

**ADOPTED REGULATION OF THE
COMMISSIONER OF INSURANCE**

LCB File No. R072-16

Effective November 2, 2016

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

AUTHORITY: §1, NRS 616B.300 and 679B.130.

A REGULATION relating to insurance; revising provisions governing the circumstances under which the Commissioner of Insurance may accept from an employer a deposit of financial instruments in lieu of the demonstration of net worth otherwise required to qualify as a self-insured employer for industrial insurance and occupational disease; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Under existing law, a private employer that wishes to qualify and remain qualified as a self-insured employer for industrial insurance or occupational disease must satisfy the Commissioner of Insurance that the employer has sufficient financial resources to make certain the prompt payment of all compensation that may be due to employees under those programs. An employer is deemed to have sufficient financial resources if the employer maintains at all times during the first 3 years of operation as a self-insured employer a tangible net worth of at least \$2,500,000. The employer must provide evidence of that tangible net worth by submitting audited financial statements. (NRS 616B.300; NAC 616B.424)

Existing regulations incorporate by reference a statutory definition of “tangible net worth” that excludes as assets of an association of self-insured employers or its members: (1) goodwill; and (2) any other item listed as an asset that is deemed unacceptable by the Commissioner because it cannot be justified or does not directly support the ability to pay a claim. (NRS 616A.330; NAC 616B.433) This regulation removes the reference to this definition but incorporates the substance of the definition. This aspect of the regulation does not change existing law.

Existing regulations also provide that if an employer’s financial statements demonstrate a “strong financial position,” the Commissioner may, in lieu of a demonstration that the employer has a tangible net worth of at least \$2,500,000, accept a deposit of certain financial instruments in the amount of \$2,500,000. (NAC 616B.433) This regulation eliminates the “strong financial position” standard and allows the Commissioner to accept such a deposit if the employer’s financial statements demonstrate that the employer has sufficient financial resources to make certain the prompt payment of all compensation that may be due.

Section 1. NAC 616B.433 is hereby amended to read as follows:

616B.433 1. To *enable the Commissioner to* determine the tangible net worth ~~as defined in NRS 616A.330,~~ of a self-insured employer, ~~he or she~~ *the employer* shall submit to the Commissioner all financial statements and accompanying footnotes, including an independent auditor's opinion. Each statement must be audited.

2. The following factors must be used to review the audited financial statements:

(a) The auditor's opinion.

(b) The various financial ratios, including working capital and cash flow.

(c) Any footnotes related to:

(1) A contingency or commitment;

(2) A party;

(3) A bad debt; or

(4) The restructuring of an operation.

3. If any of the factors in subsection 2 are deemed material, the Commissioner may deny certification.

4. *In determining the tangible net worth of a self-insured employer, the Commissioner will disallow as assets of the employer:*

(a) Goodwill; and

(b) Any other item listed as an asset that is deemed unacceptable by the Commissioner because it cannot be justified or does not directly support the ability of the employer to pay a claim.

5. If, after ~~the adjustments are made pursuant to subsection 1, the employer's statement demonstrates a strong financial position and meets the tests in subsection 2,~~ *accounting for the*

factors in subsection 2, the Commissioner determines that the employer's financial statements do not demonstrate the tangible net worth otherwise required by subsection 1 of NAC 616B.424, but demonstrate that the employer has sufficient financial resources to make certain the prompt payment of all compensation that may be due under chapters 616A to 616D, inclusive, or chapter 617 of NRS, the Commissioner may accept as an additional deposit any instrument described in NAC 616B.436 in the amount of \$2,500,000 in lieu of the requirement set forth in subsection 1 of NAC 616B.424. The deposit described in this subsection must be separate from the deposit required pursuant to NRS 616B.300.

LEGISLATIVE REVIEW OF ADOPTED REGULATIONS
INFORMATIONAL STATEMENT AS REQUIRED BY NRS 233B.066

LCB FILE NO. R072-16

The following statement is submitted by the State of Nevada, Department of Business and Industry, Division of Insurance (“Division”) for adopted amendments to Nevada Administrative Code (“NAC”) Chapter 616B.

1. A clear and concise explanation of the need for the adopted regulation.

The proposed regulation amends NAC 616B.433 which was previously amended in 2007. When the regulation was amended in 2007, certain critical language was inadvertently omitted, leaving the adopted regulation poorly worded and unclear. The purpose of proposed regulation R072-16 is to amend NAC 616B.433 to clearly state the circumstances under which an employer may qualify for self-insurance in lieu of meeting the tangible net worth requirement of \$2.5 million.

2. A description of how public comment was solicited, a summary of public response, and an explanation of how other interested persons may obtain a copy of the summary.

- (a) A description of how public comment was solicited:

Public comment was solicited by e-mailing the proposed regulation, notice of workshop, notice of intent to act upon the regulation, and small business impact statement to persons on the Division’s mailing list requesting notification of proposed regulations. The documents were also made available on the website of the Division, <http://doi.nv.gov/>, mailed to the main library for each county in Nevada, and posted at the following locations:

Department of Business and Industry
Division of Insurance
1818 East College Parkway, Suite 103
Carson City, Nevada 89706

Department of Business and Industry
Division of Insurance
2501 East Sahara Avenue, Suite 302
Las Vegas, Nevada 89104

Legislative Building
401 South Carson Street
Carson City, Nevada 89701

Grant Sawyer Building
555 East Washington Avenue
Las Vegas, Nevada 89101

Blasdel Building
209 East Musser Street
Carson City, Nevada 89701

Capitol Building
101 North Carson Street
Carson City, Nevada 89701

Nevada Department of Employment,
 Training and Rehabilitation
 2800 E. Saint Louis Avenue
 Las Vegas, Nevada 89104

Public comment was also solicited at the workshop held on July 27, 2016, and at the hearing held on September 22, 2016. The public meetings took place at the offices of the Division, 1818 East College Parkway, Carson City, Nevada 89706, with simultaneous videoconferencing to the Bradley Building, 2501 East Sahara Avenue, Las Vegas, Nevada 89104.

(b) A summary of the public response: No written or oral comments were received.

(c) An explanation of how other interested persons may obtain a copy of the summary:

The summary in part 2(b) above reflects the comments and testimony that transpired with regard to regulation R072-16. A copy of said summary may be obtained by contacting Terri Chambers at (775) 687-0777 or tchambers@doi.nv.gov. This summary will also be made available by e-mail request to insinfo@doi.nv.gov.

3. The number of persons who:

- (a) Attended each hearing: 4
- (b) Testified at each hearing: 1
- (c) Submitted to the agency written statements: 0

4. A list of names and contact information, including telephone number, business address, business telephone number, electronic mail address, and name of entity or organization represented, for each person identified above in #3 (b) and (c), as provided to the agency:

Name	Entity/Organization Represented	Business Address	Telephone No./ Business Telephone No.	E-Mail Address
Terri Chambers	Nevada Division of Insurance	1818 E. College Parkway Ste. 103 Carson City, NV 89706	775-687-0777	tchambers@doi.nv.gov

5. A description of how comment was solicited from affected businesses, a summary of their responses, and an explanation of how other interested persons may obtain a copy of the summary.

Comments were solicited from affected businesses in the same manner as they were solicited from the public. Please see the description, summary and explanation provided above in response to question #2.

6. If after consideration of public comment the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

As no comments were received, the regulation was adopted as proposed.

7. (a) The estimated economic effect of the adopted regulation on the business which it is to regulate:

- (1) Both adverse and beneficial effects:

- a. There are no adverse effects.
- b. The proposed regulation clarifies a poorly worded regulation. The revised language would benefit anyone who would reference the regulation.

- (2) Both immediate and long-term effects: Not applicable.

- (b) The estimated economic effect of the adopted regulation on the public:

- (1) Both adverse and beneficial effects: None.

- (2) Both immediate and long-term effects: None.

8. The estimated cost to the agency for enforcement of the adopted regulation.

None.

9. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates, and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

Not applicable.

10. If the regulation includes provisions that are more stringent than a federal regulation which regulates the same activity, a summary of those provisions.

Not applicable.

11. If the regulation establishes a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

Not applicable.