

**ADOPTED REGULATION OF THE  
COMMISSIONER OF INSURANCE**

**LCB File No. R034-12**

Effective September 14, 2012

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

AUTHORITY: §§1-4, 7, 10, 11 and 13, NRS 679B.130 and 685A.210; §5, NRS 679B.130, 685A.070 and 685A.210; §6, NRS 679B.130, 685A.040 and 685A.210; §8, NRS 679B.130, 685A.050 and 685A.210; §9, NRS 679B.130, 685A.160 and 685A.210; §12, NRS 679B.130, 685A.180 and 685A.210.

A REGULATION relating to insurance; revising provisions relating to nonadmitted insurance; and providing other matters properly relating thereto.

**Section 1.** Chapter 685A of NAC is hereby amended by adding thereto a new section to read as follows:

*The Commissioner will interpret the term “qualified risk manager,” as used in NRS 685A.032, to have the meaning ascribed to it in 15 U.S.C. § 8206(13).*

**Sec. 2.** NAC 685A.140 is hereby amended to read as follows:

685A.140 “Eligible insurer” means an insurer which does not hold a certificate of authority to transact the business of insurance in this State but has qualified to write ~~[surplus lines]~~ *nonadmitted* insurance in this State pursuant to chapter 685A of NRS.

**Sec. 3.** NAC 685A.145 is hereby amended to read as follows:

685A.145 “Ineligible insurer” means an insurer which does not hold a certificate of authority to transact the business of insurance in this State and has not qualified pursuant to chapter 685A of NRS to write ~~[surplus lines]~~ *nonadmitted* insurance in this State.

**Sec. 4.** NAC 685A.150 is hereby amended to read as follows:

685A.150 “Producing agent or broker” means ~~[any]~~ *an* agent or broker *of a subject of insurance for an insured for which Nevada is the home state* who is licensed by the Commissioner and acts on behalf of the insured in the placement of risks through a broker.

**Sec. 5.** NAC 685A.205 is hereby amended to read as follows:

685A.205 1. A broker ~~is~~:

~~—(a) Shall~~ *shall* make a reasonable effort to determine the financial solvency of any foreign or alien insurer which is not an admitted insurer *and is not an insurer listed on the Quarterly Listing of Alien Insurers maintained by the International Insurers Department of the National Association of Insurance Commissioners* before placing any surplus lines insurance *for an insured for which Nevada is the home state* with that insurer.

~~[(b) May not place insurance with any foreign or alien insurer for risks located in Nevada unless the insurer has filed a power of attorney appointing the Commissioner as attorney in fact for service of process in Nevada. The power of attorney must be executed on a form provided by the Division and filed with the Division.]~~

2. Upon the Commissioner’s request, whether made before or after the placement of any surplus lines insurance *for an insured for which Nevada is the home state* with a foreign or alien insurer which is not an admitted insurer, the broker shall submit to the Commissioner the latest financial statement or any supplemental information concerning the insurer.

~~[3.—The Commissioner will determine if an eligible insurer has the surplus required by subsection 2 of NRS 685A.070 by reviewing the financial statement of the insurer in accordance with the provisions of NAC 679B.033.~~

~~—4.— If the Commissioner, pursuant to subsection 3 of NRS 685A.070, removes an unauthorized insurer from his or her list of approved surplus lines insurers, the insurer is eligible~~

~~to reapply for approval when the insurer has successfully operated for 3 consecutive calendar years after the year of the termination of approval.]~~

**Sec. 6.** NAC 685A.215 is hereby amended to read as follows:

685A.215 1. ~~[Insurance]~~ *Except as otherwise provided in subsection 3, for an insured for which Nevada is the home state, insurance* which is not readily obtainable from admitted insurers after a diligent effort has been made to obtain the insurance may be obtained from eligible brokers ~~[Upon]~~ *or procured by the insured. For surplus lines insurance, upon* filing the ~~[affidavit]~~ *report* required by NRS 685A.050 , ~~[and the report of coverage,]~~ the broker shall affirm that the coverage is unavailable from admitted insurers and provide evidence that at least three insurers which are marketing that line or class of insurance in this State have declined to provide that coverage.

2. The refusal of admitted insurers to write a form of contract is not a basis for a contention that the insurance is not procurable from admitted insurers if the form of contract involves a combination of classes of insurance which cannot lawfully be combined in a single certificate of authority to one insurer. Separate forms of contracts, each incorporating a class or a lawful combination of classes, must be offered to and refused by admitted insurers in the manner set forth in subsection 1 ~~[of this section]~~ before the insurance may be placed with eligible insurers.

3. ~~[Artificial divisions of coverage in one class or in any form of coverage under one class into two or more proposed contracts for the purpose of rendering a portion of the coverage unacceptable to insurers admitted for that class, or for the purpose of obtaining a rate advantage upon the entire risk, is prohibited if the entire coverage sought in that class or form would be acceptable as a single contract to admitted insurers.]~~ *The provisions of subsection 1 do not apply to an exempt commercial purchaser.*

**Sec. 7.** NAC 685A.230 is hereby amended to read as follows:

685A.230 1. ~~[The]~~ *For an insured for which Nevada is the home state, the* broker may pass on an inspection fee to the insured and may collect the fee from him or her as a part of the premium if the fee is directly related to an independent inspection required by insurers for insurance. The broker shall maintain a copy of each inspection report and each invoice or statement related to the report in his or her files.

2. An inspection fee that is charged to the insured must be shown as a separate item on the broker's certificate, the cover note, or both.

**Sec. 8.** NAC 685A.240 is hereby amended to read as follows:

685A.240 1. The following provisions apply to the broker's ~~[affidavit and]~~ report ~~[of coverage:]~~ *required by NRS 685A.050:*

(a) ~~[Except as otherwise provided in subsection 3, the affidavit and report of coverage must bear the original signature of the broker.]~~

~~—(b)]~~ The ~~[affidavit and]~~ report constitutes the broker's statement of compliance with NRS 685A.040, 685A.070, 685A.080 and 685A.090.

~~[(e)]~~ (b) A separate ~~[affidavit and]~~ report ~~[of coverage]~~ must be filed with the broker's organization upon any renewal or extension of coverage of a contract of insurance ~~[.~~

~~(d) An]~~ *for an insured for which Nevada is the home state.*

(c) *For an insured for which Nevada is the home state, an* amended ~~[affidavit and]~~ report ~~[of coverage]~~ must be filed with the broker's organization for each cancellation and each endorsement which changes the named insured, the description or location of the subject of insurance, or the coverage, conditions, terms, premium or participating insurers.

~~[(e)]~~ (d) The broker shall exercise due care in accounting for the premium, including any inspection fee charged as part of the premium, and for the premium tax on each ~~[affidavit and]~~ report . ~~[of coverage.]~~ The premium tax must be computed upon the total premium or deposit premium, plus the fee allowed by NRS 685A.155, minus any return premium. The premium must include policy, membership, and other fees and assessments charged by the insurer as considerations for the insurance.

~~[(f)]~~ (e) If a type of coverage is on the list of open lines eligible for export which is approved by the Commissioner, statements of declinations from admitted insurers pursuant to subsection 1 of NAC 685A.215 are not required on the ~~[affidavit and]~~ report . ~~[of coverage.]~~

~~[(g)]~~ (f) The Commissioner may require a broker to file with the broker's organization a complete copy of the policy, certificate or cover note to substantiate information which he or she has provided in ~~[an affidavit or]~~ a report . ~~[of coverage.]~~

~~—2.—~~ The annual statement must:

~~—(a) Except as otherwise provided in subsection 3, bear the original signature of the broker;~~

~~—(b) Include the total direct premiums written on surplus lines coverage, calculated in the same manner as premiums are calculated pursuant to NRS 685A.180;~~

~~—(c) Include a report, in a form prescribed by the Commissioner, showing the allocation of premiums as required by NRS 680B.030; and~~

~~—(d) Include a calculation of the premium taxes due to each state or other jurisdiction.~~

~~—3.]~~ 2. If a broker's ~~[affidavit and]~~ report ~~[of coverage or an annual statement]~~ **required by NRS 685A.050** is filed electronically, ~~[the broker's affidavit and report of coverage or the annual statement]~~ **it** must be signed with an electronic signature of the broker pursuant to the provisions of chapter 719 of NRS.

**Sec. 9.** NAC 685A.250 is hereby amended to read as follows:

685A.250 1. In addition to the records required by NRS 685A.160, the broker shall maintain complete copies of ~~[affidavits and]~~ reports ~~[of coverage,]~~ *required by NRS 685A.050*, including any amendment to a report, which have been filed with the Commissioner or the broker's organization.

2. ~~[The broker shall maintain a complete log of all surplus lines insurance which he or she has placed during the calendar year, specifying the name of the insured, policy number, name of the insurer, line of coverage, premium, inspection fee, broker fee, premium tax and type of transaction.]~~

~~—3.]~~ The broker's files, accounts ~~[, logs]~~ and other records of surplus lines transactions ~~[:]~~ *for an insured for which Nevada is the home state:*

- (a) Must be maintained in the office of the broker; and
- (b) Must be open to examination by the Commissioner at any reasonable time.

~~[4.]~~ 3. The broker shall maintain the files, accounts ~~[, logs]~~ and other records of surplus lines transactions ~~[separately from any other records in his or her place of business.]~~  
~~—5.]~~ *for an insured for which Nevada is the home state.*

4. Premium taxes collected by the broker *for a policy for an insured for which Nevada is the home state* must be deposited in a fiduciary account. The broker shall establish a fiduciary account for the conduct of his or her business of insurance and maintain the account in a commercial bank or other financial institution depository which is insured by an agency of the Federal Government.

**Sec. 10.** NAC 685A.350 is hereby amended to read as follows:

685A.350 An organization shall:

1. Establish and maintain an office in this State to carry out the applicable provisions of this chapter and chapter 685A of NRS.
2. Maintain a plan of operation which ensures that the members of the organization and all associated ~~[surplus lines]~~ *nonadmitted* insurance transactions comply with the provisions of title 57 of NRS and all other applicable rules and regulations adopted by the Commissioner.
3. Require each broker who is a member of the organization to file with the organization:
  - (a) The broker's ~~[affidavit and]~~ report ~~[of coverage]~~ required by NRS 685A.050 and NAC 685A.240;
  - (b) A copy of the broker's cover note, declarations page or certificate; *and*
  - (c) ~~[A copy of the annual statement required by NRS 685A.170; and~~
  - ~~—(d)]~~ A copy of the quarterly tax report required by NRS 685A.175.
4. Maintain each document filed with the organization pursuant to subsection 3.
5. Distribute to the members of the organization the current list of ~~[eligible surplus lines insurers and]~~ open lines eligible for export.
6. ~~[Prepare and submit]~~ *Make available* to the Commissioner ~~[on or before May 1 of each year]~~ a report summarizing the premiums written in this State as of December 31 of the previous year through eligible surplus lines insurers. The report must identify for each premium written:
  - (a) The name of the insurer, including the identification number issued to the insurer by the National Association of Insurance Commissioners;
  - (b) The broker; and
  - (c) The line of coverage provided.

7. Cooperate with the Commissioner to resolve inquiries concerning the availability of coverage with admitted insurers and provide assistance in the placement of coverage with an eligible surplus lines insurer.

8. If requested by the Commissioner, perform a survey of insurance transacted in this State that reflects coverage placed in this State which involves major risks. The organization shall submit the results of the survey to the Commissioner with the report required by subsection 6.

9. Hold a meeting *of its board of directors* at least annually.

**Sec. 11.** NAC 685A.380 is hereby amended to read as follows:

685A.380 1. The board of directors shall:

(a) Promptly report alleged violations of this chapter and chapters 685A and 685B of NRS to the Commissioner;

(b) Report to the Commissioner:

(1) Delinquent, inaccurate, incomplete or improper ~~[affidavits,]~~ *reports required by NRS 685A.050 or* tax reports ~~[, annual statements or declarations]~~ filed by brokers with the organization pursuant to NAC 685A.350; and

(2) Insurance fraud or illegal insurance activity;

(c) Recommend to the Commissioner the class or classes of insurance to be included within the open lines eligible for export; and

(d) Maintain a current list of open lines eligible for export.

2. The board of directors may contract with accountants, experts, investigators and attorneys to assist, in cooperation with the Commissioner, with investigations of alleged violations of this chapter and chapters 685A and 685B of NRS.

**Sec. 12.** NAC 685A.420 is hereby amended to read as follows:



685A.420 For the purpose of determining the tax payable to the Commissioner pursuant to NRS 685A.180 ~~[ ]~~:

*1. For a multi-state risk:*

*(a) If the Commissioner has entered into a multi-state agreement pursuant to NRS 685A.185, a broker shall ~~[make the following]~~ use the allocation formulas and filing procedures established pursuant to the multi-state agreement to determine the* allocation to this State of premiums as to persons, property, subjects or risks in this State insured under policies and contracts covering persons, property, subjects or risks located or resident in more than one state . ~~[ ]~~

**PROPERTY INSURANCE**

<b>Code:</b>	<b>Type of Insurance:</b>	<b>Allocation of Premium:</b>
<del>01</del>	<del>Real property, including buildings and other permanent additions</del>	<del>Insured value of structures and other property located in this State</del>
<del>02</del>	<del>Personal property, including inland marine</del>	<del>Insured value of personal property permanently or principally located in this State</del>
<del>03</del>	<del>Business interruption (The</del>	<del>Insured value of time element coverage or</del>

Code:	Type of Insurance:	Allocation of Premium:
	interruption of business activity for certain number of days or for period based on time value)	time value coverage in this State
04	Farm owners, home owners and business owners	Insured value of structures and other property located in this State
05	Aircraft	Insured value of aircraft principally kept or used in this State
06	Motor vehicles	Insured value of motor vehicle that is principally garaged or used in this State
07	Kidnapping and ransom of employees	Number of insured employees who are principally employed in this State
08	Ocean marine	Insured value of all vessels registered in this State or other property used at a marina located in this State

**FIDELITY AND SURETY**

Code:	Type of Insurance:	Allocation of Premium:
11	<del>Fidelity bonds, forgery bonds and other indemnity bonds</del>	<del>Number of insured employees who work in this State</del>
12	<del>Banker's blanket bonds</del>	<del>Number of insured employees who work in this State</del>
13	<del>Performance bonds</del>	<del>Total value of bonds on portion of contract performed in this State</del>
14	<del>Other surety bonds</del>	<del>Total value of bonds on portion of contract performed in this State</del>

#### CREDIT INSURANCE

Code:	Type of Insurance:	Allocation of Premium:
21	Credit insurance	Value of debt insured in this State

#### RESIDUAL VALUE INSURANCE

Code:	Type of Insurance:	Allocation of Premium:
31	Residual value of property	Insured value of underlying property

### LIABILITY INSURANCE

Code:	Type of Insurance:	Allocation of Premium:
41	Manufacturers and contractors	Amount of payroll of manufacturer or contractor in this State
42	Premises operations (Operation of premises of business)	Amount of gross receipts, or in the absence of gross receipts, on square footage of premises located in this State
43	Owners and contractors protective	Cost of the contracts of owners and contractors in this State
44	Products	Number of units manufactured in this State
45	Completed operations	Receipts relating to completed operations in this State

46	<del>Municipalities, public authorities and other local governments</del>	<del>Number of municipalities, public authorities and other local governments in this State</del>
47	<del>Child care services provided by a business</del>	<del>Number of children cared for by a business in this State</del>
48	<del>Specific contractual transactions</del>	<del>Value of all transactions executed in this State</del>
49	<del>Recreational activities</del>	<del>Amount of receipts collected for admission to recreational activities in this State</del>
50	<del>Impairment of the environment</del>	<del>Number of buildings or operations in this State that represent a risk of impairment to the environment</del>
51	<del>Abatement of asbestos</del>	<del>Amount of payroll of all employees of a business who are engaged in the abatement of asbestos in this State</del>
52	<del>Benefit programs for employees and other members</del>	<del>Number of employees and other members in this State</del>

53	Special events	Number of persons who attend special events in this State
54	Professional liability	Number of persons insured as professionals in this State
55	Errors and omissions	Revenue generated from performance of business in this State
56A	Operation of an organization for profit	Amount of revenue generated from operation of organization in this State
56B	Operation of a nonprofit organization	Number of directors and officers based in this State
57	Operation of a hospital or nursing home	Number of beds for inpatient care, plus one additional bed for each 100 visits by outpatients at locations in this State
58	Liquor liability	Receipts from sale of alcoholic beverages in this State
59	Railroad protective	Miles of railroad track located in this State

60	Aircraft	Number of aircraft principally kept or used in this State
61	Motor vehicles	Number of motor vehicles principally garaged or used in this State
62	Umbrella coverage	Predominant coverage, unless underlying coverages are separate, pursuant to classifications of insurance set forth in this section
63	Excess liability coverage	If excess coverage is directly over primary coverage, pursuant to classifications of insurance set forth in this section, but if excess coverage is directly over umbrella coverage, pursuant to classification of umbrella coverage set forth in this section]

*(b) If the Commissioner has not entered into a multi-state agreement pursuant to NRS 685A.185, a broker shall file premium taxes through the Surplus Lines Information Portal, or a successor system, of the nonprofit organization of surplus lines brokers formed pursuant to NRS 685A.075 for all risks for which Nevada is the home state of the insured.*

*2. For a risk with exposure located solely in Nevada, a broker shall file premium taxes through the Surplus Lines Information Portal, or a successor system, of the nonprofit organization of surplus lines brokers formed pursuant to NRS 685A.075.*

**Sec. 13.** NAC 685A.190, 685A.195, 685A.200 and 685A.235 are hereby repealed.

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**TEXT OF REPEALED SECTIONS**

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**685A.190 Requirements for approval as eligible insurer. (NRS 679B.130, 685A.070, 685A.210)** An insurer, or a broker on behalf of an insurer, who is applying for approval as an eligible insurer for placement of surplus lines insurance coverage shall:

1. File with the Commissioner a written application on a form prescribed by the Commissioner;
2. Submit the appropriate fees; and
3. File with the Commissioner an affidavit that is signed under oath by the president, vice president, or other senior executive officer, and the secretary of the insurer and contains:
  - (a) The name of the insurer;
  - (b) The address of the home office, or the address of the principal office or representative in the United States if it is an alien insurer;
  - (c) The type of insurance to be transacted;
  - (d) The date of organization or incorporation;
  - (e) The form of organization;



- (f) The name of the state or country of its domicile; and
- (g) Any additional information which the Commissioner requires.

**685A.195 Application: Format. (NRS 679B.130, 685A.070, 685A.210)**

1. An application must be submitted in a three-ring binder.
2. If a new page is submitted to supplement or amend the application, the date of submission must be noted on the bottom of the page, and the page must be prepared so that it may be placed in the binder with the remainder of the application.
3. Each application must contain:
  - (a) A table of contents; and
  - (b) Dividers which separate the sections of the application and indicate the subject contained in each section.

**685A.200 Application: Withdrawal. (NRS 679B.130, 685A.070, 685A.210)**

1. An application shall be deemed withdrawn by an applicant if:
  - (a) The application is incomplete; and
  - (b) There is no activity by the applicant concerning the application for 60 days after the date of notification of deficiencies by the Commissioner.
2. The Division will provide notice in writing to the applicant that it considers the application withdrawn.

**685A.235 Insurance contract: Inclusion of signature and license number of procuring broker. (NRS 679B.130, 685A.210)**

1. Immediately following the statement required pursuant to NRS 685A.090, every insurance contract procured and delivered as a surplus lines coverage pursuant to chapter 685A

of NRS must bear the original signature and the license number of the broker who procured the insurance contract.

2. As used in this section, “license number” means the number of the license issued by the Commissioner to the broker.

**NRS 233B.066**  
**INFORMATIONAL STATEMENT**

Re: Proposed Regulation Concerning Nonadmitted Insurance  
LCB File No. R034-12, Division's Cause No. 12.0187

A workshop was held on August 1, 2012, and a hearing was held on August 10, 2012, at the office of the Department of Business and Industry, Division of Insurance ("Division"), located at 1818 East College Parkway, Suite 103, Carson City, Nevada 89706, with a simultaneous videoconference conducted at the Division's office located in the Bradley Building, 2501 E. Sahara Avenue, Suite 302, Las Vegas, Nevada 89104, in regard to adoption of the regulation concerning nonadmitted insurance.

Public comment was solicited by posting notices of the workshop and hearing in the following public locations: the Division's Web site, 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 the notices of the workshop and 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 an e-mail list of interested parties, comprised mainly of insurance companies, agencies, and other persons regulated by the Division. These persons were notified of the workshop and hearing and that a copy of the regulation could be obtained from or examined on the Division's Internet Web site.

The workshop was attended by three (3) interested members of the public in Carson City and three (3) in Las Vegas. The proposed regulation was presented orally by Gennady Stolyarov II, on behalf of the Division. Five (5) written comments were received prior to the August 1, 2012 workshop. Two (2) of these comments were received from Mr. Mark Sektnan of the Property Casualty Insurers of America (PCI), and three (3) of the comments were received from Mr. Brady R. Kelley of the National Association of Professional Surplus Lines Offices (NAPSLO).

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

<b>Name</b>	<b>Organization Represented</b>	<b>Business Address</b>	<b>Business Telephone Number</b>	<b>Electronic Mail Address</b>
Mark Sektnan	Property Casualty Insurers of America (PCI)	1415 L Street, Suite 670, Sacramento, CA 95814	(916)440-1115	<b>mark.sektnan@acicnet.org</b>
Brady R. Kelley	National Association of Professional Surplus Lines Offices (NAPSLO)	200 N.E. 54 <sup>th</sup> Street, Suite 200 Kansas City, MO 64118	(816)741-3910	<b>brady@napslo.org</b>
Kay Lockhart	Nevada Independent Insurance Agents (NIIA) and Nevada Surplus Lines Association (NSLA)	3710 Grant Drive, Suite A Reno, NV 89509	(775)882-1366	<b>kay@niaa.org</b>

The hearing was attended by one (1) interested member of the public in Carson City and one (1) in Las Vegas. The proposed regulation was presented orally by Gennady Stolyarov II, on behalf of the Division. No written comments were received after the workshop and prior to the hearing.

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

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

Based upon the written comments received and the oral comments and testimony provided, the proposed regulation, LCB File No. R034-12, was adopted with three (3)

amendments, as follows. (Amendments to the LCB version are in *bold italics*, and deletions are in ~~bracketed strikethrough~~ format.)

**Amendment 1.** A new section was added to Chapter 685A of NAC, as follows:

*As used in NRS 685A.032, “qualified risk manager” has the meaning ascribed to it in 15 USC Sec. 8206, Subsection 13.*

**Amendment 2.** Subsection 3 of Section 4 (Subsection 3 of NAC 685A.205) is amended by repealing that subsection in entirety.

~~[3. The Commissioner will determine if an eligible insurer for which the state of domicile is Nevada has the surplus required by subsection 2 of NRS 685A.070 by reviewing the financial statement of the insurer in accordance with the provisions of NAC 679B.033.]~~

**Amendment 3.** Subsection 6 of Section 9 (Subsection 6 of NAC 685A.350) is amended in the manner shown below.

6. ~~[Prepare and submit]~~ *Make available* to the Commissioner ~~[on or before May 1 of each year]~~ a report summarizing the premiums written in this State as of December 31 of the previous year through eligible surplus lines insurers. The report must identify for each premium written:

- (a) The name of the insurer, including the identification number issued to the insurer by the National Association of Insurance Commissioners;
- (b) The broker; and
- (c) The line of coverage provided.

The economic impact of the regulation is as follows:

- (a) On the business it is to regulate: **Beneficial effect:** Regulation R034-12 would bring Chapter 685A of the Nevada Administrative Code into compliance with federal and Nevada statutes, facilitating clarity and consistency within Nevada law and ease of understanding and interpretation by brokers, nonadmitted insurers, and insureds. Furthermore, the repeal of requirements that are obsolete in the electronic age will help to streamline the procedures of brokers and insureds and eliminate the need to comply with outdated requirements. No adverse effects are anticipated.
- (b) On the small businesses: **Beneficial effect:** Surplus-lines brokers that are small businesses will benefit from the elimination of obsolete compliance requirements that are no longer needed in the electronic age. No adverse effects are anticipated.
- (c) On the public: **Beneficial effect:** The public may benefit from increased availability and affordability of nonadmitted insurance. This regulation has the potential to achieve cost savings for brokers and nonadmitted insurers by repealing obsolete requirements, as well as requirements that are in conflict with the new federal law – the Nonadmitted and Reinsurance Reform Act of 2010. The

resulting cost savings may be passed on to consumers. No adverse effects are anticipated.

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. Indeed, this regulation is necessary to prevent conflicts with the federal Nonadmitted and Reinsurance Reform Act of 2010 and Nevada's Chapter 685A of NRS, as amended via Senate Bill 289 in 2011.

STATE OF NEVADA  
DEPARTMENT OF BUSINESS AND INDUSTRY  
DIVISION OF INSURANCE

IN THE MATTER OF THE

CAUSE NO. **12.0187**  
LCB FILE NO. **R034-12**

**REGULATION CONCERNING  
NONADMITTED INSURANCE**

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**SUMMARY OF PROCEEDINGS  
AND ORDER**

**SUMMARY OF PROCEEDINGS**

A public workshop, as required by Nevada Revised Statute (“NRS”) 233B.061, on the proposed regulation concerning nonadmitted insurance was held before Amy L. Parks, Esq. (“Hearing Officer”), on August 1, 2012, at the office of the Nevada Division of Insurance (“Division”) in Carson City, Nevada, and was videoconferenced to the Las Vegas office located in 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 was videoconferenced to the Bradley Building in Las Vegas, Nevada. The regulation is proposed under the authority of NRS 679B.130, NRS 685A.040, NRS 685A.050, NRS 685A.070, NRS 685A.160, NRS 685A.180, and NRS 685A.210.

The workshop was attended by three (3) members of the public in Carson City and three (3) members of the public in Las Vegas. The hearing was attended by one (1) member of the public in Carson City and one (1) member of the public in Las Vegas. At the workshop and hearing, Gennady Stolyarov II presented the regulation on behalf of the Division. In addition to testimony and comments by employees of the Division, one (1) member of the public testified at the workshop, and one (1) member of the public testified at the hearing. These testimonies will be summarized later in the present document.

Five (5) written comments were received prior to the August 1, 2012 workshop. Two (2) of these comments were received from Mr. Mark Sektnan of the Property Casualty Insurers of America (“PCI”), and three (3) of the comments were received from Mr. Brady R. Kelley of the National Association of Professional Surplus Lines Offices (“NAPSLO”). These comments, and the Division’s response to each, are summarized below.

Mr. Mark Sektnan of PCI recommended adding a definition of “qualified risk manager” to mirror the definition in the federal Nonadmitted and Reinsurance Reform Act (“NRRA”). Chapter 685A of NRS does not contain a definition of “qualified risk manager” – but the definition in the federal law is itself binding upon the states. To reinforce the binding nature of this federal definition, Mr. Stolyarov stated that the Division has no objection to including in NAC 685A a definition of “qualified risk manager” identical to the federal definition. At the workshop and hearing the Division therefore proposed, in its first amendment to Regulation R034-12, to include such a definition by adding a new section, phrased as follows:

*As used in NRS 685A.032, “qualified risk manager” has the meaning ascribed to it in 15 USC Sec. 8206, Subsection 13.*

See Exhibit A (Sec. 13, on page 16).

Subsection 3 of NAC 685A.205 in the current draft of the regulation limits the requirement that the Commissioner review an eligible insurer’s financial statement to eligible insurers whose state of domicile is Nevada. Both NAPSLO and Mr. Mark Sektnan of PCI correctly observed that insurers whose state of domicile is Nevada are necessarily admitted insurers. Therefore, the provisions of this chapter would not apply to such insurers. At the workshop and hearing the Division therefore proposed, in its second amendment to Regulation R034-12, to remove Subsection 3 of NAC 685A.205 altogether. See Exhibit A (Sec. 4, on page 2).

In the originally and currently proposed revisions to Subsection 2 of NAC 685A.205, it is stated that, with respect to placement of surplus lines insurance for an insured for which Nevada



is the home state, the Commissioner shall have the authority to request information from the broker regarding the latest financial statement or any supplemental information concerning the insurer. The Division received comments from Mr. Brady Kelley of NAPSLO, suggesting that this authority be limited to gathering information about alien insurers that are not listed on the Quarterly Listing of Alien Insurers. NAPSLO stated that supplemental information about other insurers “appears to be unnecessary given the streamlined eligibility requirements of the NRRA.” At the workshop Mr. Stolyarov explained that the Division opts to retain the currently proposed language of Subsection 2, because the ability to gather such supplemental information is optional for the Commissioner. In practice, if the nonadmitted market functions without significant disruptions, the Commissioner has the choice not to request such information at all. However, if a significant issue is brought to the Commissioner’s attention regarding any nonadmitted insurer, the Commissioner should have the prerogative to obtain the data necessary to thoroughly consider such an issue.

NAPSLO also recommended in its written comments that Section 11 of this regulation be amended to clarify that brokers shall remit taxes due on the gross premiums to the Commissioner at the Nevada tax rate. At the workshop Mr. Stolyarov explained that this requirement to use Nevada’s tax rate is already present in NRS 685A.180(1), and so the Division does not consider a restatement of this requirement in the regulation to be necessary.

At the workshop Mr. Stolyarov explained that Nevada’s recent withdrawal from the Nonadmitted Insurance Multistate Agreement (“NIMA”) does not impact any of the provisions of this regulation. He then outlined the effects of each section of the proposed regulation. Sections 1 and 2 render the definitions of “Eligible insurer” and “Ineligible insurer” applicable to nonadmitted insurance, which includes both surplus lines insurance and independently procured nonadmitted insurance. Mr. Stolyarov explained that Sections 3, 4, 6, 7, 8, and 11 conform the provisions of Chapter 685A of NAC to the prohibition by the federal NRRA of regulation of nonadmitted insurance transactions by a state that is not the home state of the insured. Mr.

Stolyarov also explained that Section 4 limits the broker's duty to make a reasonable effort to determine the financial solvency of any foreign or alien insurer to those insurers that are not listed on the Quarterly Listing of Alien Insurers maintained by the International Insurers Department ("IID") of the National Association of Insurance Commissioners ("NAIC"). Furthermore, eligible nonadmitted insurers are no longer required to file a power of attorney appointing the Commissioner as attorney in fact for service of process in Nevada, on a form provided by the Division. Mr. Stolyarov further explained the proposed regulation's removal of provisions related to the former list of approved surplus lines insurers, which is no longer in existence pursuant to the NRRRA and SB 289.

With respect to Sections 5, 7, 8, 9, and 10, Mr. Stolyarov discussed the removal of the obsolete term "affidavit" and its revision to "report required by NRS 685A.050." With respect to Section 5, Mr. Stolyarov also discussed the removal of the diligent-search requirement for exempt commercial purchasers and the removal of restrictions on artificial divisions of coverage, which have the potential to conflict with the exempt-commercial-purchaser exception. Mr. Stolyarov also explained the removals of references to an "annual statement" in Sections 7, 9, and 10 – since SB 289 repealed the requirement to file an annual statement. Additionally, the proposed regulation repeals several requirements that are obsolete in the electronic age. Mr. Stolyarov explained that Section 7 repeals the requirement that the report required by NRS 685A.050 must bear the original signature of the broker. Mr. Stolyarov explained that Section 8 repeals the requirement that the broker maintain a complete log of all surplus lines insurance placed during the calendar year. Section 8 also repeals the requirement that the broker maintain its files separately from any other records in his or her place of business. Mr. Stolyarov explained that Section 10 removes the separate reference to "declinations", since the reports required by NRS 685A.050 already constitute a demonstration of due diligence, including any necessary declinations obtained by the broker from the admitted market. Mr. Stolyarov further explained

that Section 12 repeals the obsolete sections 190, 195, 200, and 235 of Chapter 685A of NAC – which are either in conflict with the NRRRA, obsolete due to electronic filing, or both.

At the workshop, Mr. Stolyarov also discussed the effects of Section 11, which clarifies the treatment of the premium tax pertaining to a multi-state risk. Mr. Stolyarov explained that, because Nevada does not currently participate in a multi-state agreement, and does not intend to participate in such an agreement in the foreseeable future, the provisions of this regulation would require brokers to file through the NSLA all premium taxes for multi-state risks where Nevada is the home state of the insured. The same requirement applies to the filing of premium taxes for Nevada-only risks.

Ms. Kay Lockhart, representing the Nevada Independent Insurance Agents (“NIIA”) and the Nevada Surplus Lines Association (“NSLA”), spoke at the workshop. Pursuant to the recommendation by Ms. Lockhart, the Division proposed a third amendment to Section 9 of this regulation. The amendment modernizes the provisions of Subsection 6 of NAC 685A.350 by requiring the NSLA to “make available” – rather than to “prepare and submit” – to the Commissioner a report summarizing the premiums written in this State as of December 31 of the previous year through eligible surplus lines insurers. Since the report is available to the Division in real time and in electronic format, the NSLA only needs to make this information available to the Commissioner and his staff. Active steps to prepare and submit this information are no longer required. Furthermore, pursuant to the recommendation at the workshop by Ms. Elena Ahrens of the Division, the requirement to make available the information “on or before May 1 of each year” is proposed to be removed, since the information is available continuously and a due date does not need to be specified. See Exhibit A (Sec. 9, on page 7).

After the workshop and prior to the hearing, no additional written comments were received.

During the hearing, Mr. Stolyarov again presented this proposed regulation, LCB File No. R034-12, for adoption with the three proposed amendments described above. He also

summarized the proceedings of the workshop. At the hearing, Mr. James Wadhams, representing Fennemore Craig Jones Vargas, commented on the provisions of Section 5, Subsections 1 and 3. Mr. Wadhams was concerned that the proposed language of Subsection 3, which states that “The provisions of subsection 1 do not apply to an exempt commercial purchaser” – in combination with the proposed revision of Subsection 1 to be applicable to both surplus lines insurance (obtained via a broker) and direct procurement of nonadmitted insurance by an insured – would lead some exempt commercial purchasers who directly procure nonadmitted coverage to mistakenly infer that they are exempt from premium taxation, even though NRS 680A.040 explicitly describes the tax obligations of insureds who independently procure nonadmitted insurance. Mr. Stolyarov responded to Mr. Wadhams by affirming the existence of the obligation of insureds who independently procure nonadmitted insurance to pay premium tax pursuant to NRS 680A.040. Mr. Stolyarov clarified that this requirement stands apart from the provisions of Section 5 of the proposed regulation, and more generally from the exempt-commercial-purchaser exception. Mr. Stolyarov clarified that the exempt-commercial-purchaser exception is not an exemption from the payment of premium tax. Rather, it is an exemption from diligent-search requirements – from needing to obtain three declinations from the admitted market before coverage can be placed in the nonadmitted market. Mr. Stolyarov explained that nothing in Section 5 of the proposed regulation would in any manner eliminate the obligation by any insured or broker to pay premium tax to the State of Nevada. Mr. Stolyarov also stated that this clarification might be appropriately offered by the Division in subsequent guidance to brokers and insureds – such as a bulletin – once this regulation has been enacted into law. Mr. Wadhams clarified that he did not find the proposed language of Regulation R034-12 to be controversial and wanted to raise the issue in question in order to ensure that the record of the hearing reflects its consideration and acknowledgment by the Division.

No further public comments were received at the hearing. Mr. Stolyarov then again recommended that the proposed regulation, LCB File No. R034-12, be adopted as proposed with

the three above-described amendments pertaining to (i) the definition of a “qualified risk manager”, (ii) the repeal of Subsection 3 of NAC 685A.205, and (iii) the modification of Subsection 6 of NAC 685A.350.

**RECOMMENDED ORDER OF THE HEARING OFFICER**

Based upon the testimony received at the workshop and hearing, and the written comments received, it is recommended that the proposed regulation concerning nonadmitted insurance, LCB File No. R034-12, be adopted, as amended, as a permanent regulation of the Division. See Exhibit A, which displays the regulation as amended.

SO RECOMMENDED this 28th day of August, 2012.

\_\_\_\_\_  
/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 concerning nonadmitted insurance, LCB File No. R034-12, be adopted, as amended, as a permanent regulation of the Division. See Exhibit A, which displays the regulation as amended.

SO ORDERED this 28th day of August, 2012.

SCOTT J. KIPPER  
Commissioner of Insurance

By: \_\_\_\_\_  
/s/  
TODD RICH  
Deputy Commissioner  
with Delegation of Authority (See

Exhibit B)