

**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.