

**ADOPTED REGULATION OF THE
COMMISSIONER OF INSURANCE**

LCB File No. R072-10

Effective December 16, 2010

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

AUTHORITY: §§1-10, NRS 679B.130, 679B.137, 680A.270 and 681B.050.

A REGULATION relating to insurance; requiring certain insurance companies to file an actuarial opinion annually; establishing requirements for the actuarial opinion and supporting documents; providing for the confidentiality of documents supporting the actuarial opinion under certain circumstances; and providing other matters properly relating thereto.

Section 1. Chapter 681B of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 10, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 10, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 6, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Appointed actuary” means a qualified actuary who is appointed or retained by a property and casualty insurance company to prepare the opinion and supporting documents required by sections 7 to 10, inclusive, of this regulation.*

Sec. 4. *“Domiciliary commissioner” means the Commissioner of Insurance or similar officer of the state in which a property and casualty insurance company is domiciled.*

Sec. 5. *“Property and casualty insurance company” means an insurance company authorized to write:*

1. Casualty insurance as defined in NRS 681A.020;

2. *Marine and transportation insurance or wet marine and transportation insurance as defined in NRS 681A.050;*

3. *Property insurance as defined in NRS 681A.060; or*

4. *Surety insurance as defined in NRS 681A.070.*

Sec. 6. *“Qualified actuary” means a person who meets the qualification requirements for actuaries set forth in the standards of the American Academy of Actuaries or a successor organization approved by the Commissioner.*

Sec. 7. *Every property and casualty insurance company doing business in this State, unless otherwise exempted by the domiciliary commissioner, shall annually submit the opinion of an appointed actuary entitled “Statement of Actuarial Opinion.” This opinion must be filed in accordance with the Annual Statement Instructions: Property and Casualty, as adopted by the National Association of Insurance Commissioners for the year in which the property and casualty insurance company files the opinion and must be treated as a public document.*

Sec. 8. *Each opinion required by section 7 of this regulation must be supported by a document entitled “Actuarial Opinion Summary” prepared by the appointed actuary of the property and casualty insurance company. This summary must be filed with the Commissioner in accordance with the appropriate instructions adopted by the National Association of Insurance Commissioners:*

1. *Annually by every property and casualty insurance company domiciled in this State that is required to submit an opinion pursuant to section 7 of this regulation; and*

2. *Upon request of the Commissioner by a property and casualty insurance company licensed by, but not domiciled in, this State.*

Sec. 9. *Each opinion required by section 7 of this regulation must be supported by a document entitled “Actuarial Report” prepared by the appointed actuary of the property and casualty insurance company in accordance with the Annual Statement Instructions: Property and Casualty, as adopted by the National Association of Insurance Commissioners for the year in which the property and casualty insurance company files the opinion. This report and all underlying work papers must be made available to the Commissioner upon his request. If a property and casualty insurance company fails to provide a supporting Actuarial Report or work papers at the request of the Commissioner or the Commissioner determines that the supporting Actuarial Report or work papers provided by the company are otherwise unacceptable to the Commissioner, the Commissioner may engage a qualified actuary at the expense of the company to review the opinion and the basis for the opinion and prepare the supporting Actuarial Report or work papers.*

Sec. 10. 1. *If submitted with the express condition that they remain confidential, all documents filed pursuant to sections 8 and 9 of this regulation, and any other materials provided by a property and casualty insurance company to the Commissioner in connection therewith, must be kept confidential by the Commissioner, are privileged, are not open to the public and are not subject to subpoena.*

2. Neither the Commissioner nor any person who received documents, other materials or information contained therein while acting under the authority of the Commissioner is permitted or required to testify in any private civil action concerning any documents, other materials or information contained therein made confidential pursuant to this section.

3. The provisions of this section shall not be construed to limit the Commissioner’s authority:

(a) To release documents or other materials to the Actuarial Board for Counseling and Discipline or its successor organization if the documents or other materials are required for the purpose of professional disciplinary proceedings and the Actuarial Board for Counseling and Discipline establishes procedures satisfactory to the Commissioner for preserving the confidentiality of the documents or other materials; or

(b) To use the documents or other materials or information contained therein in furtherance of any regulatory or legal action brought as part of the Commissioner's official duties.

NOTICE OF ADOPTION OF PROPOSED REGULATION

The Commissioner of Insurance adopted regulations assigned LCB File No. R072-10 which pertain to chapter 681B of the Nevada Administrative Code.

INFORMATIONAL STATEMENT

A workshop was held on October 8, 2010, and a hearing was held on October 22, 2010, at the offices of the Nevada State Health Division, 4150 Technology Way, Suite 303, Carson City, Nevada 89706, with a simultaneous video-conference conducted at the Bradley Building, 2501 E. Sahara Avenue, 2nd Floor Conference Room, Las Vegas, Nevada 89104, regarding the adoption of the regulation concerning actuarial opinions for property and casualty insurance companies.

Public comment was solicited by posting notice of the hearing in the following public locations: the Division's Website, Division's Carson City and Las Vegas offices, Carson City Courthouse, Office of the Attorney General, Capitol Building Lobby, Capitol Building Press Room, Blasdel Building, and Legislative Counsel Bureau; and by providing notice of the hearing to the Donald W. Reynolds Press Center, 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 workshop was attended by two members of the public in Carson City and one member of the public in Las Vegas. No members of the public attended the hearing. The proposed regulation was presented orally by Janice Moskowitz, on behalf of the Division. The Division received one written comment concerning the regulation.

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.

The proposed regulation, LCB File No. R072-10, was adopted, as proposed, as a permanent regulation of the Division. See attached Order.

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INSURANCE

IN THE MATTER OF THE

CAUSE NO. **10.0306**
LCB FILE NO. **R072-10**

**ACTUARIAL OPINIONS FOR
PROPERTY AND CASUALTY
INSURANCE COMPANIES**

**SUMMARY OF PROCEEDINGS
AND ORDER**

SUMMARY OF PROCEEDINGS

A public workshop, as required by Nevada Revised Statute (“NRS”) 233B.061, on the proposed regulation revising provisions relating to actuarial opinions for property and casualty insurance companies was held before Amy L. Parks, Esq. (“Hearing Officer”), on October 8, 2010, at the offices of the Nevada State Health Division 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 the Hearing Officer, on October 22, 2010, 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.

The workshop was attended by two members of the public in Carson City and one member of the public in Las Vegas. There were no comments concerning the proposed regulation at the workshop. There were no members of the public at the hearing.

At the workshop, Janice Moskowitz, lead actuary for the State of Nevada, Department of Business and Industry, Division of Insurance (“Division”), explained that the proposed regulation implements the provisions of the National Association of Insurance Commissioner’s (“NAIC”) Actuarial Opinion Model Law and that the proposed regulation will amend chapter 681B of the Nevada Administrative Code by prescribing requirements for the filing of property and casualty actuarial opinions, supporting documents and maintenance thereof. She also

indicated that the Actuarial Opinion Model Law recently became an NAIC state accreditation standard.

Ms. Moskowitz explained that the proposed regulation defines terms relating to actuarial statements of opinion; requires each property and casualty insurer doing business in the state to annually submit a statement of actuarial opinion, an actuarial opinion summary and actuarial report that were prepared by a qualified actuary; and provides that the Commissioner shall maintain the confidentiality of the summary and report, if submitted with the express condition that they be maintained in a confidential manner.

Ms. Moskowitz summarized written comments received from Dennis Burke of the Reinsurance Association of America. In his letter, Mr. Burke expressed concern that the section of the model law concerning the liability of the appointed actuary was omitted from the proposed regulation. He also asked that the regulation be amended to include sections 3(D) and 3(E) of the model law which explicitly allow the Commissioner to share documents for regulatory purposes, as long as the documents are kept confidential, and that Section 10 concerning the confidentiality of the documents be amended to explicitly indicate that the confidential documents are not subject to Nevada's Open Records Act, NRS 239 *et seq.* and are not subject to discovery or admissible as evidence in any private civil action.

Ms. Moskowitz explained that the actuary is already immune from liability pursuant to NRS 681B.250. She indicated that while the header to NRS 681B.250 appears to limit its scope to life insurance, the attorney at LCB assigned to the regulation stated that the header was not part of the legislation and would be amended to remove the reference to life insurance. She also explained that the Commissioner is already authorized to share documents for regulatory purposes under a confidential status pursuant to NRS 679B.122. With respect to the request that the regulation be amended to explicitly reference that the documents are not subject to Nevada's Open Records Act, Ms. Moskowitz explained that the Nevada Open Records Act permits documents to be maintained as confidential pursuant to other statutes and regulations. She stated

that NRS 239.010 (1) reads, in part: “Except as otherwise provided in subsection 3, all public books and public records of a governmental entity, the contents of which are not otherwise declared by law to be confidential, must be open at all times during office hours to inspection by any person, and may be fully copied or an abstract or memorandum may be prepared from those public books and public records.” She indicated that to specifically reference the public records law in the regulation would be redundant. Finally, both the Hearing Officer and Ms. Moskowitz noted that NRS 679B.190(5)(b) also provides for confidentiality of documents upon the express request for confidentiality.

At the hearing, Ms. Moskowitz again presented the proposed regulation and summarized the proceedings of the workshop. The Division then recommended that the proposed regulation, LCB File No. R072-10, be adopted as proposed.

RECOMMENDED ORDER OF THE HEARING OFFICER

Based upon the testimony received at the workshop and hearing, it is recommended that the proposed regulation revising provisions relating to actuarial opinions for property and casualty insurance companies, LCB File No. R072-10, be adopted, as proposed, as a permanent regulation of the Division.

SO RECOMMENDED this 17th day of November, 2010.

/s/
AMY L. PARKS
Hearing Officer

ORDER OF THE COMMISSIONER

Having reviewed the record in this matter and the recommendation of the Hearing Officer, it is hereby ordered that the proposed regulation revising provisions relating to actuarial

