

# PROPOSED REGULATION OF THE COMMISSIONER OF INSURANCE

## LCB File No. R094-14

June 13, 2014

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

AUTHORITY: §: NRS 679B.130 and 693A.110

A REGULATION relating to business transacted with producer-controlled property & casualty insurers for risk retention groups.

**Section 1.** Chapter 693A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 through 4, inclusive, of this regulation.

**Sec. 2.** *“Controlling producer” means a producer who controls an insurer.*

**Sec. 3.** *“Licensed insurer” or “insurer” means a person, firm, association, or corporation duly licensed to transact property and casualty insurance business in this state.*

**Sec. 4.** *“Producer” means a person licensed pursuant to NRS 683A.201 through 683A.370, inclusive.*

**Sec. 5.** NAC 693A.610 is hereby amended to read as follows:  
“Accredited state” means a state in which the agency which regulates insurance in that state has qualified as meeting the minimum financial regulatory standards established *and promulgated from time to time* by the National Association of Insurance Commissioners.

**Sec. 6.** NAC 693A.640 is hereby amended to read as follows:  
**1.** “Control” or “controlled” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a controlled insurer, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services or otherwise, unless the power is the result of an official position with or corporate office held by the controlled insurer ~~if the person possessing that power placed, in a calendar year, an aggregate amount of gross written premiums on business with the controlled insurer that is equal to or greater than 5 percent of the assets of the controlled insurer that were reported in the controlled insurer’s annual statement filed with the Commissioner as of March 1 preceding~~.  
**2.** *Control shall be presumed to exist if any person directly or indirectly owns, controls, holds with the power to vote or holds proxies representing 10 percent or more of the voting securities*

*of any other person. This presumption may be rebutted by a showing made in the manner provided by NRS 692C.330 that control does not exist in fact.*

*3. The Commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.*

**Sec. 7.** NAC 693A.660 is hereby amended to read as follows:

“Controlled insurer” means a licensed insurer which is domiciled in this State or an insurer which is domiciled in a state that is not an accredited state and which is controlled by a ~~{broker}~~ **producer**. The term does not include:

1. ~~{Risk retention groups covered by 15 U.S.C. § 3902, 42 U.S.C. § 9673 and chapter 695E of NRS;~~
- ~~2.~~ Residual market pools;
- ~~3.~~ 2. Joint underwriting authorities or associations; and
- ~~4.~~ 3. Captive insurers, *other than risk retention groups defined in 15 U.S.C. § 3902, 42 U.S.C. § 9673 and chapter 695E of NRS.*

**Sec. 8.** NAC 693A.670 is hereby amended to read as follows:

*1. The provisions of NAC 693A.600 to 693A.770, inclusive, and sections 2 through 4, inclusive, of this regulation shall apply to licensed insurers as defined in section 3 of this regulation, either domiciled in this state or domiciled in a state that is not an accredited state having in effect a substantially similar law, and which, in any calendar year, have an aggregate amount of gross written premium on business placed with a controlled insurer by a controlling producer equal to or greater than five percent of the admitted assets of the controlled insurer, as reported in the controlled insurer’s quarterly financial statement filed as of September 30 of the prior calendar year.*

*2. Notwithstanding the provisions of subsection 1, ~~{The}~~ the provisions of NAC 693A.600 to 693A.770, inclusive, and sections 2 through 4, inclusive, of this regulation do not apply if:*

~~1.~~ (a) A controlling ~~{broker}~~ **producer**:

~~{(a)}~~ (i) Places insurance only with a controlled insurer, or only with the controlled insurer and ~~{an affiliate of the controlled insurer}~~ *a member of the controlled insurer’s holding company system, or the controlled insurer’s parent, affiliate or subsidiary*, and receives no compensation based upon the amount of premiums written in connection with that insurance; and

~~{(b)}~~ (ii) Accepts insurance only from other nonaffiliated ~~{brokers}~~ **producers** and not directly from insureds; and

~~2.~~ (b) The controlled insurer, except for insurance business written through a residual market plan, accepts insurance business only from a controlling ~~{broker}~~ **producer**, *a producer controlled by the controlling insurer*, or a ~~{broker}~~ **producer** that is a subsidiary of the controlled insurer.

*3. To the extent the provisions of this Chapter conflict with the provisions of Chapter 692C of NRS or 692C of NAC, the provisions of Chapter 692C of NRS or 692C of NAC shall apply.*

**Sec. 9.** NAC 693A.680 is hereby amended to read as follows:

1. A controlled insurer shall not accept insurance business from a controlling ~~{broker}~~ **producer** and a controlling ~~{broker}~~ **producer** shall not place insurance with a controlled insurer unless there is a written contract, which has been approved by the board of directors of the

controlled insurer, between the controlling **{broker} producer** and the controlled insurer that specifies the responsibilities of each party.

2. Such a contract must contain a provision that allows a controlled insurer, upon written notice to a controlling **{broker} producer**, to terminate the contract for cause. The controlled insurer ***shall suspend the authority of the controlling producer to write business and*** shall not accept insurance business from the controlling **{broker} producer** during the pendency of any dispute regarding the cause for the termination of the contract.

3. A controlling **{broker} producer** shall not assign, in whole or in part, a contract entered into pursuant to subsection 1.

**Sec. 10.** NAC 693A.690 is hereby amended to read as follows:

1. A controlling **{broker} producer** shall provide an accounting to a controlled insurer that sets forth all material transactions executed by the controlling **{broker} producer** that affect the controlled insurer, including information necessary to identify and explain all commissions, charges and other fees already received by the controlling **{broker} producer** or still owing by the controlled insurer to the controlling **{broker} producer**.

2. A controlling **{broker} producer** shall remit all money due under the terms of a contract entered into with a controlled insurer to the controlled insurer at least once each month on a date agreed to by the parties. Premiums or installments thereof must be remitted to the controlled insurer no later than 90 days after the effective date of any policy of insurance placed with the controlled insurer pursuant to the contract.

3. Except as otherwise provided in this subsection, all money collected by a controlling **{broker} producer** for a controlled insurer must be held by the controlling **{broker} producer** in a fiduciary capacity, in one or more bank accounts established for the controlled insurer in banks that are members of the Federal Reserve System. A controlling **{broker} producer** which is not required to be licensed in this State shall hold money for the controlled insurer in compliance with the requirements of the controlling **{broker's} producer's** domiciliary jurisdiction.

4. A controlling **{broker} producer** shall maintain records of all insurance business written for a controlled insurer separate from all other records of the controlling **{broker} producer**.

**Sec. 11.** NAC 693A.700 is hereby amended to read as follows:

1. A controlled insurer shall provide to the controlling **{broker} producer** its underwriting standards, rules, procedures and manuals setting forth the rates to be charged and the conditions for the acceptance or rejection of risks. The controlling **{broker} producer** shall adhere to the standards, rules, procedures, rates and conditions of the controlled insurer. The standards, rules, procedures, rates and conditions of the controlled insurer must be the same as those the insurer applies to comparable business placed with the controlled insurer by a **{broker} producer** other than the controlling **{broker} producer**.

2. The contract between the controlling **{broker} producer** and the controlled insurer must specify the rates and terms of the controlling **{broker's} producer's** commissions, charges or other fees and the purposes for those commissions, charges and fees. The rates of the commissions, charges and other fees must not be greater than those applicable to comparable business placed with the controlled insurer by **{brokers} producers** other than the controlling **{broker} producer**.

3. As used in this section, “comparable business” includes insurance of the same lines, insurance of the same kinds, risks of the same kinds, limits on policies of insurance that are similar and business of a similar quality to the business between the controlling ~~{broker}~~ *producer* and the controlled insurer.

**Sec. 12.** NAC 693A.710 is hereby amended to read as follows:

1. If a contract between a controlling ~~{broker}~~ *producer* and a controlled insurer provides that the controlling ~~{broker}~~ *producer* is to be compensated for insurance business placed with the controlled insurer contingent upon the controlled insurer making a profit on that business, the compensation may not be determined or paid:

(a) If the insurance is liability insurance, for at least 5 years after the premiums on the insurance are earned.

(b) If the insurance is other than liability insurance, for at least 1 year after the premiums are earned on the insurance.

2. Any commissions owed to a controlling ~~{broker}~~ *producer* may not be paid until the adequacy of the controlled insurer’s reserves on remaining claims has been independently verified pursuant to subsection 1 of NAC 693A.750.

**Sec. 13.** NAC 693A.720 is hereby amended to read as follows:

1. A contract between a controlling ~~{broker}~~ *producer* and a controlled insurer must provide a limit on the controlling ~~{broker’s}~~ *producer’s* writings that is within the limit on the controlled insurer’s *surplus and* total writings. A different limit for each line or subline of insurance may be established in the contract.

2. A controlled insurer shall notify the controlling ~~{broker}~~ *producer* when the ~~{broker}~~ *producer* is approaching the limit established pursuant to subsection 1. The controlled insurer shall not accept insurance business from the controlling ~~{broker}~~ *producer* if the ~~{broker}~~ *producer* has reached the limit. The controlling ~~{broker}~~ *producer* shall not place insurance business with the controlled insurer if the ~~{broker}~~ *producer* has been notified by the controlled insurer that he or she has reached his or her limit.

**Sec. 14.** NAC 693A.730 is hereby amended to read as follows:

Except as otherwise provided in this section, a controlling ~~{broker}~~ *producer* may negotiate for but shall not require a controlled insurer to reinsure business that the controlling ~~{broker}~~ *producer* places with the controlled insurer. The controlling ~~{broker}~~ *producer* may require the controlled insurer to enter into contracts for facultative reinsurance pursuant to obligatory facultative agreements if the written contract between the controlling ~~{broker}~~ *producer* and the controlled insurer contains guidelines for underwriting. If the reinsurance has been ceded and assumed, the guidelines for underwriting must include a list of reinsurers with whom obligatory facultative agreements are in effect, the coverages and amounts or percentages that may be reinsured and a schedule of commissions.

**Sec. 15.** NAC 693A.750 is hereby amended to read as follows:

1. In addition to any other required certification of reserves for losses, a controlled insurer shall, on April 1 of each year, file with the Commissioner an opinion of an independent actuary or other independent specialist on reserves for losses who is acceptable to the Commissioner, a report of loss ratios for each line of insurance written which attests to the adequacy of reserves

established for losses incurred and outstanding as of December 31, preceding, including the losses incurred but not reported on insurance business placed with the controlled insurer by his or her controlling ~~{broker}~~ **producer**.

2. The controlled insurer shall report annually to the Commissioner the amount of commissions paid to the controlling ~~{broker}~~ **producer**, the percentage which the amount represents of the net premiums written, and comparable amounts and percentages paid to noncontrolling ~~{brokers}~~ **producers** for placements of the same kinds of insurance.

**Sec. 16.** NAC 693A.760 is hereby amended to read as follows:

1. A controlling ~~{broker}~~ **producer**, before the effective date of a policy of insurance, shall deliver written notice to the prospective insured that discloses the relationship between the controlling ~~{broker}~~ **producer** and the controlled insurer.

2. If a controlling ~~{broker}~~ **producer** places insurance business through a ~~{broker}~~ **producer** who is not a controlling ~~{broker}~~ **producer**, the controlling ~~{broker}~~ **producer** shall retain in his or her records a signed statement from the other ~~{broker}~~ **producer** indicating that the other ~~{broker}~~ **producer** is aware of the relationship between the controlling ~~{broker}~~ **producer** and the controlled insurer and will notify the insured of the relationship.

**Sec. 17.** NAC 693A.770 is hereby amended to read as follows:

1. If the Commissioner believes that a controlling ~~{broker}~~ **producer** has not complied with a provision of NAC 693A.600 to 693A.770, inclusive, *and sections 2 through 4, inclusive, of this regulation*, or any *regulation or* order issued pursuant to those sections, the Commissioner may:

(a) After giving notice and an opportunity to be heard pursuant to NRS 679B.310 to 679B.370, inclusive, order the controlling ~~{broker}~~ **producer** to cease placing insurance business with a controlled insurer.

(b) Invoke the aid of the courts to enjoin an existing or threatened violation of a provision of NAC 693A.600 to 693A.770, inclusive, *and sections 2 through 4, inclusive, of this regulation*, or to enforce an order made pursuant to paragraph (a).

2. If an order for liquidation or rehabilitation of the controlled insurer has been entered pursuant to chapter 696B of NRS and the Commissioner, acting as domiciliary receiver, believes that the controlling ~~{broker}~~ **producer** has not complied with a provision of NAC 693A.600 to 693A.770, inclusive, *and sections 2 through 4, inclusive, of this regulation*, or any order issued pursuant to those sections, and the controlled insurer suffered a loss or damage therefrom, the receiver may, on behalf of the controlled insurer and pursuant to NRS 696B.290, maintain a civil action to recover compensatory damages or obtain other appropriate relief against the controlling ~~{broker}~~ **producer**.

3. This section does not affect:

(a) The right of the Commissioner to impose any other penalties provided for in title 57 of NRS; or

(b) The rights of policyholders, claimants, creditors or other third parties to maintain any civil action against a controlling ~~{broker}~~ **producer**.

**Sec. 18.** NAC 693A.620 and 693A.650 are hereby repealed.