

**PROPOSED REGULATION OF THE
COMMISSIONER OF INSURANCE**

LCB File No. R034-12

June 28, 2012

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

AUTHORITY: §§1-3, 6, 9, 10 and 12, NRS 679B.130 and 685A.210; §4, NRS 679B.130, 685A.070 and 685A.210; §5, NRS 679B.130, 685A.040 and 685A.210; §7, NRS 679B.130, 685A.050 and 685A.210; §8, NRS 679B.130, 685A.160 and 685A.210; §11, 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. 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. 2. 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. 3. 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. 4. 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 *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.

~~[(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. 5. 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. 6. 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. 7. 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. 8. 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. 9. 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 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. 10. 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 declinations]~~ 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. 11. 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

Code:	Type of Insurance:	Allocation of Premium:
01	Real property, including buildings and other permanent additions	Insured value of structures and other property located in this State
02	Personal property, including inland marine	Insured value of personal property permanently or principally located in this State
03	Business interruption (The interruption of business activity for certain number of days or for period based on time value)	Insured value of time element coverage or time value coverage in this State

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

~~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	Municipalities, public authorities and other local governments	Number of municipalities, public authorities and other local governments in this State

47	Child care services provided by a business	Number of children cared for by a business in this State
48	Specific contractual transactions	Value of all transactions executed in this State
49	Recreational activities	Amount of receipts collected for admission to recreational activities in this State
50	Impairment of the environment	Number of buildings or operations in this State that represent a risk of impairment to the environment
51	Abatement of asbestos	Amount of payroll of all employees of a business who are engaged in the abatement of asbestos in this State
52	Benefit programs for employees and other members	Number of employees and other members in this State
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. 12. NAC 685A.190, 685A.195, 685A.200 and 685A.235 are hereby repealed.

TEXT OF REPEALED SECTIONS

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.