the Division's Las Vegas Office, and by e-mail to the Property & Casualty Advisory Committee, and interested parties thereto.

The 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 eight individuals in Carson City and two individuals in Las Vegas. There was no oral testimony or written comments received.

Due to an oversight in the preparation of the LCB version of the regulation, the last section of the Division's draft of the proposed regulation was omitted. That section was added to the proposed regulation during the workshop. No other changes were made.

After considering the recommendation of the Hearing Officer, the Commissioner has issued an order adopting the proposed regulation, LCB File No. R064-06, as amended, as a permanent regulation of the Division.

Due to the omission of suggested language, it is recommended that the proposed regulation be revised to read as follows:

1. A new section 11 has been added to read as follows:

Sec. 11. NAC 694C.220 is hereby amended to read as follows:

A captive insurer shall report to the commissioner in writing the name and address of the independent certified public accountant whom the captive insurer has retained to conduct the annual audit required to be filed pursuant to NAC 694C.210:

1. Within 90 days after becoming subject to chapter 694C of NRS; and
2. ~~[If the captive insurer changes its independent certified public accountant, within 90 days after making that change.]~~ ***The captive insurer shall obtain a letter from the independent certified public accountant and shall file a copy of the letter with the Commissioner that states that the accountant is aware of the provisions of Title 57 of NRS, and the regulations adopted pursuant thereto, that relate to accounting and financial matters, and affirms that the accountant will express his opinion on the financial statements in terms of their conformity to the accounting practices prescribed or otherwise permitted by NRS 694C.400, and the regulations adopted pursuant thereto, specifying such exceptions as he deems appropriate.***

The economic impact of the regulation is as follows:

- (a) On the business it is to regulate:
There will be a minimal financial impact on the industry as it provides clear direction of the duties and disclosures required of accountants acting as auditors, and the information on audit materials for the accountants will now be current.
- (b) On the public:
The regulation will have a beneficial impact on the citizens of Nevada as the regulation will provide better assurance that the auditors of captive insurers are performing in a professional manner and must provide complete disclosure when problems are found.

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. **06.403**
LCB FILE NO. **R064-06**

REGULATION FOR CAPTIVE INSURERS.

**SUMMARY OF PROCEEDINGS
AND ORDER**

SUMMARY OF PROCEEDINGS

A public workshop, as required by Nevada Revised Statute (NRS) 233B.061, on the proposed regulation relating to captive insurers, was held before Pamela Mackay, Deputy Insurance Commissioner, on June 7, 2006, 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 Pamela Mackay, Deputy Insurance Commissioner, on June 7, 2006, in Carson City, Nevada, and video-conferenced to the Bradley Building in Las Vegas, Nevada. The regulation is proposed pursuant to the authority of NRS 679B.130.

The hearing was attended by 10 individuals. There was no testimony at the hearing and no written comments were received by the Division.

Cliff King, Chief Administrator of Captive Programs for the Division, presented the proposed regulation and noted LCB's omission of the last section of the Division's proposed regulation. LCB advised that this was a mere oversight and recommended that the section be inserted at the workshop and provided suggested language for that addition labeled Section 11.

RECOMMENDED ORDER OF THE HEARING OFFICER

Due to the omission of suggested language, it is recommended that the proposed regulation be revised to read as follows:

1. A new section 11 has been added to read as follows:

Sec. 11. NAC 694C.220 is hereby amended to read as follows:

A captive insurer shall report to the commissioner in writing the name and address of the independent certified public accountant whom the captive insurer has retained to conduct the annual audit required to be filed pursuant to NAC 694C.210:

1. Within 90 days after becoming subject to chapter 694C of NRS; and
2. ~~[If the captive insurer changes its independent certified public accountant, within 90 days after making that change.]~~ ***The captive insurer shall obtain a letter from the independent certified public accountant and shall file a copy of the letter with the Commissioner that states that the accountant is aware of the provisions of Title 57 of NRS, and the regulations adopted pursuant thereto, that relate to accounting and financial matters, and affirms that the accountant will express his opinion on the financial statements in terms of their conformity to the accounting practices prescribed or otherwise permitted by NRS 694C.400, and the regulations adopted pursuant thereto, specifying such exceptions as he deems appropriate.***

SO RECOMMENDED this _____ day of July, 2006.

PAMELA MACKAY
Hearing Officer

ORDER OF THE COMMISSIONER

Having reviewed the record in this matter, it is hereby ordered that the proposed regulation concerning captive insurers, LCB File No. R064-06, be adopted, as amended, as a permanent regulation of the Division.

SO ORDERED this _____ day of _____, 2006.

ALICE A. MOLASKY-ARMAN
Commissioner of Insurance