

**ADOPTED REGULATION OF THE
COMMISSIONER OF INSURANCE**

LCB File No. R071-09

Effective October 27, 2009

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

AUTHORITY: §§1 and 2, NRS 679B.130 and 694C.170.

A REGULATION relating to captive insurers; creating requirements for contracts between a captive insurer and a service provider; revising provisions relating to conflicts of interest for captive insurers; and providing other matters properly relating thereto.

Section 1. Chapter 694C of NAC is hereby amended by adding thereto a new section to read as follows:

- 1. A material service provider contract between a captive insurer and a service provider:*
 - (a) Must be for a period of not more than 5 years;*
 - (b) Requires the approval of the majority of the captive insurer’s directors or subscribers’ advisory committee members for its initial term and for all renewals; and*
 - (c) Must be filed with the Division within 30 days after the effective date of the contract.*
- 2. As used in this section:*
 - (a) “Material service provider contract” means any contract between a captive insurer and a service provider under the terms of which the amount to be paid to the service provider by the captive insurer is greater than \$15,000 during any one 12-month period.*
 - (b) “Service provider” means a captive manager, auditor, accountant, actuary, investment adviser, attorney, managing general underwriter, managing general agent, attorney-in-fact or*

any other party responsible for underwriting, the determination of rates, the collection of premiums, adjusting and settling claims or the preparation of financial statements.

Sec. 2. NAC 694C.290 is hereby amended to read as follows:

694C.290 1. A captive insurer chartered in this State shall adopt a ~~[statement for]~~ conflict of interest *policy* for its *attorneys-in-fact, trustees*, managers, officers ~~[,]~~ *and* directors . ~~[and key employees. The statement must provide for a disclosure that the manager, officer, director or employee has no outside commitments, personal or otherwise, that would divert him from his duty to further the interest of the captive insurer which he represents, except that the statement for conflict of interest must not preclude the manager, officer, director or employee from being a director or officer in more than one insurance company or captive insurer, or both.]~~ *The policy must contain:*

(a) A requirement that the attorney-in-fact, trustee, manager, officer or director must annually disclose that he has no outside commitments, personal or otherwise, that would divert him from his duty to further the interests of the captive insurer that he represents;

(b) A clear expression that the attorney-in-fact, trustee, manager, officer or director has a duty of care to protect the interests of the captive insurer above those of any person including, but not limited to, the attorney-in-fact, trustee, manager, officer or director or any service provider; and

(c) A requirement that each attorney-in-fact, trustee, manager, officer or director must provide a complete annual disclosure of each material relationship that he has with the captive insurer.

2. ~~[A]~~ *Each attorney-in-fact, trustee, manager, ~~[an]~~ officer ~~[-, a]~~ or director ~~[and a key employee]~~ of a captive insurer shall file a disclosure of his conflicts of interest with the board of directors *or subscribers' advisory committee* of the captive insurer annually.*

3. *Nothing in this section shall be construed to prevent an attorney-in-fact, trustee, manager, officer or director of a captive insurer from being a director or officer in more than one insurance company or captive insurer.*

4. *As used in this section:*

(a) *“Material relationship” means any relationship in which an attorney-in-fact, trustee, manager, officer or director of a captive insurer, any member of such a person’s immediate family or any business with which such a person is affiliated receives compensation or payment of any other items of value from the captive insurer or a consultant or service provider to the captive insurer of an amount greater than \$15,000 within any one 12-month period.*

(b) *“Service provider” means a captive manager, auditor, accountant, actuary, investment adviser, attorney, managing general underwriter, managing general agent, attorney-in-fact or any other party responsible for underwriting, the determination of rates, the collection of premiums, adjusting and settling claims or the preparation of financial statements.*

NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R071-09

The Commissioner of Insurance adopted regulations which pertain to chapter 694C of the Nevada Administrative Code.

INFORMATIONAL STATEMENT

A workshop was held on October 14, 2009, and a hearing was held on October 21, 2009, 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, Real Estate Division Conference Room, 2nd Floor, Las Vegas, Nevada 89104, regarding the adoption of the regulation concerning Captive Insurer Conflict of Interest and Disclosure.

Public comment was solicited by posting notice of the hearing in the following public locations: the Division’s Carson City and Las Vegas offices, Carson City Courthouse, Office of the Attorney General, the Donald W. Reynolds Press Center, Capitol Building Lobby, Capitol Building Press Room, Blasdel Building, Legislative Counsel Bureau, Nevada State Library, Carson City Library, Churchill County Library, Clark County District Library, Douglas County Library, Elko County Library, Esmeralda County Library, Eureka Branch Library, Humboldt County Library, Lander County Library, Lincoln County Library, Lyon County Library, Mineral County Library, Pershing County Library, Storey County Library, Tonopah Public Library, Washoe County Library, and White Pine County Library.

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 12 individuals in Carson City and 3 individuals in Las Vegas. Oral testimony was provided by Michael S. Lynch, representing the Division. The Division did not receive any written comments.

Based upon the testimony received at the public workshop and formal hearing, the proposed regulation is amended as follows:

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

2. As used in this section:

- (a) “Material service provider contract” means any contract between a captive insurer and a service provider under the terms of which the amount to be paid to the service provider by the captive insurer is greater than \$15,000 during any one 12-month period.

- (b) “Service provider” means a captive manager, auditor, accountant, actuary, investment adviser, attorney, managing general underwriter, managing general agent, attorney-

in-fact or any other party responsible for underwriting, the determination of rates, the collection of premiums, adjusting and settling claims or the preparation of financial statements.

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

1. A captive insurer chartered in this state shall adopt a conflict of interest policy for its attorneys-in-fact, trustees, managers, officers and directors. The policy must contain:

(a) A requirement that the attorney-in-fact, trustee, manager, officer or director must annually disclose that he [or she] has no outside commitments, personal or otherwise, that would divert him [or her] from his [or her] duty to further the interests of the captive insurer that he [or she] represents;

(b) A clear expression that the attorney-in-fact, trustee, manager, officer or director has a duty of care to protect the interests of the captive insurer above those of any person including, but not limited to, the attorney-in-fact, trustee, manager, officer or director or any service provider; and

(c) A requirement that each attorney-in-fact, trustee, manager, officer or director must provide a complete annual disclosure of each material relationship that he [or she] has with the captive insurer.

3. Subsection 4 of Section 2 is amended to read as follows:

4. As used in this section:

(a) “Material relationship” means any relationship in which an attorney-in-fact, trustee, manager, officer or director of a captive insurer, any member of such a person’s immediate family or any business with which such a person is affiliated receives compensation or payment of any other items of value from the captive insurer or a consultant or service provider to the captive insurer of an amount greater than \$15,000 within any one 12-month period.

(b) “Service provider” means a captive manager, auditor, accountant, actu[ar]ie[y], investment adviser, attorney, managing general underwriter, managing general agent, attorney-in-fact or any other party responsible for underwriting, the determination of rates, the collections of premiums, adjusting and settling claims or the preparation of financial statements.

The economic impact of the regulation is as follows:

- (a) On the business it is to regulate: None.
- (b) On the small businesses: None.
- (c) On the public: None.

The Division will not incur any additional expense to enforce this regulation.

The Division is not aware of any overlap or duplication of the regulation with any state, local or federal regulation.

This proposed regulation for permanent adoption will replace temporary regulation T034-09. The temporary regulation will expire as a matter of law no later than November 1, 2009.

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INSURANCE

IN THE MATTER OF THE

CAUSE NO. **09.0397**
LCB FILE NO. **R071-09**

**REGULATION CONCERNING
CAPTIVE INSURER CONFLICT OF
INTEREST AND DISCLOSURE**

**SUMMARY OF
PROCEEDINGS
AND ORDER**

SUMMARY OF PROCEEDINGS

A public workshop, as required by NRS 233B.061, on the proposed regulation to amend NAC 694C.290 relating to captive insurer conflict of interest and disclosure was held before Amy L. Parks, Hearing Officer, on October 14, 2009, in Carson City, Nevada, and video-conferenced to the Bradley Building in Las Vegas, Nevada. A public hearing on the proposed regulation to amend NAC 694C.290 was held before the Hearing Officer on October 21, 2009, 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 and 694C.170. This rule-making process began on April 9, 2009, when the Nevada Captive Insurance Association filed petitions pursuant to NAC 679B.482 to amend NAC 694C.280 and NAC 694C.290. The Commissioner approved the petitions on April 17, 2009.

The Department of Business and Industry, Division of Insurance (“Division”), did not receive any written comments from the industry and interested parties regarding the proposed changes to NAC 694C.290. The workshop was attended by twelve (12) interested parties in Carson City and three (3) interested parties in Las Vegas. Michael Lynch, representing the Division, provided testimony before the Hearing Officer. The hearing was attended by fourteen (14) interested parties in Carson City and two (2) interested parties in Las Vegas. The Hearing Officer asked that Division staff address the proposed changes to NAC 694C.290.

Mr. Lynch testified that the new language would amend NAC 694C.290 relating to captive insurers and conflict of interest statements to enhance disclosure requirements.

Based upon the testimony received at the public workshop and formal hearing, the proposed regulation is amended as follows:

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

2. As used in this section:

(a) "Material service provider contract" means any contract between a captive insurer and a service provider under the terms of which the amount to be paid to the service provider by the captive insurer is greater than \$15,000 during any one 12-month period.

(b) "Service provider" means a captive manager, auditor, accountant, actuary, investment adviser, attorney, managing general underwriter, managing general agent, attorney-in-fact or any other party responsible for underwriting, the determination of rates, the collection of premiums, adjusting and settling claims or the preparation of financial statements.

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

1. A captive insurer chartered in this state shall adopt a conflict of interest policy for its attorneys-in-fact, trustees, managers, officers and directors. The policy must contain:

(a) A requirement that the attorney-in-fact, trustee, manager, officer or director must annually disclose that he ~~or she~~ has no outside commitments, personal or otherwise, that would divert him ~~or her~~ from his ~~or her~~ duty to further the interests of the captive insurer that he ~~or she~~ represents;

(b) A clear expression that the attorney-in-fact, trustee, manager, officer or director has a duty of care to protect the interests of the captive insurer above those of any person including, but not limited to, the attorney-in-fact, trustee, manager, officer or director or any service provider; and

(c) A requirement that each attorney-in-fact, trustee, manager, officer or director must provide a complete annual disclosure of each material relationship that he [or she] has with the captive insurer.

3. Subsection 4 of Section 2 is amended to read as follows:

4. As used in this section:

(a) “Material relationship” means any relationship in which an attorney-in-fact, trustee, manager, officer or director of a captive insurer, any member of such a person’s immediate family or any business with which such a person is affiliated receives compensation or payment of any other items of value from the captive insurer or a consultant or service provider to the captive insurer of an amount greater than \$15,000 within any one 12-month period.

(b) “Service provider” means a captive manager, auditor, accountant, actuar[ie]ly, investment adviser, attorney, managing general underwriter, managing general agent, attorney-in-fact or any other party responsible for underwriting, the determination of rates, the collections of premiums, adjusting and settling claims or the preparation of financial statements.

RECOMMENDATION OF THE HEARING OFFICER

Based upon the testimony received at the hearing, it is recommended that the proposed regulation concerning captive insurer conflict of interest and disclosure, Division’s Cause No. 09.0397, LCB File No. R071-09, be adopted, as amended, as a permanent regulation of the Division.

SO RECOMMENDED this 21st day of October, 2009.

/s/

AMY L. PARKS
Hearing Officer

ORDER OF THE COMMISSIONER

Having reviewed the record in this matter, and considering the Recommendation of the Hearing Officer, it is hereby ordered that the proposed regulation concerning captive insurer conflict of interest and disclosure, Division's Cause No. 09.0397, LCB File No. R071-09, be adopted, as amended, as a permanent regulation of the Division.

SO ORDERED this 21st day of October, 2009.

/s/ _____
SCOTT J. KIPPER
Commissioner of Insurance