

**PROPOSED REGULATION OF THE
COMMISSIONER OF INSURANCE**

LCB File No. R077-20

September 17, 2020

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

AUTHORITY: §§1-3, NRS 679B.130, 694C.170, 694C.400; §4, NRS 679B.130, 694C.170.

A REGULATION relating to captive insurers; revising provisions relating to the filing of a report of the financial condition of a captive insurer; revising provisions relating to the annual audits of captive insurers; revising provisions governing contracts between a captive insurer and certain service provider contracts; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law requires a captive insurer to submit to the Commissioner of Insurance on or before March 1 of each year a report of its financial condition. (NRS 694C.400) Existing regulations require the report filed by a captive insurer, other than a pure captive insurer or a state-chartered risk retention group, to contain the footnotes and opinions of the independent certified public accountant or other person who prepared the report. (NAC 694C.200) **Section 1** of this regulation removes this requirement and requires the report to be on the form prescribed by the Commissioner that is known as the “Captive Annual Statement.” **Section 1** also removes the requirement for a captive insurer, other than a pure captive insurer or a state-chartered risk retention group, to submit to the Commissioner certain exhibits and schedules from the *Property/Casualty Insurance Annual and Quarterly Statements Blanks*, published by the National Association of Insurance Commissioners. (NAC 694C.200)

Existing law requires a captive insurer, other than a state-chartered risk retention group, to submit an annual audit to the Commissioner which complies with the requirements set forth in regulations adopted by the Commissioner, including criteria for extensions and exemptions. (NRS 694C.400) **Section 2** of this regulation removes a requirement: (1) for the Commissioner to deem that the annual audit submitted by a captive insurer is part of the report of financial condition of the captive insurer; and (2) for a captive insurer to include in its annual audit a statement prepared by the independent certified public accountant who conducted the audit certifying that all financial requirements of the captive insurer have been met. (NAC 694C.210) **Section 3** of this regulation makes a conforming change to indicate the section of existing law that requires a captive insurer, other than a state-chartered risk retention group, to submit an annual audit to the Commissioner.

Existing regulations impose certain requirements on material service provider contracts between a captive insurer and a service provider. Existing regulations define “material service provider contract” to be 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. (NAC 694C.245) **Section 4** of this regulation provides that the amount to be paid under a material service provider contract is an amount greater than or equal to 5 percent of the captive insurer’s annual gross written premium or 2 percent of its surplus, whichever is greater, during any one 12-month period.

Section 1. NAC 694C.200 is hereby amended to read as follows:

694C.200 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 other than a pure captive insurer or a state-chartered risk retention group shall file with the Commissioner a report of its financial condition ~~;~~ *on the form prescribed by the Commissioner known as the “Captive Annual Statement.”* The 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 or other person who prepared the report;~~ and

(b) Accompanied by a statement, prepared by the independent certified public accountant or other person who prepared the report 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 a captive insurer other than a pure captive insurer or a state-chartered risk retention group is required by law to file, a captive insurer other than a pure captive insurer or a state-chartered risk retention group 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 Property/Casualty~~

~~Annual and Quarterly Statement Instructions, 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”~~ *the “Pure Captive Annual Statement .”* ~~†-Pure.”~~

~~—5.†~~ 4. A state-chartered risk retention group shall file with the Commissioner an annual and quarterly statement in accordance with the provisions of NAC 680A.160. In addition to the information required by NAC 680A.160, the statement must include, without limitation:

(a) A reconciliation between the accounting principles identified in paragraph (a) of subsection 2 and the principles identified in NRS 680A.270, unless the statement is prepared in accordance with subparagraph (2) of paragraph (b) of subsection 1 of NRS 680A.270; and

(b) If an annual statement, a copy of the “Statement of Actuarial Opinion,” “Actuarial Opinion Summary” and “Actuarial Report” filed pursuant to NAC 681B.250 to 681B.290, inclusive.

~~16.1~~ 5. Upon a showing of good cause by the captive insurer and subject to the provisions of NRS 694C.390 and 694C.400, the Commissioner may grant a reasonable extension of the filing date for the report of financial condition required by this section. Such a request for extension must be submitted to the Commissioner in writing not less than 10 days before the date on which the report of financial condition is due and must contain sufficient details to permit the Commissioner to make an informed decision with respect to the requested extension.

Sec. 2. NAC 694C.210 is hereby amended to read as follows:

694C.210 1. Except as otherwise provided in subsection 2 or ~~17.1~~ 6, a captive insurer shall have ~~an~~ *the* annual audit *required by NRS 694C.400 conducted* 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. Unless exempted pursuant to subsection ~~17.1~~ 6 or NAC 680A.172, 680A.199 or 680A.205, a state-chartered risk retention group shall have an annual audit pursuant to NAC 680A.172 to 680A.211, inclusive. Unless the Commissioner grants an extension pursuant to subsection ~~15.1~~ 4 or NAC 680A.177, a state-chartered risk retention group 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.~~ The annual audit required by *NRS 694C.400* and this section must include:

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

~~(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.

~~(e)~~ (b) 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.

~~(d)~~ (c) 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 subsection 1;

(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.

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

(I) A reconciliation of differences, if any, between the audited financial report and the report *of financial condition* filed with the Commissioner pursuant to NRS 694C.400, with a written description of the nature of these differences;

(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.

~~(f)~~ (e) 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)~~ 4. Upon a showing of good cause by the captive insurer and subject to the provisions of NRS 694C.390 and 694C.400, the Commissioner may grant a reasonable extension of the filing date for the annual audit required by this section. Such a request for extension must be submitted to the Commissioner in writing not less than 10 days before the date on which the audited financial report is due and must contain sufficient details to permit the Commissioner to make an informed decision with respect to the requested extension.

~~16.1~~ 5. If an extension for the filing of the audited financial report is granted pursuant to subsection ~~15.1~~ 4, the same extension will be deemed granted for the filing of the Management's Report on Internal Control Over Financial Reporting.

~~17.1~~ 6. Upon a showing of good cause by the captive insurer and subject to the provisions of NRS 694C.390 and 694C.400, the Commissioner may grant an exemption from compliance with any provisions of this section if he or she determines, upon review of an application for exemption that compliance with any or all provisions of this section would constitute a financial or organizational hardship on the captive insurer or that the captive insurer has shown other good cause why such an exemption should be granted. A request for an exemption must be submitted in writing not less than 30 days before the date on which the audited financial report is due and must contain sufficient details to permit the Commissioner to make an informed decision with respect to the requested exemption.

Sec. 3. NAC 694C.220 is hereby amended to read as follows:

694C.220 1. A captive insurer shall report to the Commissioner in writing the name and address of the independent certified public accountant whom the captive insurer has retained to conduct the annual audit required to be filed pursuant to *NRS 694C.400 and* NAC 694C.210 within 90 days after becoming subject to chapter 694C of NRS.

2. The captive insurer shall:

(a) Obtain a letter from the independent certified public accountant which states that the accountant is aware of the provisions of title 57 of NRS, and the regulations adopted pursuant thereto, that relate to accounting and financial matters, and which affirms that the accountant will express his or her opinion on the financial statements of the captive insurer in terms of their conformity to the accounting practices prescribed or otherwise permitted by NRS 694C.400, and

the regulations adopted pursuant thereto, specifying such exceptions as he or she deems appropriate; and

(b) File a copy of the letter with the Commissioner.

Sec. 4. NAC 694C.245 is hereby amended to read as follows:

694C.245 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;

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

(d) If subsequently amended, must be refiled with the Division within 60 days after the effective date of the amended 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~~ *or equal to 5 percent of the captive insurer's annual gross written premium or 2 percent of its surplus, whichever is greater*, 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.