

**ADOPTED REGULATION OF THE
COMMISSIONER OF INSURANCE**

LCB File No. R030-12

Effective September 14, 2012

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

AUTHORITY: §§1-3, NRS 679B.130 and 680A.205.

A REGULATION relating to insurance; revising the items that the Commissioner of Insurance will consider in determining whether the financial condition of an insurer may be hazardous to policyholders, creditors or the general public; revising provisions governing the requirements that the Commissioner may impose on an insurer with regard to which the Commissioner has made such a determination; and providing other matters properly relating thereto.

Section 1. NAC 680A.220 is hereby amended to read as follows:

680A.220 1. The Commissioner ~~[of Insurance]~~ will consider the following to determine whether the continued operation of an insurer transacting the business of insurance in this State is hazardous to the general public or the policyholders or creditors of the insurer:

(a) Adverse findings ~~[reported in examinations]~~ concerning the insurer's financial condition or market conduct *as reported or summarized in examination reports, audit reports and actuarial opinions, reports, summaries or memoranda* which the Commissioner determines to be material.

(b) ~~[Information]~~ *Financial solvency analysis tools and information* and reports concerning the insurer from the Insurance Regulatory Information System of the National Association of Insurance Commissioners.

(c) Whether the ~~ratios of the expenses for commissions and for general insurance, policy benefits and increases in reserve of the insurer compared to its annual premium and net investment income indicate that the capital and surplus of the insurer could be impaired.~~

~~—(d) Whether the insurer's portfolio of assets when considered in light of the current economic conditions is of sufficient value, liquidity or diversity to ensure the insurer's ability to meet its outstanding obligations as those obligations mature.~~

~~—(e) *insurer has made adequate provision in accordance with accepted actuarial standards of practice for the anticipated cash flows required by policies, contractual obligations and related expenses of the insurer. In making that determination, the Commissioner will consider the assets held by the insurer with respect to reserves and related actuarial items, including, without limitation, the investment earnings on such assets and the financial consideration anticipated to be received and retained under such policies and contracts.*~~

(d) If the insurer has reinsurance, the ability of the assuming reinsurer to perform and whether the insurer's reinsurance program provides sufficient protection for the insurer's remaining surplus after taking into account the insurer's cash flow, the classes of insurance written by the insurer and the financial condition of the assuming reinsurer.

~~(e)~~ (e) Whether the insurer's operating loss in the most previous 12-month period, or such shorter period as the Commissioner deems appropriate, is greater than 50 percent of the insurer's surplus which is in excess of the statutory minimum surplus required for that insurer pursuant to NRS 680A.120.

(f) Whether the insurer's operating loss, excluding net capital gain, in the most previous 12-month period, or such shorter period as the Commissioner deems appropriate, is greater

than 20 percent of the insurer's surplus which is in excess of the statutory minimum surplus required for that insurer pursuant to NRS 680A.120.

(g) Whether any ~~[affiliate, subsidiary or]~~ *entity within the system of the insurance holding company*, reinsurer *or obligor* of the insurer is insolvent, threatened with insolvency or delinquent in payment of its monetary or other obligations ~~[.]~~ *and, in the opinion of the Commissioner, such insolvency or delinquency may affect the solvency of the insurer.*

(h) Whether the contingent liabilities, pledges or guaranties of the insurer, either individually or collectively, involve a total amount which, in the opinion of the Commissioner, may affect the solvency of the insurer.

(i) Whether any person who directly or indirectly controls the insurer is delinquent in the transmission to, or payment of, a net premium to the insurer.

(j) The age and collectibility of the accounts receivable of the insurer.

(k) Whether any person involved in the management of the insurer fails to possess and demonstrate the competence, fitness and reputation deemed necessary by the Commissioner to serve the insurer in such a position.

(l) Whether the management of the insurer has failed to respond to any inquiry concerning the condition of the insurer, or has provided false or misleading information in response to such an inquiry.

(m) *Whether the insurer has failed to meet financial and holding company filing requirements, unless the insurer is excused from such filing requirements for a reason deemed sufficient by the Commissioner.*

(n) Whether the management of the insurer has : ~~[intentionally:]~~

- (1) Filed a false or misleading sworn financial statement with the Division or the insurance regulatory authority of any other state;
- (2) Released a false or misleading statement to a lending institution or the general public;
- or
- (3) Made a false or misleading entry, or has omitted an entry of a material amount, in the books of the insurer.

~~[(n)]~~ (o) Whether the insurer has grown so rapidly and to such an extent that it lacks adequate financial and administrative capacity to meet its obligations in a timely manner.

~~[(o)]~~ (p) Whether the insurer has experienced, or will likely experience in the foreseeable future, problems with its cash flow or liquidity.

(q) Whether the insurer has established reserves that do not comply with the minimum standards prescribed by specific statute or regulation, statutory accounting practices, sound actuarial principles and actuarial standards of practice.

(r) Whether the insurer persistently maintains inadequate reserves that results in an adverse effect on the general public or on the policyholders or creditors of the insurer.

(s) Whether transactions among affiliates, subsidiaries or controlling persons for which the insurer receives assets or capital gains, or both, do not provide sufficient value, liquidity or diversity to ensure the ability of the insurer to meet its outstanding obligations as the obligations mature.

(t) Any other finding determined by the Commissioner to be hazardous to the general public or to the policyholders or creditors of the insurer.

2. As used in this section ~~[(t)]~~, *unless the context otherwise requires:*

(a) “Management of the insurer” includes officers, directors and any other person who directly or indirectly controls the operation of the insurer.

(b) “Operating loss” includes, but is not limited to:

(1) Net capital gain or loss;

(2) Change in assets which are not allowed as assets in a determination of the financial condition of the insurer pursuant to NRS 681B.020; and

(3) Cash dividends paid to shareholders.

Sec. 2. NAC 680A.222 is hereby amended to read as follows:

680A.222 To determine the financial condition of an insurer for the purposes of NAC 680A.220 to 680A.226, inclusive, the Commissioner may, if he or she deems it appropriate:

1. Disregard any credit or amount receivable resulting from the transactions of the insurer with a reinsurer which is insolvent, impaired or otherwise subject to a delinquency proceeding;

2. ~~[Make]~~ *Consistent with the Accounting Practices and Procedures Manual of the National Association of Insurance Commissioners, which has been adopted by reference in NAC 679B.033, make* an appropriate adjustment , *including a disallowance*, to the value of the insurer’s assets which are attributable to the insurer’s investments in or transactions with any parent, subsidiary or affiliate of the insurer;

3. Refuse to recognize the stated value of the accounts receivable of the insurer if the ability of the insurer to collect those accounts is highly speculative in view of the age of the account or the financial condition of the debtor; or

4. Increase the insurer’s liability in an amount equal to any contingent liability, pledge or guaranty not otherwise included in the annual statements or financial statements of the insurer if

there is a substantial risk that the insurer will be called upon to meet the liability, pledge or guaranty undertaken within the following 12-month period.

Sec. 3. NAC 680A.224 is hereby amended to read as follows:

680A.224 **1.** If the Commissioner determines that the continued operation of an insurer licensed to transact the business of insurance in this State may be hazardous to the policyholders *or creditors* of the insurer or the general public, the Commissioner will, if appropriate:

~~1.~~ **(a)** Issue an order requiring the insurer to:

~~(a)~~ **(1)** Purchase reinsurance to reduce the total amount of present or future liability for policy benefits.

~~(b)~~ **(2)** Reduce, suspend or limit the volume of business being accepted or renewed by the insurer.

~~(c)~~ **(3)** Reduce the insurer's expenses relating to general insurance and commission by methods specified by the Commissioner.

~~(d)~~ **(4)** Increase its capital and surplus.

~~(e)~~ **(5)** Suspend or limit its declaration and payment of dividends to the stockholders or policyholders of the insurer.

~~(f)~~ **(6)** File reports, in a form acceptable to the Commissioner, concerning the market value of the assets of the insurer.

~~(g)~~ **(7)** Limit or withdraw from any of its investments, or discontinue any part of its practices relating to investments, to the extent deemed necessary by the Commissioner.

~~(h)~~ **(8)** Document the adequacy of its premium rates in relation to the risks insured by the insurer.

~~(9)~~ (9) File with the Commissioner, in addition to its regular annual statements, interim financial reports. The interim reports must be on the appropriate form adopted by the National Association of Insurance Commissioners, or in a format approved by the Commissioner.

~~(10)~~ (10) *Correct any corporate governance practices of the insurer which are deemed deficient by the Commissioner and adopt and use corporate governance practices acceptable to the Commissioner.*

(11) Provide a business plan to the Commissioner.

(12) Unless prohibited by title 57 of NRS, adjust rates for a product, other than a contract for life insurance, written by the insurer that the Commissioner considers necessary to improve the financial condition of the insurer.

(b) Take any other action deemed appropriate by the Commissioner.

2. The provisions of subsection 1 do not apply to a foreign insurer holding a certificate of authority to transact insurance in this State, except as otherwise provided in NRS 680A.190 to 680A.220, inclusive.

NRS 233B.066
INFORMATIONAL STATEMENT

Re: Proposed Regulation Concerning Hazardous Financial Condition of Insurance Companies, Division's Cause No. 12.0194
LCB File No. R030-12

A workshop was held on August 1, 2012, and a hearing was held on August 10, 2012, at the offices of the Nevada Division of Insurance, 1818 E. College Parkway, Suite 103, Carson City, Nevada 89706, with a simultaneous videoconference conducted at the Bradley Building, 2501 E. Sahara Avenue, Las Vegas, Nevada 89104, regarding the adoption of the regulation concerning hazardous financial conditions of insurance companies.

Public comment was solicited by posting notices of the workshop and hearing in the following public locations: the Web site of the State of Nevada, Department of Business and Industry, Division of Insurance ("Division"), the 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 workshop was attended by one interested party in Las Vegas. The Division did not receive any written comments from interested parties. Oral testimony, in the form of suggested changes to the existing regulation and to the LCB version of the regulation dated June 7, 2012, was provided by Annette James, representing the Division. There were no public comments, testimony, or questions by the industry or interested parties.

The hearing was attended by one interested party in Carson City and one in Las Vegas. During the hearing, oral testimony was provided by Annette James, representing the Division, and Jim Wadhams.

Regarding the persons who gave testimony at the hearing and/or submitted written comments, the following disclosure is made pursuant to NRS 233B.066(1)(c):

Name	Organization Represented	Business Address	Business Telephone Number	Electronic Mail Address
James L. Wadhams	Fennemore Craig Jones Vargas	300 S. Fourth Street, Suite 1400 Las Vegas, NV 89101	(702)692-8039	jwadhams@fclaw.com

Based on the testimony received, the proposed permanent regulation, LCB File No. 030-12, dated June 7, 2012, is amended as follows (*see green italics*):

1. Paragraph (a) of subsection 1 of section 1 is amended to read as follows:

(a) Adverse findings ~~[reported in examinations]~~ concerning the insurer's financial condition or market conduct *as reported or summarized in examination reports, audit reports [ø] and actuarial opinions, reports, summaries or memoranda* which the Commissioner determines to be material.

2. Paragraph (c) of subsection 1 of section 1 is amended to read as follows:

(c) Whether the ~~[ratios of the expenses for commissions and for general insurance, policy benefits and increases in reserve of the insurer compared to its annual premium and net investment income indicate that the capital and surplus of the insurer could be impaired.~~

~~(d) Whether the insurer's portfolio of assets when considered in light of the current economic conditions is of sufficient value, liquidity or diversity to ensure the insurer's ability to meet its outstanding obligations as those obligations mature.~~

(e) insurer has made adequate provision, in accordance with accepted actuarial standards of practice, for the anticipated cash flows required by any contractual obligation or related expense of the insurer. In making that determination, the Commissioner will consider the assets held by the insurer with respect to reserves and related actuarial items, including, without limitation, the investment earnings on such assets and the financial considerations anticipated to be received and retained under such policies and contracts.

3. Paragraph (f) of subsection 1 of section 1 is amended to read as follows:

(f) Whether the insurer's operating loss, excluding net capital gains, in the most previous 12-month period, or such shorter period as the Commissioner deems appropriate, is greater than 20 percent of the insurer's surplus which is in excess of the statutory minimum surplus required for that insurer pursuant to NRS 680A.120.

4. Paragraph (j) of subsection 1 of section 1 is amended to read as follows:

(j) The age and ~~[collectibility]~~ *collectability* of the accounts receivable of the insurer.

5. Paragraph (q) of subsection 1 of section 1 is amended to read as follows:

(q) Whether the insurer has established reserves that do not comply with the minimum standards prescribed by specific statute or regulation, statutory accounting practice, sound actuarial principles [ø] and actuarial standards of practice.

6. Subparagraph 12 of paragraph (a) of subsection 1 of section 3 is amended as follows:

(12) Unless prohibited by title 57 of NRS, adjust rates for a product, other than a contract for life insurance, written by the insurer that the Commissioner considers necessary to improve the financial condition of the insurer.

The economic impact of the regulation is as follows:

(a) On the business it is to regulate: The proposed regulation should have no economic impact on the industry that the Division of Insurance regulates. This regulation assists the Division in maintaining the solvency of the insurance companies that operate in the state of Nevada.

(b) On Small Business: The proposed regulation should have no economic impact on small business. This regulation assists the Division in maintaining the solvency of the insurance companies that operate in the state of Nevada.

(c) On the public: The proposed regulation should have no economic impact on the public. This regulation assists the Division in maintaining the solvency of the insurance companies that operate in the state of Nevada.

The Division does not anticipate any additional cost for enforcing the regulation. The Division is not aware of any overlap or duplication of the regulation with any state, local or federal regulation.

After considering the record and the recommendation of the hearing officer, the Commissioner has issued an order adopting the regulation, LCB File No. R030-12, as a permanent regulation of the Division.

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INSURANCE

IN THE MATTER OF THE

CAUSE NO. **12.0194**
LCB FILE NO. **R030-12**

**REGULATION CONCERNING THE
HAZARDOUS FINANCIAL CONDITION
OF 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 permanent regulation concerning the hazardous financial condition of insurance companies was held before Amy L. Parks, Esq. (“Hearing Officer”), on August 1, 2012, at the offices of the State of Nevada, Department of Business and Industry, Division of Insurance (“Division”), in Carson City, Nevada, and videoconferenced to the Bradley Building in Las Vegas, Nevada. A public hearing on the proposed regulation was also held before the Hearing Officer, on August 10, 2012, in Carson City, Nevada, and videoconferenced to the Bradley Building in Las Vegas, Nevada. The regulation is proposed under the authority of NRS 679B.130 and NRS 680A.205.

The Division did not receive any written comments or oral testimony at the workshop. The workshop was attended by one member of the public in Las Vegas. At the workshop, Annette James, Lead Actuary for the Division, presented the regulation. Ms. James stated that the regulation is primarily intended to bring Nevada’s regulations into compliance with the financial accreditation standards of the National Association of Insurance Commissioners (“NAIC”), and is necessary to address the financial condition and solvency of insurers transacting business within the state of Nevada. The revisions to the existing language provide additional standards and authority to the Commissioner to determine whether continued operations of any insurer operating in Nevada might be considered hazardous to its stakeholders.

Ms. James then presented six (6) amendments to the proposed regulation. Ms. James indicated that the amendments were necessary to correct changes that LCB made which had inadvertently changed the Division's intended substance, and to correct typographical errors in the proposed regulation.

The hearing was attended by one interested party in Carson City and one in Las Vegas. At the hearing, Ms. James again presented the proposed regulation with the six (6) amendments, and summarized the proceedings of the workshop.

The following are the amendments (shown in *green italics*) to the proposed regulation, LCB File No. R030-12, which were presented at the hearing:

2. Paragraph (a) of subsection 1 of section 1 is amended to read as follows:

(a) Adverse findings ~~[reported in examinations]~~ concerning the insurer's financial condition or market conduct *as reported or summarized in examination reports, audit reports ~~[or]~~ and actuarial opinions, reports, summaries or memoranda* which the Commissioner determines to be material.

2. Paragraph (c) of subsection 1 of section 1 is amended to read as follows:

(c) Whether the ~~[ratios of the expenses for commissions and for general insurance, policy benefits and increases in reserve of the insurer compared to its annual premium and net investment income indicate that the capital and surplus of the insurer could be impaired.~~

~~(d) Whether the insurer's portfolio of assets when considered in light of the current economic conditions is of sufficient value, liquidity or diversity to ensure the insurer's ability to meet its outstanding obligations as those obligations mature.~~

~~(e)]~~ *insurer has made adequate provision, in accordance with accepted actuarial standards of practice, for the anticipated cash flows required by any contractual obligation or related expense of the insurer. In making that determination, the Commissioner will consider the assets held by the insurer with respect to reserves and*

related actuarial items, including, without limitation, the investment earnings on such assets and the financial considerations anticipated to be received and retained under such policies and contracts.

3. Paragraph (f) of subsection 1 of section 1 is amended to read as follows:

(f) Whether the insurer's operating loss, excluding net capital gains, in the most previous 12-month period, or such shorter period as the Commissioner deems appropriate, is greater than 20 percent of the insurer's surplus which is in excess of the statutory minimum surplus required for that insurer pursuant to NRS 680A.120.

4. Paragraph (j) of subsection 1 of section 1 is amended to read as follows:

(j) The age and ~~collectibility~~ collectability of the accounts receivable of the insurer.

5. Paragraph (q) of subsection 1 of section 1 is amended to read as follows:

(q) Whether the insurer has established reserves that do not comply with the minimum standards prescribed by specific statute or regulation, statutory accounting practice, sound actuarial principles ~~or~~ and actuarial standards of practice.

6. Subparagraph 12 of paragraph (a) of subsection 1 of section 3 is amended as follows:

(12) Unless prohibited by title 57 of NRS, adjust rates for a product, other than a contract for life insurance, written by the insurer that the Commissioner considers necessary to improve the financial condition of the insurer.

At the hearing, Mr. Jim Wadhams requested three revisions to the language of the proposed regulation. After discussion, Mr. Wadhams agreed that he supported the regulation as proposed with the Division's amendments, and that his changes were not substantive. Mr. Wadhams appreciated that his comments would be entered into the record. Therefore, no wording change was needed beyond the amendments proposed by Ms. James.

