

**PROPOSED REGULATION OF THE
COMMISSIONER OF INSURANCE**

LCB File No. R080-16

May 6, 2016

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

AUTHORITY: NRS 679B.130, 694C.170

A REGULATION relating to insurance; allowing exemptions and extensions of annual and audited financial statements, reducing reinsurance notification requirements, and other changes updating old information.

Section 1. Chapter 694C of NAC is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this regulation.

Sec. 2. *The terms and definitions identified in NAC 680A.0035 through 680A.017, inclusive, pertaining to audited financial reporting, and as used in NAC 694C.210 through NAC 694C.235, inclusive, apply to captive insurers.*

Sec. 3. *For the purposes of this chapter, in determining whether or not a captive insurer's surplus as regards policyholders is reasonable in relation to the captive insurer's outstanding liabilities and adequate to its financial needs, the following factors among others may be considered by the Commissioner:*

- 1. The size of the captive insurer as measured by its assets, capital and surplus, reserves, premium writings, and operating results.*
- 2. The extent to which the captive insurer's business is diversified among the several lines of insurance.*
- 3. The number and size of risks insured in each line of business.*

4. *The extent of the geographical dispersion of the captive insurer's insured risks.*
5. *The nature and extent of the captive insurer's reinsurance program, if any.*
6. *The quality, diversification and liquidity of the captive insurer's investment portfolio, if any.*
7. *The recent past and projected future trend in the size of the captive insurer's surplus as regards policyholders.*
8. *The surplus as regards policyholders maintained by other comparable captive insurers.*
9. *The adequacy of the captive insurer's reserves.*
10. *The quality and liquidity of investments in affiliates or subsidiaries made pursuant to NRS 692C.180 to 692C.250, inclusive. The Commissioner may treat any such investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders.*
11. *The quality of the captive insurer's earnings and the extent to which the reported earnings of the captive insurer include extraordinary items. As used in this subsection, the term "extraordinary item" means a nonrecurring occurrence or event.*
12. *Any other criteria the Commissioner may reasonably consider.*

Sec. 4. NAC 694C.090 is hereby amended to read as follows:

The Commissioner hereby adopts the following publications by reference:

1. The Property/Casualty Insurance Annual *and Quarterly* Statement Blanks (ASB-PU) and the Annual *and Quarterly* Statement Instructions for the Property/Casualty ~~Manual~~ (ASI-PU), published by the National Association of Insurance Commissioners. A copy of these publications may be purchased from NAIC Insurance Products and Services Division, ~~{2301 McGee Street, Suite 800, Kansas City, Missouri 64108-2662}~~ *1100 Walnut Street, Suite 1500, Kansas City,*

Missouri 64106-2197, by telephone at (816) 783-8300, ~~by fax at (816) 460-7593~~ *or on the Internet at www.naic.org/account_manager.htm* or by electronic mail at prodserv@naic.org, at a cost of \$200 for *ASB-PU* and \$225 for *ASI-PU*.

2. The AICPA Professional Standards, ~~2007~~ *2015* edition, published by the American Institute of Certified Public Accountants. A copy of this publication may be obtained from the American Institute of Certified Public Accountants, Order Department, P.O. Box ~~2209~~ *25824*, ~~Jersey City, New Jersey 07303-2209~~ *Lehigh Valley, Pennsylvania 18002*, by telephone at (888) 777-7077, by fax at (800) 362-5066 or at the Internet address <https://www.cpa2biz.com/default.htm>, at a cost of ~~119~~ *179* for members of the AICPA or ~~148.75~~ *219* for nonmembers.

3. ~~Original Pronouncements As Amended, 2007-2008 edition, and Current Text, 2007-2008 edition~~ *FASB Accounting Standards Codification*, published by the Financial Accounting Standards Board. A copy ~~of each~~ of ~~these~~ *this* publication~~s~~ may be obtained at the Internet address <http://www.fasb.org> or by telephone at (800) 748-0659. The *publications are available in several formats at the* cost of:

(a) ~~The Original Pronouncements As Amended is \$140~~ *FASB Accounting Standards Codification – Professional View, a single user subscription is \$895. A discount is available for multiple users.*

(b) ~~The Current Text is \$125~~ *FASB Accounting Standards Codification – Basic View subscription is available free of charge.*

(c) ~~Both publications purchased as a set is \$240~~ *FASB Accounting Standards Codification – Bound Edition as of October 31, 2014 is \$215 plus shipping.*

4. The Domestic Per Diem Rates, published by the General Services Administration. A copy of this publication may be obtained, free of charge, from the General Services Administration at the Internet address <http://www.gsa.gov/perdiem>.

Sec. 5. NAC 694C.092 is hereby amended to read as follows:

The Commissioner will periodically review:

1. The Property/Casualty Insurance Annual *and Quarterly* Statement Blanks (ASB-PU) and the Annual *and Quarterly* Statement Instructions for the Property/Casualty ~~Manual~~ (ASI-PU), as adopted by reference in subsection 1 of NAC 694C.090;

2. The AICPA Professional Standards, as adopted by reference in subsection 2 of NAC 694C.090;

3. The ~~Original Pronouncements As Amended, and the Current Text~~ FASB Accounting Standards Codification, as adopted by reference in subsection 3 of NAC 694C.090; and

4. The Domestic Per Diem Rates, as adopted by reference in subsection 4 of NAC 694C.090,

and determine within 30 days after the review whether any change made to a publication listed in subsections 1 to 4, inclusive, is appropriate for application in this State. If the Commissioner does not disapprove a change to an adopted publication within 30 days after the review, the change is deemed to be approved by the Commissioner.

Sec. 6. NAC 694C.200 is hereby amended to read as follows:

1. A report of financial condition filed by an association captive insurer, an agency captive insurer or a rental captive insurer pursuant to NRS 694C.400 must be verified by the oath of two executive officers of the captive insurer.

2. A captive insurer, *excluding pure captive insurers and state-chartered risk retention groups as defined by Sect. 307 of SB 67*, shall file with the Commissioner a ~~an audited statement~~ *report* of its financial condition. The ~~audited statement~~ *report* must be:

(a) Prepared in accordance with generally accepted accounting principles in the United States and stated in United States dollars, and must contain the footnotes and opinions of the independent certified public accountant who prepared the statement; and

(b) Accompanied by a statement, prepared by the independent certified public accountant who prepared the audited statement, certifying that all financial requirements established by law and the articles of incorporation, bylaws and the business plan of the captive insurer have been met.

3. In addition to any other statements and schedules which the captive insurer is required by law to file, the captive insurer shall submit to the Commissioner the following exhibits and schedules from the Property/Casualty Insurance Annual *and Quarterly* Statements Blanks, published by the National Association of Insurance Commissioners, which is adopted by reference in NAC 694C.090:

(a) Exhibit 1 - Analysis of Nonadmitted Assets and Related Items;

(b) Schedule A - Real Estate;

(c) Schedule B - Mortgage Loans;

(d) Schedule BA - Other Long-Term Invested Assets;

(e) Schedule D - Bonds and Stocks;

(f) Schedule DA - Short-Term Investments; and

(g) Schedule P - Parts 1 through 4 - Analysis of Losses and Loss Expenses.

↳ The exhibits and schedules must be prepared in accordance with the Annual *and Quarterly* Statement Instructions for Property/Casualty ~~Manual~~, published by the National Association of Insurance Commissioners, which is adopted by reference in NAC 694C.090.

4. A report of financial condition filed by a pure captive insurer pursuant to NRS 694C.400 must be verified by the oath of two executive officers of the pure captive insurer. The report must be on the form prescribed by the Commissioner known as “Captive Annual Statement: Pure.”

5. A state-chartered risk retention group as defined by Sect. 307 of SB 67 shall annually and quarterly submit to the Commissioner a report of its financial condition pursuant to NAC 680A.160.

(a) A state-chartered risk retention group as defined by Sect. 307 of SB 67 shall include a reconciliation between accounting principles identified in subsection 2(a) and accounting principles identified in NRS 680A.270, unless the report of its financial condition is prepared in accordance with NRS 680A.270(1)(b)(2).

(b) A state-chartered risk retention group as defined by Sect. 307 of SB 67 shall include annually a statement of actuarial opinion pursuant to NAC 681B.250 through NAC 681B.290, inclusive.

6. Subject to the provisions of this subsection, NRS 694C.400, and upon good cause shown by the captive insurer, the Commissioner may grant a reasonable extension of the filing date. A request for an extension must be submitted in writing not less than 10 days before the date on which the report of the financial condition is to be filed and must contain sufficient detail to permit the Commissioner to make an informed decision with respect to the requested extension.

Sec. 7. NAC 694C.210 is hereby amended to read as follows:

1. A captive insurer, *excluding state-chartered risk retention groups as defined by Sect. 307 of SB 67*, shall have an annual audit by an independent certified public accountant who is authorized by the Commissioner to conduct the audit. The captive insurer shall file the audited financial report with the Commissioner on or before June 30 for the year ending on the immediately preceding December 31.

2. *A state-chartered risk retention group as defined by Sect. 307 of SB 67 shall file an annual audit pursuant to NAC 680A.172 through NAC 680A.211, inclusive. A state-chartered risk retention group as defined by Sect. 307 of SB 67 shall file the audited financial report with the Commissioner on or before June 1 for the year ending on the immediately preceding December 31.*

3. The Commissioner will deem the annual audit conducted pursuant to this section to be a part of the annual report of financial condition of the captive insurer which is filed pursuant to NRS 694C.400.

~~4.~~ 4. The annual audit required by this section must include:

(a) A statement, prepared by the independent certified public accountant who prepared the audited statement, certifying that all financial requirements established by law, the articles of incorporation, bylaws, and the business plan of the captive insurer have been met.

~~(a)~~ (b) The opinion of the independent certified public accountant who conducted the audit which states that the financial statements of the captive insurer were examined in accordance with generally accepted auditing standards, as determined by the American Institute of Certified

Public Accountants and included in the publication AICPA Professional Standards, which is adopted by reference in NAC 694C.090. The opinion must:

- (1) Cover all years presented in the audit;
- (2) Be addressed to the captive insurer on stationery of the accountant; and
- (3) Include the address of the accountant issuing the opinion, original manual signatures and the date on which the opinion was issued.

~~(b)~~ (c) A report of an evaluation of the internal controls of the captive insurer relating to:

- (1) The methods and procedures used in the securing of assets; and
- (2) The reliability of the financial records of the captive insurer, including, without limitation, the controls for the system of authorization and approval, and the separation of duties.

~~(e)~~ (d) A letter from the independent certified public accountant which includes:

- (1) A statement that the accountant is independent with respect to the captive insurer and that he or she conforms to the standards of his or her profession as set forth in the AICPA Professional Standards, published by the American Institute of Certified Public Accountants, and adopted by reference in NAC 694C.090, and the pronouncements of the Financial Accounting Standards Board;
- (2) A general description of the background and experience of the staff of the accountant engaged in the audit, including the experience of the staff in auditing captive insurers and other insurance companies;
- (3) A statement that the accountant understands that the audited annual report and his or her opinions thereon will be filed with the Commissioner pursuant to this section;

(4) A statement that the accountant will comply with NAC 694C.230 and consents and agrees to make his or her work papers available for review by the Commissioner or a designee thereof; and

(5) A statement that the accountant is properly licensed by the appropriate state licensing authority and is a member in good standing of the American Institute of Certified Public Accountants.

~~(d)~~ (e) Financial statements, including:

(1) A balance sheet;

(2) A statement of gain or loss from operations;

(3) A statement of changes in financial position;

(4) A statement of changes in paid-up capital, gross paid-in contributed surplus and unassigned money or assets; and

(5) Notes to financial statements required by generally accepted accounting principles, *or as required by any other comprehensive basis of accounting in use by the captive insurer and approved by the Commissioner, and shall include ~~including~~:*

(I) A reconciliation of differences, if any, between the audited financial report and the report filed with the Commissioner pursuant to NRS 694C.400, *with a written description of the nature of these differences ~~if the captive insurer is reporting on a statutory accounting basis~~.*

(II) A summary of ownership and relationships of the company and all affiliated corporations or companies insured by the captive insurer; and

(III) A narrative explanation of all material transactions and balances with the captive insurer.

~~(e)~~ (f) An annual actuarial certification of loss reserves and loss expense reserves which includes an opinion of the adequacy of the loss reserves and loss expense reserves of the captive insurer, in a format acceptable to the Commissioner. The person who certifies the adequacy of the reserves must be approved by the Commissioner and must be a Fellow of the Casualty Actuarial Society, *a Fellow of the Society of Actuaries*, a member in good standing of the American Academy of Actuaries or a person who has otherwise demonstrated competence in the evaluation of loss reserves to the Commissioner. The annual actuarial certification must be in such form as the Commissioner determines appropriate.

5. Subject to the provisions of this subsection, NRS 694C.400, upon good cause shown by the captive insurer, the Commissioner may grant a reasonable extension of the filing date. A request for an extension must be submitted in writing not less than 10 days before the date on which the annual audit is to be filed and must contain sufficient detail to permit the Commissioner to make an informed decision with respect to the requested extension.

6. If an extension is granted pursuant to subsection 5 for filing the annual audit, the same extension of the filing date of the Management's Report on Internal Control Over Financial Reporting is also granted.

7. Subject to the provisions of this subsection, NRS 694C.400, upon good cause shown by the captive insurer, the Commissioner may grant exemption to this section if he or she determines, upon review of an application for exemption to file the annual audit, that having to file the annual audit would constitute a financial or organizational hardship upon the captive insurer or that the captive insurer has shown other good cause why it should not have to file the report. A request for an exemption must be submitted in writing not less than 30 days before

the date on which the annual audit is to be filed and must contain sufficient detail to permit the Commissioner to make an informed decision with respect to the requested exemption.

Sec. 8. NAC 694C.240 is hereby amended to read as follows:

1. If the Commissioner determines that the financial condition of a captive insurer warrants additional security, the Commissioner may require the captive insurer to:

(a) Deposit with the State Treasurer:

(1) Cash; or

(2) Securities which have been approved by the Commissioner; or

(b) Furnish the Commissioner a clean irrevocable letter of credit issued by a bank chartered by the State of Nevada, or a bank that is a member of the United States Federal Reserve System, on a form approved by the Commissioner.

2. A captive insurer may:

(a) Receive interest or dividends from the security deposit; or

(b) With the approval of the Commissioner, exchange the deposit for other deposits of equal value.

3. If the captive insurer discontinues business, the Commissioner will return the deposit to the captive insurer only after being satisfied that all obligations of the captive insurer have been discharged.

Sec. 9. NAC 694C.245 is hereby amended to read as follows:

1. A material service provider contract between a captive insurer and a service provider:

(a) Must be for a period of not more than 5 years;

(b) Requires the approval of the majority of the captive insurer's directors or subscribers' advisory committee members for its initial term and for all renewals; and

(c) Must be filed with the Division within 30 days after the effective date of the contract.

2. As used in this section:

(a) "Material service provider contract" means any contract between a captive insurer and a service provider under the terms of which the amount to be paid to the service provider by the captive insurer is greater than \$15,000 during any one 12-month period.

(b) "Service provider" means a captive manager, auditor, accountant, actuary, investment adviser, attorney, managing general underwriter, managing general agent, attorney-in-fact or any other party responsible for underwriting, the determination of rates, the collection of premiums, adjusting and settling claims or the preparation of financial statements.

3. If there are any changes to the material service provider contract, the captive insurer shall, within 60 days, file a copy of the updated service provider contract with the Commissioner.

Sec. 10. NAC 694C.250 is hereby amended to read as follows:

1. A captive insurer shall ~~give at least 90 days' advance notice to the insured and the Commissioner of the termination or modification of any reinsurance treaty or agreement held by the captive insurer~~ ***not, without the approval of the Commissioner:***

(a) Enter into any agreement to cede reinsurance;

(b) Enter into any agreement to assume reinsurance; or

(c) Terminate an existing reinsurance treaty, except for its natural expiration, as stated within the contract of reinsurance.

2. The effective date of any reinsurance agreement or modification of a reinsurance agreement entered into by a captive insurer may be prior to or subsequent to the date of the Commissioner's approval, except that such effective date may not be prior to the date on which the captive insurer was initially formed as an insurer domiciled in this State. However, the act by a captive insurer of entering into, or executing a reinsurance agreement may not occur prior to the Commissioner's approval.

3. The Commissioner may require a captive insurer to terminate any reinsurance transaction or prohibit a captive insurer from obtaining any or all reinsurance, if the Commissioner:

(a) Determines the terms of a particular reinsurance agreement or agreements pose any material risk or disadvantage to the general public; or

(b) Determines reinsurance to be inappropriate, given the captive insurer's financial condition or the type, nature, or volume of business written by the captive insurer.

4. Upon ~~notification of~~ termination or modification of a reinsurance treaty or agreement held by a captive insurer, the Commissioner may order the captive insurer to cease writing any new business until the Commissioner approves the modification of the existing reinsurance treaty or agreement, or any replacement reinsurance treaty or agreement obtained by the captive insurer, *or until the captive insurer ceases to utilize any or all reinsurance, if such cessation is determined to be appropriate by the Commissioner.*

~~2~~5. Reinsurance and excess insurance must be effected through a written agreement of reinsurance, or a written contract setting forth the terms, provisions and conditions governing the reinsurance.

~~3~~6. ~~The Commissioner may require that e~~ Complete copies of all reinsurance treaties, agreements and contracts entered into by a captive insurer *must* be~~;~~

- ~~—(a) Filed by the captive insurer with the Commissioner;~~
- ~~—(b) Approved by the Commissioner; or~~
- ~~—(c) F~~**f**iled by the captive insurer with, and approved by, the Commissioner.

Sec. 11. NAC 694C.260 is hereby amended to read as follows:

1. If any material change occurs in the operations of a captive insurer or in the organizational structure within the captive insurer, the manager, certified public accountant or actuary of the captive insurer shall notify the board of directors of the captive insurer of the material change within 60 days after the material change occurs.

2. *If there are any material changes in the operations of a captive insurer or in the organizational structure within the captive insurer, the captive insurer shall file a copy of the notice to the board of directors with the Commissioner within 60 days.*

Sec. 12. NAC 694C.270 is hereby amended to read as follows:

1. A captive insurer shall not, without the prior approval of the Commissioner, make any material change in the nature of its business from that stated in its plan of operation filed with the Commissioner.

2. Any change in any other information filed with the application must be filed with the Commissioner as soon as practicable, but does not require the prior approval of the Commissioner to make the change.

3. *As used in this section, a material change may include, but is not limited to, the following:*

(a) Entry into any agreement to cede reinsurance;

(b) Entry into any agreement to assume reinsurance;

- (c) Termination of an existing reinsurance treaty, except for its natural expiration, as stated within the contract of reinsurance;*
- (d) Writing of a new line of business;*
- (e) Exit from an existing line of business;*
- (f) Changes to limits of coverage written by the captive insurer; or*
- (g) For state-chartered risk retention groups as defined by Sect. 307 of SB 67, expansion into any new state.*

Sec. 13. NAC 694C.290 is hereby amended to read as follows:

1. A captive insurer shall adopt a conflict of interest policy for its attorneys-in-fact, trustees, managers, officers and directors. The policy must contain:

(a) A requirement that the attorney-in-fact, trustee, manager, officer or director must annually disclose that he or she has no outside commitments, personal or otherwise, that would divert him or her from the duty to further the interests of the captive insurer that he or she represents;

(b) A clear expression that the attorney-in-fact, trustee, manager, officer or director has a duty of care to protect the interests of the captive insurer above those of any person including, but not limited to, the attorney-in-fact, trustee, manager, officer or director or any service provider; and

(c) A requirement that each attorney-in-fact, trustee, manager, officer or director must provide a complete annual disclosure of each material relationship that he or she has with the captive insurer.

2. Each attorney-in-fact, trustee, manager, officer or director of a captive insurer shall file a disclosure of his or her conflicts of interest with the board of directors or subscribers' advisory committee of the captive insurer annually.

3. Nothing in this section shall be construed to prevent an attorney-in-fact, trustee, manager, officer or director of a captive insurer from being a director or officer in more than one insurance company or captive insurer.

4. *If there are any changes in the relationship between an attorney-in-fact, trustee, manager, officer or director of a captive insurer that would violate the duty of care that he or she has with the captive insurer, the attorney-in-fact, trustee, manager, officer or director shall file within 60 days an amended statement pertaining to conflicts of interest with the board of directors or subscribers' advisory committee of the captive insurer.*

5. As used in this section:

(a) "Material relationship" means any relationship in which an attorney-in-fact, trustee, manager, officer or director of a captive insurer, any member of such a person's immediate family or any business with which such a person is affiliated receives compensation or payment of any other items of value from the captive insurer or a consultant or service provider to the captive insurer of an amount greater than \$15,000 within any one 12-month period.

(b) "Service provider" means a captive manager, auditor, accountant, actuary, investment adviser, attorney, managing general underwriter, managing general agent, attorney-in-fact or any other party responsible for underwriting, the determination of rates, the collection of premiums, adjusting and settling claims or the preparation of financial statements.

Sec. 14. NAC 694C.295 is hereby amended to read as follows:

Reasonable and proper expenses incurred in an examination conducted pursuant to NRS 694C.410 may include, without limitation:

1. For a financial examiner or market conduct examiner, a daily salary as defined in the *Financial Condition Examiners Handbook*, which is adopted by reference in NAC 679B.033 *or an hourly rate based upon the rate established in the contract approved by the State Board of Examiners.*
2. For expert assistants, a daily salary *or hourly rate* based upon the rate established in the contract approved by the State Board of Examiners.
3. The maximum per diem rate for the location of the examination established by the Administrator of General Services in the Federal Trade Regulation System of the General Services Administration, 41 C.F.R. Chapters 300 to 304, inclusive, and set forth in Domestic Per Diem Rates, which is adopted by reference in NAC 694C.090.
4. Expenses for transportation, including, without limitation, the cost of airfare, rail fare, taxicab fare and automobile rental and the reimbursement of any personal automobile expenses necessary to reach the location of the examination. The calculation of expenses for transportation may include expenses for transportation incurred by virtue of the length of time necessary to complete the examination.
5. Upon approval of the Commissioner, miscellaneous expenses incurred by the examiner and assistants while performing an examination. Miscellaneous expenses may include, without limitation, expenses for telephone calls, facsimile transmissions and postal charges relating to the examination.

6. An administrative charge, expressed as a percentage of the daily salary *or hourly rate* of the examiner or assistant, as provided in subsections 1 and 2 and as provided in the Division budget approved by the Nevada Legislature.