

**Amendment No. CA10**

Conference Committee Amendment to (BDR 57-485)  
Senate Bill No. 209 Second Reprint

**Proposed by:** Conference Committee

**Amends:** Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

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Date: 6/5/2017

S.B. No. 209—Revises provisions relating to insurance. (BDR 57-485)





SENATE BILL NO. 209—COMMITTEE ON  
COMMERCE, LABOR AND ENERGY

FEBRUARY 27, 2017

Referred to Committee on Commerce, Labor and Energy

SUMMARY—Revises provisions relating to insurance. (BDR 57-485)

FISCAL NOTE: Effect on Local Government: No.  
Effect on the State: No.

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

AN ACT relating to insurance; authorizing the Commissioner of Insurance to accept an independent audit in lieu of an examination of a nonprofit organization of surplus lines brokers; limiting when a surplus lines broker may charge a fee; authorizing the Commissioner to adopt regulations for the charging and collection of certain fees for the purchase of individual or group life or health insurance or an individual or group annuity; authorizing an employee or authorized representative of a vendor to receive certain compensation relating to offering portable electronics insurance; revising provisions relating to the termination of the membership of a member of an association of self-insured public or private employers; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Existing law requires the Commissioner of Insurance to make an examination of the affairs, transactions, accounts, records and assets of a nonprofit organization of surplus lines brokers. (NRS 685A.075) **Section 7** of this bill authorizes the Commissioner to accept the report of an independent audit in lieu of an examination if the Commissioner deems an independent audit to be in the best interest of the residents of this State.

Existing law authorizes a surplus lines broker to charge a fee for procuring surplus lines coverage. (NRS 685A.155) **Section 8** of this bill limits existing law by only authorizing a broker who places any insurance coverage with an authorized insurer to charge a fee for procuring surplus lines coverage.

Existing law authorizes the Commissioner to adopt regulations to allow for the charging and collection of a fee by an insurance broker, consultant or financial planner for consultation or related advice on the purchase of life or health insurance or an annuity. (NRS 686A.230) **Section 11** of this bill clarifies existing law by authorizing the Commissioner to adopt regulations to allow for the charging and collection of a fee by an insurance broker, consultant or financial planner for consultation or related advice on the purchase of individual or group life or health insurance or an individual or group annuity.

**Section 12** of this bill authorizes an employee or authorized representative of a vendor to receive from the vendor certain incidental compensation relating to offering coverage and

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19 enrolling a customer under a policy of portable electronics insurance. **Section 6** of this bill  
20 makes conforming changes.

21 Existing law authorizes the Commissioner, with the approval of the State Board of  
22 Examiners, to enter into a multi-state agreement to preserve the ability of this State to collect  
23 premium tax on multi-state risks. (NRS 685A.185) **Section 13** of this bill repeals this  
24 provision. **Sections 9 and 10** of this bill make conforming changes.

25 Existing law sets forth that an employer who is a member of an association of self-  
26 insured public or private employers may terminate his or her membership at any time,  
27 as long as the member submits to the association a notice of intent to withdraw from the  
28 association at least 120 days before the effective date of withdrawal. Existing law further  
29 requires this notice of intent to withdraw to include a statement indicating that the  
30 member has replaced his or her membership in the association with a certain other type  
31 of insurance. (NRS 616B.386) Section 12.5 of this bill amends existing law by requiring  
32 that the notice of intent to withdraw be deemed rescinded if the member does not  
33 provide to the association before the expiration of the 120-day period proof that the  
34 member has replaced his or her membership in the association with a certain other type  
35 of insurance.

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THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN  
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** (Deleted by amendment.)

2 **Sec. 2.** (Deleted by amendment.)

3 **Sec. 3.** (Deleted by amendment.)

4 **Sec. 4.** (Deleted by amendment.)

5 **Sec. 5.** (Deleted by amendment.)

6 **Sec. 6.** NRS 683A.325 is hereby amended to read as follows:

7 683A.325 1. Except as otherwise provided in NRS 683A.3687 ~~†~~ *or*  
8 *691D.220*, a producer of insurance who is appointed as an agent may pay a  
9 commission or compensation for or on account of the selling, soliciting, procuring  
10 or negotiating of insurance in this State only to a licensed and appointed producer  
11 of insurance of the insurer with whom insurance was placed or to a licensed  
12 producer acting as a broker.

13 2. A licensee shall not accept any commission or compensation to which the  
14 licensee is not entitled pursuant to the provisions of this title.

15 **Sec. 7.** NRS 685A.075 is hereby amended to read as follows:

16 685A.075 1. A nonprofit organization of surplus lines brokers may be  
17 formed to:

18 (a) Facilitate and encourage compliance by its members with the laws of this  
19 State and the rules and regulations of the Commissioner concerning surplus lines  
20 insurance;

21 (b) Provide a means for the review of all surplus lines coverage written in this  
22 State;

23 (c) Communicate with organizations of admitted insurers with respect to the  
24 proper use of the surplus lines market;

25 (d) Receive and disseminate to brokers information relative to surplus lines  
26 coverages; and

27 (e) Charge members a filing fee, approved by the Commissioner, for the  
28 review of surplus lines coverages.

29 2. Every such organization shall exercise its powers through a board of  
30 directors and shall file with the Commissioner:

1 (a) A copy of its constitution, articles of agreement or association or certificate  
2 of incorporation;

3 (b) A copy of its bylaws, rules and regulations governing its activities;

4 (c) A copy of its plan of operations established and approved by the  
5 Commissioner;

6 (d) A current list of its members;

7 (e) The name and address of a resident of this State upon whom notices or  
8 orders of the Commissioner or processes issued at the direction of the  
9 Commissioner may be served; and

10 (f) An agreement that the Commissioner may examine the organization in  
11 accordance with the provisions of this section.

12 3. The Commissioner shall make an examination of the affairs, transactions,  
13 accounts, records and assets of such an organization and any of its members as  
14 often as the Commissioner deems necessary for the protection of the interests of the  
15 people of this State, but no less frequently than once every 3 years. The officers,  
16 managers, agents and employees of such an organization may be examined at any  
17 time, under oath, and shall provide to the Commissioner all books, records,  
18 accounts, documents or agreements governing its method of operation. The  
19 Commissioner shall furnish two copies of the examination report to the  
20 organization examined and shall notify the organization that it may, within 20 days  
21 thereof, request a hearing on the report or on any facts or recommendations set  
22 forth therein. If the Commissioner finds such an organization or any member  
23 thereof to be in violation of this chapter, the Commissioner may, in addition to any  
24 administrative fine or penalty imposed pursuant to this Code, issue an order  
25 requiring the discontinuance of such violations. *In lieu of an examination  
26 conducted pursuant to this subsection, the Commissioner may accept the report  
27 of an independent audit of such an organization if the Commissioner deems that  
28 an independent audit is in the best interest of the residents of this State.*

29 4. The board of directors of such an organization must consist of not fewer  
30 than five persons. The members of the board must be appointed by the  
31 Commissioner and serve at the pleasure of the Commissioner.

32 5. A broker must be a member of such an organization as a condition of  
33 continued licensure under this chapter.

34 **Sec. 8.** NRS 685A.155 is hereby amended to read as follows:

35 685A.155 A broker *who places any insurance coverage with an authorized*  
36 *insurer pursuant to subsection 3 of NRS 685A.060* may charge a fee for procuring  
37 surplus lines coverage. Except as otherwise provided by agreement between the  
38 insurer and broker, the fee must not exceed 20 percent of the premium charged,  
39 after deduction of any other commissions, fees and charges payable to the broker.

40 **Sec. 9.** NRS 685A.175 is hereby amended to read as follows:

41 685A.175 1. A broker who has written coverage for which this State is the  
42 insured's home state shall pay, by the date described in subsection 2, the tax for  
43 each calendar quarter as directed by the Commissioner and shall file as directed by  
44 the Commissioner a copy of a quarterly report which includes an accounting of:

45 (a) The aggregate gross premiums for the quarter;

46 (b) The aggregate of the return premiums received; *and*

47 (c) The amount of tax remitted to the Commissioner. ~~† and~~

48 ~~—(d) The distribution of the exposures of insureds by state in accordance with~~  
49 ~~the requirements of any multi-state agreement entered into by the Commissioner~~  
50 ~~pursuant to NRS 685A.185.†~~

51 ↪ The report must be on a form approved by the Commissioner.

1           2. The tax filings and payments required by subsection 1 must be submitted  
2 by:

- 3           (a) February 15 for the calendar quarter ending the preceding December 31.  
4           (b) May 15 for the calendar quarter ending the preceding March 31.  
5           (c) August 15 for the calendar quarter ending the preceding June 30.  
6           (d) November 15 for the calendar quarter ending the preceding September 30.

7           **Sec. 10.** NRS 685A.180 is hereby amended to read as follows:

8           685A.180 1. ~~Except as otherwise provided in subsection 6, on~~ **On** or  
9 before the date described in subsection 2 of NRS 685A.175 for each quarter, each  
10 broker shall pay as directed by the Commissioner a tax on surplus lines coverages  
11 for which this State is the insured's home state written by the broker in  
12 unauthorized insurers during the preceding calendar quarter at the same rate of tax as  
13 imposed by law on the premiums of similar coverages written by authorized  
14 insurers, in addition to any fees imposed pursuant to NRS 685A.075.

15           2. ~~Except as otherwise provided in subsection 6, on~~ **On** or before the date  
16 described in subsection 2 of NRS 685A.175 for each quarter, each insured for  
17 which this State is the home state shall pay as directed by the Commissioner a tax  
18 on independently procured insurance written for the insured by an unauthorized  
19 insurer during the preceding calendar quarter at the same rate of tax as imposed by  
20 law on the premiums of similar coverages written by authorized insurers, in  
21 addition to any fees imposed pursuant to NRS 685A.075.

22           3. For the purposes of this section, the "premium" on surplus lines coverages  
23 includes:

- 24           (a) The gross amount charged by the insurer for the insurance, less any return  
25 premium;  
26           (b) Any fee allowed by NRS 685A.155;  
27           (c) Any policy fee;  
28           (d) Any membership fee;  
29           (e) Any inspection fee; and  
30           (f) Any other fees or assessments charged by the insurer as consideration for  
31 the insurance.

32           ➤ Premium does not include any additional amount charged for state or federal tax,  
33 or for executing or completing affidavits or reports of coverage.

34           4. All taxes collected as directed by the Commissioner pursuant to this section  
35 ~~and not intended for disbursement to other states by a clearinghouse established~~  
36 ~~through any multi-state agreement entered into by the Commissioner pursuant to~~  
37 ~~NRS 685A.185~~ must be promptly deposited with the State Treasurer ~~to~~ the  
38 credit of the State General Fund.

39           5. A broker who receives a credit for tax paid shall refund to each insured the  
40 amount of the credit attributable to the insured when the insurer pays a return  
41 premium or within 30 days, whichever is earlier.

42           ~~6.—If the Commissioner has entered into a multi-state agreement pursuant to~~  
43 ~~NRS 685A.185, the Commissioner may require that each broker who has written~~  
44 ~~surplus line coverages for multi-state risks for which this State is the insured's~~  
45 ~~home state and each insured for which this State is the home state who has obtained~~  
46 ~~independently procured insurance for multi-state risks pay a premium tax:~~

47           ~~—(a) For the portion of the premium allocated to Nevada, at the tax rate~~  
48 ~~applicable to nonadmitted insurance pursuant to this chapter;~~

49           ~~—(b) For the portion of the premium allocated to any other state that also~~  
50 ~~participates in the multi-state agreement, at the tax rate applicable to nonadmitted~~  
51 ~~insurance as established by that state; and~~

1 ~~—(c) For the portion of the premium allocated to any other state that does not~~  
2 ~~participate in the multi-state agreement, at the tax rate applicable to nonadmitted~~  
3 ~~insurance pursuant to this chapter. The tax for this portion of the premium must be~~  
4 ~~deposited with the State Treasurer, to the credit of the State General Fund, after it is~~  
5 ~~processed by the clearinghouse established through the multi-state agreement.]~~

6 **Sec. 11.** NRS 686A.230 is hereby amended to read as follows:

7 686A.230 1. A person shall not willfully collect any sum as a premium or  
8 charge for insurance which is not then provided or is not in due course to be  
9 provided, subject to acceptance of the risk by the insurer, by an insurance policy  
10 issued by an insurer as authorized by this Code.

11 2. Except as otherwise provided in subsection 3, a person shall not willfully  
12 collect as a premium or charge for insurance any sum in excess of the premium or  
13 charge applicable to the insurance and as specified in the policy, in accordance with  
14 the applicable classifications and rates as filed with and approved by the  
15 Commissioner. In cases where classifications, premiums or rates are not required  
16 by this Code to be so filed and approved, the premiums and charges must not be in  
17 excess of those specified in the policy and as fixed by the insurer. This subsection  
18 does not prohibit:

19 (a) The charging and collection by surplus lines brokers licensed under chapter  
20 685A of NRS of the amount permitted by chapter 685A of NRS and regulations  
21 adopted by the Commissioner.

22 (b) The charging and collection by a life insurer of amounts actually to be  
23 expended for the medical examination of any applicant for life insurance or for  
24 reinstatement of a life insurance policy.

25 3. The Commissioner may adopt regulations to allow the charging and  
26 collection of a fee by an insurance broker, consultant or financial planner:

27 (a) In lieu of any other charge or commission for solicitation, negotiation or  
28 procurement of a policy of insurance which covers commercial or business risks;

29 (b) For consultation or any related advice on the insuring of commercial or  
30 business risks which does not result in the procurement of a policy of insurance;  
31 and

32 (c) For consultation or related advice on the purchase of *individual or group*  
33 life or health insurance or an *individual or group* annuity, whether or not it results  
34 in the purchase of a policy of insurance or annuity. In such a case, the fee must be  
35 set forth in a written contract signed by the client before the consultation begins.

36 4. An agent or broker who provides consultation or related advice pursuant to  
37 this section shall do so pursuant to a written contract specifying the compensation  
38 the agent or broker will receive. The compensation may be in addition to or in lieu  
39 of a commission and is not a premium as defined in NRS 679A.115.

40 **Sec. 12.** NRS 691D.220 is hereby amended to read as follows:

41 691D.220 1. Notwithstanding any other provision of law, an employee or  
42 authorized representative of a vendor that holds a license as a producer of insurance  
43 in portable electronics insurance issued by the Commissioner pursuant to NRS  
44 683A.261 or 683A.271 may, without a license issued by the Commissioner, sell or  
45 offer coverage under a policy of portable electronics insurance at any location at  
46 which the vendor does business if:

47 (a) The employee or authorized representative of the vendor sells or offers  
48 coverage under a policy of portable electronics insurance only on behalf of, and  
49 under the supervision of, the vendor; and

50 (b) Before the employee or authorized representative of the vendor sells or  
51 offers coverage under a policy of portable electronics insurance, he or she

1 completes a program of training provided by the vendor pursuant to NRS  
2 691D.300.

3 2. An employee or authorized representative of a vendor who sells or offers  
4 coverage under a policy of portable electronics insurance pursuant to this section  
5 shall not advertise, represent or otherwise hold himself or herself out as a licensed  
6 producer of insurance unless the person is licensed as a producer of insurance.

7 **3. An employee or authorized representative of a vendor who offers to a**  
8 **customer coverage under a policy of portable electronics insurance pursuant to**  
9 **this section and enrolls the customer under the policy may receive from the**  
10 **vendor compensation that is:**

11 **(a) Incidental to the overall compensation received by the employee or**  
12 **authorized representative of the vendor; and**

13 **(b) Relating to the offering of the coverage and the enrolling of the customer**  
14 **under the policy of portable electronics insurance.**

15 **Sec. 12.5. NRS 616B.386 is hereby amended to read as follows:**

16 616B.386 1. If an employer wishes to become a member of an association  
17 of self-insured public or private employers, the employer must:

18 (a) Submit an application for membership to the board of trustees or third-party  
19 administrator of the association; and

20 (b) Enter into an indemnity agreement as required by NRS 616B.353.

21 2. The membership of the applicant becomes effective when each member of  
22 the association approves the application or on a later date specified by the  
23 association. The application for membership and the action taken on the application  
24 must be maintained as permanent records of the board of trustees.

25 3. Each member who is a member of an association during the 12 months  
26 immediately following the formation of the association must:

27 (a) Have a tangible net worth of at least \$500,000; or

28 (b) Have had a reported payroll for the previous 12 months which would have  
29 resulted in a manual premium of at least \$15,000, calculated in accordance with a  
30 manual prepared pursuant to subsection 4 of NRS 686B.1765.

31 4. An employer who seeks to become a member of the association after the 12  
32 months immediately following the formation of the association must meet the  
33 requirement set forth in paragraph (a) or (b) of subsection 3 unless the  
34 Commissioner adjusts the requirement for membership in the association after  
35 conducting an annual review of the actuarial solvency of the association pursuant to  
36 subsection 1 of NRS 616B.353.

37 5. An association of self-insured private employers may apply to the  
38 Commissioner for authority to determine the amount of tangible net worth and  
39 manual premium that an employer must have to become a member of the  
40 association. The Commissioner shall approve the application if the association:

41 (a) Has been certified to act as an association for at least the 3 consecutive  
42 years immediately preceding the date on which the association filed the application  
43 with the Commissioner;

44 (b) Has, as determined by the Commissioner, either:

45 (1) A combined tangible net worth of all members in the association of at  
46 least \$5,000,000; or

47 (2) Combined net cash flows from operating activities plus net cash flows  
48 from financing activities of all members in the association of five times the average  
49 of claims paid for each of the last 3 years or \$7,500,000, whichever is less;

50 (c) Has at least 15 members; and

51 (d) Has not been required to meet informally with the Commissioner pursuant  
52 to subsection 1 of NRS 616B.431 during the 18-month period immediately



1 preceding the date on which the association filed the application with the  
2 Commissioner or, if the association has been required to attend such a meeting  
3 during that period, has not had its certificate withdrawn before the date on which  
4 the association filed the application.

5 6. An association of self-insured private employers may apply to the  
6 Commissioner for authority to determine the documentation demonstrating  
7 solvency that an employer must provide to become a member of the association.  
8 The Commissioner shall approve the application if the association:

9 (a) Has been certified to act as an association for at least the 3 consecutive  
10 years immediately preceding the date on which the association filed the application  
11 with the Commissioner;

12 (b) Has, as determined by the Commissioner, either:

13 (1) A combined tangible net worth of all members in the association of at  
14 least \$5,000,000; or

15 (2) Combined net cash flows from operating activities plus net cash flows  
16 from financing activities of all members in the association of five times the average  
17 of claims paid for each of the last 3 years or \$7,500,000, whichever is less; and

18 (c) Has at least 15 members.

19 7. The Commissioner may withdraw approval of an application submitted  
20 pursuant to subsection 5 or 6 if the Commissioner determines the association has  
21 ceased to comply with any of the requirements set forth in subsection 5 or 6, as  
22 applicable.

23 8. A member of an association of self-insured public or private employers  
24 may terminate his or her membership at any time. To terminate his or her  
25 membership, a member must submit to the association's administrator a notice of  
26 intent to withdraw from the association at least 120 days before the effective date of  
27 withdrawal. The notice of intent to withdraw ~~{must include a statement indicating}~~  
28 shall be deemed rescinded if the member does not provide to the association  
29 before the expiration of the 120-day period proof that the member has:

30 (a) Been certified as a self-insured employer pursuant to NRS 616B.312;

31 (b) Become a member of another association of self-insured public or private  
32 employers; or

33 (c) Become insured by a private carrier.

34 9. The members of an association may cancel the membership of any member  
35 of the association in accordance with the bylaws of the association.

36 10. The association shall:

37 (a) Within 30 days after the addition of an employer to the membership of the  
38 association, notify the Commissioner of the addition and:

39 (1) If the association has not received authority from the Commissioner  
40 pursuant to subsection 5 or 6, as applicable, provide to the Commissioner all  
41 information and assurances for the new member that were required from each of the  
42 original members of the association upon its organization; or

43 (2) If the association has received authority from the Commissioner  
44 pursuant to subsection 5 or 6, as applicable, provide to the Commissioner evidence  
45 that is satisfactory to the Commissioner that the new member is a member or  
46 associate member of the bona fide trade association as required pursuant to  
47 paragraph (a) of subsection 2 of NRS 616B.350, a copy of the indemnity agreement  
48 that jointly and severally binds the new member, the other members of the  
49 association and the association that is required to be executed pursuant to paragraph  
50 (a) of subsection 1 of NRS 616B.353 and any other information the Commissioner  
51 may reasonably require to determine whether the amount of security deposited with  
52 the Commissioner pursuant to paragraph (d) or (e) of subsection 1 of NRS

1 616B.353 is sufficient, but such information must not exceed the information  
2 required to be provided to the Commissioner pursuant to subparagraph (1);

3 (b) Notify the Commissioner and the Administrator of the termination or  
4 cancellation of the membership of any member of the association within 10 days  
5 after the termination or cancellation; and

6 (c) At the expense of the member whose membership is terminated or  
7 cancelled, maintain coverage for that member for 60 days after notice is given  
8 pursuant to paragraph (b), unless the association first receives notice from the  
9 Administrator that the member has:

10 (1) Been certified as a self-insured employer pursuant to NRS 616B.312;

11 (2) Become a member of another association of self-insured public or  
12 private employers; or

13 (3) Become insured by a private carrier.

14 11. If a member of an association changes his or her name or form of  
15 organization, the member remains liable for any obligations incurred or any  
16 responsibilities imposed pursuant to chapters 616A to 617, inclusive, of NRS under  
17 the member's former name or form of organization.

18 12. An association is liable for the payment of any compensation required to  
19 be paid by a member of the association pursuant to chapters 616A to 616D,  
20 inclusive, or chapter 617 of NRS during the member's period of membership. The  
21 insolvency or bankruptcy of a member does not relieve the association of liability  
22 for the payment of the compensation.

23 **Sec. 13.** NRS 685A.185 is hereby repealed.

24 **Sec. 14.** This act becomes effective on July 1, 2017.

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### TEXT OF REPEALED SECTION

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#### **685A.185 Multi-state agreement to collect premium tax on multi-state risks.**

1. The Commissioner may, with the approval of the State Board of Examiners, on behalf of the State enter into a multi-state agreement to preserve the ability of this State to collect premium tax on multi-state risks.

2. If, within 18 months after the Commissioner enters into a multi-state agreement pursuant to subsection 1, the Commissioner conducts a hearing pursuant to the provisions of chapter 233B of NRS concerning participation in the multi-state agreement, the Commissioner shall submit to the State Board of Examiners and to the Director of the Legislative Counsel Bureau for transmittal to the Legislature a report concerning the findings of the Commissioner pursuant to the hearing.

3. The State Board of Examiners shall review and may accept the findings of the Commissioner. If the Commissioner finds and the State Board of Examiners accepts that because of the effect of the multi-state agreement on the gross receipt of premiums collected in this State:

(a) It is in the best interest of the State to continue to participate in the multi-state agreement, the State Board of Examiners may approve the State's continued participation in the multi-state agreement.

(b) It is not in the best interest of the State to continue to participate in the multi-state agreement, the State Board of Examiners may approve the State's withdrawal from the multi-state agreement.