

**REVISED PROPOSED REGULATION OF THE
COMMISSIONER OF INSURANCE**

LCB File No. R095-17

November 8, 2017

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

AUTHORITY: §§1 and 10, NRS 679B.130; §§2-5, NRS 616B.300 and 679B.130; §§6-8, NRS 616B.353, 616B.446 and 679B.130; and §9, NRS 616B.404, 616B.446 and 679B.130.

A REGULATION relating to industrial insurance; revising requirements concerning information and security deposits that must be submitted to the Commissioner of Insurance by self-insured employers and associations of self-insured employers; repealing the adoption by reference of certain publications and certain reporting requirements of self-insured employers and associations of self-insured employers; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law provides for the certification and regulation of self-insured employers for the purposes of industrial insurance. (NRS 616B.300-616B.336) Under existing law, to qualify and remain qualified as a self-insured employer an employer is required to deposit with the Commissioner of Insurance a bond or certain other security in lieu of a bond. Additionally, the Commissioner must require the self-insured employer to submit evidence of excess insurance to provide protection against catastrophic loss. (NRS 616B.300) **Sections 2 and 3** of this regulation revise the definition of the term “annual claims expenditures” and interpret the term “expected annual incurred cost of claims,” respectively, as used in existing law for the purpose of determining the security deposit required to be made by a self-insured employer. **Section 5** of this regulation revises certain requirements governing such security deposits. **Section 4** of this regulation sets forth requirements concerning evidence of excess insurance coverage that an employer must provide to the Commissioner to be eligible to establish a program of self-insurance.

Existing law provides for the formation, certification and regulation of associations of self-insured employers for the purposes of industrial insurance. (NRS 616B.350-616B.446) Under existing law, to qualify and remain qualified as an association of self-insured employers, a group of five or more employers is required to deposit with the Commissioner a bond or certain other security in lieu of a bond. (NRS 616B.350, 616B.353) **Sections 6 and 7** of this regulation revise the definitions of the terms “annual claims expenditures” and “expected annual incurred cost of claims,” respectively, for the purpose of determining the security deposit required to be

made by an association of self-insured employers. **Section 8** of this regulation revises certain requirements governing such security deposits.

An association of self-insured employers is required to file an audited statement of financial condition with the Commissioner, and the Commissioner is authorized to adopt a uniform financial reporting system to ensure the accuracy and completeness of those filings. (NRS 616B.404) The Commissioner has, in existing regulations, adopted by reference the *Property/Casualty Insurance Annual Statement Blanks* and the *Annual Statement Instructions for Property/Casualty Manual* of the National Association of Insurance Commissioners. (NAC 616B.606) **Section 9** of this regulation eliminates the requirement that an association of self-insured employers submit certain exhibits and schedules from those publications with the audited statements. **Section 10** of this regulation repeals the adoption by reference of those publications.

Section 10 also repeals certain obsolete provisions and certain reporting requirements of self-insured employers and associations of self-insured employers.

Section 1. NAC 616B.403 is hereby amended to read as follows:

616B.403 As used in NAC 616B.400 to 616B.496, inclusive, unless the context otherwise requires, the terms defined in chapters 616A to 617, inclusive, of NRS have the meanings ascribed to them therein. In addition, the words and terms defined in NAC 616B.406 to ~~616B.421,~~ **616B.418**, inclusive, have the meanings ascribed to them in those sections.

Sec. 2. NAC 616B.406 is hereby amended to read as follows:

616B.406 “Annual claims expenditures” means the total amount of money actually disbursed in a ~~{fiscal year}~~ **12-month period** by or on behalf of an employer as benefits against all past and current industrial insurance claims.

Sec. 3. NAC 616B.412 is hereby amended to read as follows:

616B.412 ~~{“Expected}~~ **As used in NRS 616B.300, the Commissioner will interpret “expected annual incurred cost of claims” {means} to mean the {result of a calculation in which the employer’s estimated payroll for the first 12 months of self-insurance is multiplied by the sum of his or her annual} average of the annual claims expenditures {for those claims initiated during a period of 3 years ending 1 year before the date on which his or her election to be a self-**

~~insured employer is made plus an estimate of the~~ *of the employer during the immediately preceding 36 months plus any estimated* additional costs, including , *without limitation*, future *anticipated* costs ~~[which are due or may become due, which will be paid in settlement of those claims, divided by the employer's total payroll for the same 3-year period. The term also includes an estimate of the employer's]~~ *and the* cost of ~~[administration of his or her]~~ *administering the* program of self-insurance.

Sec. 4. NAC 616B.424 is hereby amended to read as follows:

616B.424 In order to be eligible to establish a program of self-insurance, an employer must:

1. Except as otherwise provided in NAC 616B.427 and 616B.433, be a legally qualified business entity having a tangible net worth of at least \$2,500,000.
2. If other than a governmental employer, be licensed to do business in Nevada.
3. Make the deposit required by NAC 616B.436. If the business has been operated at a loss in any of the past 3 years, the Commissioner may increase the required deposit by a minimum amount of 20 percent of the deposit.
4. *Provide a complete copy of a policy of excess insurance to the Commissioner within 60 days after the issuance of the policy as evidence of excess insurance in accordance with NRS 616B.300. The policy must, without limitation:*
 - (a) Provide coverage for losses in excess of a self-insured retention of not less than \$100,000;*
 - (b) Contain a provision requiring at least 60 days' notice of cancellation; and*
 - (c) Contain a provision which states that the bankruptcy or insolvency of the self-insured employer will not relieve the insurer of its duties under the policy and that reimbursement will be made by the insurer as if the self-insured employer had not become bankrupt or insolvent.*

5. Present evidence that the business has administrative resources which will enable it to timely report, administer and settle all claims. The resources which are necessary include, ~~but are not limited to:~~ *without limitation:*

(a) The ability of the employer to know and correctly apply the worker's compensation laws and regulations of this State;

(b) A qualified, licensed and competent administrator of the program who is located in Nevada;

(c) An existing and feasible plan for the program of self-insurance which provides for an immediate and personal response to an employee's claim;

(d) A plan for the administration of claims which includes written instructions or examples of how to apply the worker's compensation law to ensure continuity of service to employees as well as ease of audit by company personnel and regulatory agencies;

(e) The ability to communicate the plan for the administration of the program, including, *without limitation*, such topics as benefits, filing procedures and the right of appeal, to the appropriate managers of the business and to all employees; and

(f) Standards of performance for the administration of the program of self-insurance.

Sec. 5. NAC 616B.436 is hereby amended to read as follows:

616B.436 1. Except as otherwise provided in subsection 3 of NRS 616B.300, a self-insured employer shall meet the deposit requirement of the self-insured program of workers' compensation by depositing with the Commissioner any of the following:

(a) Cash.

(b) A *savings certificate*, certificate of deposit ~~or~~ *investment certificate*. *Any such savings certificate, certificate of deposit or investment certificate must be* from a financial institution ~~in~~

~~this State~~ that is insured federally, made payable to the Commissioner of Insurance and the employer.

(c) ~~The following securities, if they have a date of maturity that is not more than 1 year:~~

~~— (1) Any obligation guaranteed by the full faith and credit of the United States, including:~~

~~— (I) United States treasury notes;~~

~~— (II) United States treasury bills; and~~

~~— (III) Internal money market funds related to United States treasury notes or treasury bills, if the account is maintained with a financial institution in this State and does not exceed \$10,000; or~~

~~— (2) Any obligation of an agency of the United States, including the Federal National Mortgage Association, Federal Housing Finance Board and Federal Home Loan Mortgage Corporation, that is guaranteed by the full faith and credit of the United States. If the obligation is an internal money market fund related to the Federal National Mortgage Association, Federal Housing Finance Board or Federal Home Loan Mortgage Corporation, the account must be maintained with a financial institution in this State and may not exceed \$10,000.~~

~~→ The securities deposited in compliance with this paragraph must have a fair market value of not less than 105 percent of the employer's expected annual incurred cost of claims, unless reduced by excess insurance in an amount approved by the Commissioner.~~

~~(d)~~ A surety bond, if it is ~~;~~

~~(1) Written~~ *written* by an insurer authorized and licensed to transact the business of surety insurance in this State . ~~;~~ and

~~(2) Countersigned by a producer of insurance appointed by the insurer.~~

~~(e)~~ *(d)* A letter of credit that meets the standards set forth in NAC 616B.439.

(e) Securities guaranteed by the full faith and credit of the United States.

(f) Any combination of ~~cash, certificates of deposit, securities guaranteed by the full faith and credit of the United States, surety bonds or letters of credit.~~ *paragraphs (a) to (e), inclusive.*

↳ Priority of payment in case of loss must be in the order stated in this ~~paragraph.~~ *subsection.*

2. Securities guaranteed by the full faith and credit of the United States that are deposited in accordance with this section will be held in trust and administered by the Commissioner, unless:

(a) The self-insured employer elects to use the services of a custodial financial institution ~~in this State~~ for trust investments;

(b) The custodial financial institution holds and administers the securities on behalf of the Commissioner under an agreement approved by the Commissioner; and

(c) The custodial financial institution provides monthly statements of the account to the Division of Insurance of the Department of Business and Industry. ~~The accuracy of each such statement must be certified monthly by a trust officer of the financial institution.~~

↳ A deposit made pursuant to this subsection may not be withdrawn except upon written order of the Commissioner. A deposit must be revised on or before June 30 each year or as the Commissioner determines to be appropriate and necessary.

3. If necessary, the Commissioner may select a competent specialist to make an evaluation:

(a) Before accepting for deposit any security of the United States or asset; or

(b) At any time after the security of the United States or asset is deposited with the Commissioner or held by a custodial financial institution in this State.

↳ The self-insured employer shall pay the cost of any such evaluation.

~~4. As used in this section, “producer of insurance” has the meaning ascribed to it in NRS 679A.117.~~

Sec. 6. NAC 616B.513 is hereby amended to read as follows:

616B.513 “Annual claims expenditures” means the total amount of money actually disbursed in a ~~fiscal year~~ *12-month period* by or on behalf of an association of self-insured public or private employers as benefits against all past and current claims for industrial insurance.

Sec. 7. NAC 616B.522 is hereby amended to read as follows:

616B.522 “Expected annual incurred cost of claims” means the ~~result of a calculation in which the estimated aggregate payroll for all of the members of an association for the first 12 months of self insurance is multiplied by the sum of their~~ *average of the* annual claims expenditures ~~for those claims initiated during a period of 3 years ending 1 year before the date on which the association’s election to be self insured is made plus an estimate of the~~ *of all of the members of an association during the immediately preceding 36 months plus any* *estimated* additional costs, including , *without limitation,* future *anticipated* costs which are due or may become due, which will be paid in settlement of those claims, divided by the aggregate payroll for all of the members of the association for the same ~~3-year~~ *36-month* period. The term also includes an estimate of the association’s cost of administering the claims arising from its program of self-insurance.

Sec. 8. NAC 616B.540 is hereby amended to read as follows:

616B.540 1. Except as otherwise provided in paragraph (e) of subsection 1 of NRS 616B.353, an association shall satisfy the requirement to make a security deposit by depositing with the Commissioner:

(a) Cash . ~~†~~

(b) A *savings certificate*, certificate of deposit ~~{;}~~ *or investment certificate*. *Any such savings certificate, certificate of deposit or investment certificate must be* from a financial institution ~~{in~~

~~this State}~~ that is insured federally, made payable to the Commissioner and the association . ~~{;}~~

(c) A surety bond, if it is ~~{~~

~~—(1) Written}~~ *written* by an insurer authorized and licensed to transact the business of surety insurance in this State . ~~{; and~~

~~—(2) Countersigned by a producer of insurance appointed by the insurer;}~~

(d) A letter of credit that meets the standards set forth in NAC 616B.543 . ~~{; or}~~

(e) *Securities guaranteed by the full faith and credit of the United States*.

(f) Any combination of ~~{cash, certificates of deposit, surety bonds or letters of credit.}~~

paragraphs (a) to (e), inclusive.

↪ Priority of payment in case of loss must be in the order stated in this ~~{section.}~~

~~—2. As used in this section, “producer of insurance” has the meaning ascribed to it in NRS 679A.117.}~~ *subsection.*

2. Securities guaranteed by the full faith and credit of the United States that are deposited in accordance with this section will be held in trust and administered by the Commissioner, unless:

(a) The association elects to use the services of a custodial financial institution for trust investments; and

(b) The custodial financial institution holds and administers the securities on behalf of the Commissioner under an agreement approved by the Commissioner.

↪ *A deposit made pursuant to this subsection may not be withdrawn by the association without the express written consent of the Commissioner.*

Sec. 9. NAC 616B.609 is hereby amended to read as follows:

616B.609 ~~111~~ The audited statement of the financial condition of an association required by NRS 616B.404 must be:

~~1(a)~~ 1. Prepared in accordance with generally accepted accounting principles of the United States, stated in United States dollars, and must contain the footnotes and opinions of the independent certified public accountant who prepared it.

~~1(b)~~ 2. Accompanied by a statement, prepared by the independent certified public accountant who prepared the audited statement, certifying that the combined tangible net worth of all members of the association satisfies the requirements of NRS 616B.353 and that all members meet the financial requirements for membership that are established by law, the bylaws of the association or the underwriting plan of the association.

~~12. In addition to the statements and schedules required by law, the association shall submit the following exhibits and schedules from the Annual Statement Blanks for Property/Casualty published by the National Association of Insurance Commissioners:~~

~~—(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;~~

~~—(g) Schedule DB—Derivative Instruments; and~~

~~—(h) Schedule P—Parts 1 through 4—Analysis of Losses and Loss Expenses.~~

~~→ The exhibits must be prepared in accordance with the Annual Statement Instructions for Property/Casualty published by the National Association of Insurance Commissioners.]~~

Sec. 10. NAC 616B.409, 616B.421, 616B.469, 616B.570 and 616B.606 are hereby repealed.

TEXT OF REPEALED SECTIONS

616B.409 “Expected annual claims expenditures” defined. (NRS 679B.130) “Expected annual claims expenditures” means an estimate of the total amount of money to be disbursed by or on behalf of an employer in the next fiscal year as benefits against all industrial insurance claims.

616B.421 “Regulation” defined. “Regulation” means NAC 616B.400 to 616B.496, inclusive.

616B.469 Submission of interim reports regarding occurrence of certain injuries and diseases. (NRS 679B.130) Each self-insured employer must submit to the Division of Insurance of the Department of Business and Industry the following interim reports as a condition for the continuance of his or her certificate of authority to self-insure:

1. Any injury or disease expected to result in the payment of at least \$100,000 for medical costs or indemnity, or which will trigger excess insurance coverage, must be reported to the

Commissioner within 30 days after the actual occurrence of the claim or the projection of the reserve. The report must contain:

- (a) The name of the claimant and the date and type of injury;
- (b) The amount paid to date for medical costs and indemnity;
- (c) The projected amount of reserves that have been established; and
- (d) The amount paid, or anticipated to be paid, by excess insurance.

2. Any injury involving five or more employees for the same accident must be reported to the Commissioner within 30 days after the actual occurrence. The report must contain:

- (a) The names of the claimants and the dates and types of injuries;
- (b) The amount paid to date for medical costs and indemnity;
- (c) The projected amounts of reserves that have been established; and
- (d) The amount anticipated to be paid by excess insurance.

616B.570 Submission of reports regarding certain injuries and diseases, fatalities and hospitalization. (NRS 616B.446, 679B.130)

1. An association shall submit to the Commissioner a report on any injury or disease expected to result in the payment of at least \$100,000 for medical costs or indemnity or to trigger the need for excess insurance coverage. The report must be submitted within 30 days after the actual occurrence of the claim or the projection of the reserve, and must contain:

- (a) The name of the claimant and the date and type of injury;
- (b) The amount paid to date for medical costs and indemnity;
- (c) The projected amount of reserves that have been established; and
- (d) The amount paid, or anticipated to be paid, by excess insurance.

2. An association shall submit to the Commissioner a report on any accident which is fatal to one or more employees or results in the hospitalization of five or more employees. The report must be submitted within 30 days after the actual occurrence, and must contain:

- (a) The names of the claimants and the dates and types of injuries;
- (b) The amount paid to date for medical costs and indemnity;
- (c) The projected amounts of reserves that have been established; and
- (d) The amount anticipated to be paid by excess insurance.

3. The Commissioner may withdraw the certification of an association that fails timely to submit the reports required by subsections 1 and 2.

616B.606 Adoption of certain publications by reference. (NRS 616B.446, 679B.130)

The Commissioner hereby adopts by reference the Property/Casualty Insurance Annual Statement Blanks and the Annual Statement Instructions for the Property/Casualty Manual of the National Association of Insurance Commissioners. A copy of these publications may be purchased from NAIC Publications Customer Service, 2301 McGee Street, Suite 800, Kansas City, Missouri 64108-2662, for \$200 and \$225, respectively.