

**ADOPTED REGULATION OF THE
COMMISSIONER OF INSURANCE**

LCB File No. R088-97

Effective March 19, 1998

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

AUTHORITY: §§2-32, 37, 40 and 41, NRS 679B.130 and 681B.290; §§33-36, NRS 679B.130; §38, NRS 233B.050, 679B.130 and 681B.290; § 39, NRS 679B.130 and 679B.190.

Section 1. Chapter 681B of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 41, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 41, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 16, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Authorized control level” means the level of risk-based capital calculated pursuant to the instructions relating to risk-based capital.*

Sec. 4. *“Company action level” means the level of risk-based capital calculated by multiplying 2 times the authorized control level of risk-based capital.*

Sec. 5. *“Corrective order” means an order issued by the commissioner that specifies the corrective actions which the commissioner has determined are necessary to correct a problem relating to the level of risk-based capital of an insurer.*

Sec. 6. *“Domestic insurer” means an insurance company domiciled in this state.*

Sec. 7. *“Foreign insurer” means an insurance company which is authorized to do business in this state pursuant to Title 57 of NRS, but which is not domiciled in this state.*

Sec. 8. *“Instructions relating to risk-based capital” means the instructions for reporting risk-based capital adopted by the National Association of Insurance Commissioners, as those instructions existed on January 1, 1997.*

Sec. 9. *“Level of risk-based capital” means the level of risk-based capital of an insurer that is calculated pursuant to the instructions relating to risk-based capital.*

Sec. 10. *“Life and health insurer” includes:*

1. A domestic or foreign insurer authorized pursuant to chapter 680A of NRS to offer health insurance or life insurance, or both; and

2. A licensed property and casualty insurer that writes only accident and health insurance.

Sec. 11. *“Mandatory control level” means the level of risk-based capital calculated by multiplying 0.7 times the authorized control level of risk-based capital.*

Sec. 12. *“Plan for risk-based capital” means a comprehensive financial plan, including revisions, if any, by the commissioner, that contains the elements specified in section 21 of this regulation.*

Sec. 13. *“Property and casualty insurer” means a domestic or foreign insurer authorized pursuant to chapter 680A of NRS to offer property or casualty insurance. The term does not include a monoline mortgage guaranty insurer, financial guaranty insurer, title insurer, or a property and casualty insurer that qualifies as a life and health insurer pursuant to section 10 of this regulation.*

Sec. 14. *“Regulatory action level” means the level of risk-based capital calculated by multiplying 1.5 times the authorized control level of risk-based capital.*

Sec. 15. *“Report on risk-based capital” means the report on risk-based capital required by section 17 of this regulation.*

Sec. 16. *“Total adjusted capital” means the sum of:*

1. An insurer’s statutory capital and surplus as determined in the annual financial statements required to be filed pursuant to NRS 680A.265; and

2. Such other items as the instructions relating to risk-based capital require to be included.

Sec. 17. *1. A report filed by a domestic or foreign insurer pursuant to NRS 681B.290 must be in such form and contain such information as is required by the instructions relating to risk-based capital.*

2. The insurer shall file its report on risk-based capital with:

(a) The commissioner;

(b) The National Association of Insurance Commissioners, in accordance with the instructions relating to risk-based capital; and

(c) The insurance commissioner or chief regulatory officer for insurance of each state in which the insurer is authorized to do business, if the insurance commissioner or chief regulatory officer for insurance of that state requests such a report from the insurer. Upon receiving such a request, the insurer shall file its report on risk-based capital pursuant to this paragraph not later than 15 days after the date on which it received the request or not later than the filing date set forth by the laws of the requesting state, whichever occurs later.

Sec. 18. *The report on risk-based capital of an insurer must be completed in accordance with the formula set forth in the instructions relating to risk-based capital.*

Sec. 19. *If an insurer files a report on risk-based capital that, in the judgment of the commissioner, is inaccurate, the commissioner will adjust the report on risk-based capital to correct the inaccuracy and notify the insurer of the adjustment.*

Sec. 20. *1. The following constitute events that require company action:*

(a) The filing by an insurer of a report on risk-based capital which indicates that:

(1) The total adjusted capital of the insurer is greater than or equal to its regulatory action level of risk-based capital but less than its company action level of risk-based capital; or

(2) For a life and health insurer, the total adjusted capital of the insurer has a negative trend and is greater than or equal to its company action level of risk-based capital but less than the product of 2.5 times its authorized control level of risk-based capital; or

(b) Notification by the commissioner to an insurer that the commissioner has adjusted a report on risk-based capital of the insurer in accordance with section 19 of this regulation and that the adjusted report indicates a situation described in paragraph (a), except that if the insurer challenges the adjustment pursuant to section 38 of this regulation, the event that requires company action is the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the challenge of the insurer.

2. As used in this section, “negative trend” means a negative trend over a period, as determined in accordance with the “Trend Test” calculation included in the instructions relating to risk-based capital.

Sec. 21. 1. *If an event that requires company action occurs, the insurer shall prepare and submit to the commissioner a plan for risk-based capital which:*

- (a) Identifies the conditions that contributed to the event which requires company action.*
- (b) Contains proposals for corrective actions that the insurer will take which are expected to result in the elimination of the event.*
- (c) Provides projections for financial results of the insurer, including projections of new and renewal business, operating income, net income, and capital and surplus, for the current year and at least the next 4 succeeding years, both in the absence of the proposed corrective actions and if the proposed corrective actions are carried out. The projections for both new and renewal business may include separate projections for each major line of business written by the insurer and identify separately each significant component of income, expenses and benefits.*
- (d) Identifies the key assumptions impacting the projections of the insurer and the sensitivity of those projections to the assumptions made by the insurer.*
- (e) Identifies the quality of, and problems associated with, the business of the insurer, including, but not limited to, its assets, its anticipated business growth and associated strain on its surplus, any extraordinary exposure to risk, its mix of business and its use of reinsurance, if any.*

2. *The plan for risk-based capital must be submitted not later than 45 days after the date on which the event that requires company action occurs.*

Sec. 22. 1. *Not later than 60 days after the date on which an insurer submits a plan for risk-based capital to the commissioner pursuant to section 21 of this regulation or a revised plan for risk-based capital pursuant to this section, the commissioner will notify the insurer as*

to whether the plan or revised plan for risk-based capital, as appropriate, may be carried out as proposed or whether the plan is unsatisfactory. If the commissioner determines that the plan or revised plan for risk-based capital is unsatisfactory, the notification will set forth the reasons for that determination and may include proposed revisions which would make the plan or revised plan satisfactory.

2. Upon receiving notification from the commissioner that its plan or revised plan for risk-based capital is unsatisfactory, the insurer shall prepare a new revised plan, which may incorporate by reference any revision proposed by the commissioner. The insurer shall submit the new revised plan to the commissioner not later than 45 days after the date on which the insurer received the notification, except that if, pursuant to section 38 of this regulation, the insurer challenges the determination by the commissioner that the plan is unsatisfactory, the insurer shall submit the new revised plan to the commissioner not later than 45 days after the date on which the insurer is notified that the commissioner has, after a hearing, rejected the challenge of the insurer.

3. Subject to the right of the insurer to a hearing pursuant to section 38 of this regulation, the commissioner will, if he deems it to be necessary, specify in the notification to an insurer that the plan or revised plan for risk-based capital is unsatisfactory and that the notification constitutes an event which requires regulatory action.

Sec. 23. *1. Each domestic insurer that files a plan or revised plan for risk-based capital with the commissioner pursuant to sections 21 and 22 of this regulation shall file a copy of the plan or revised plan, as appropriate, with the insurance commissioner or chief regulatory officer for insurance in each state in which the domestic insurer is authorized to do business if:*

(a) The insurance commissioner or chief regulatory officer for insurance of that state has notified the domestic insurer, in writing, of his request that the domestic insurer file a copy of its plan or revised plan with that insurance commissioner or chief regulatory officer for insurance; and

(b) That state has enacted a provision which provides that:

(1) Except as otherwise provided by the laws of that state, information contained in a report on risk-based capital or a plan or revised plan for risk-based capital:

(I) Is confidential and must not be made available to the general public; and

(II) Is not subject to a subpoena other than a subpoena issued by a court of competent jurisdiction, or by the insurance commissioner or chief regulatory officer for the sole purpose of enforcing an action taken by the insurance commissioner or chief regulatory officer against the insurer pursuant to the laws of that state relating to the regulation of insurance;

(2) The result or report of any examination or analysis of an insurer performed pursuant to the requirements of that state relating to the reporting of risk-based capital and any corrective order issued by the insurance commissioner or chief regulatory officer are confidential; and

(3) Any requirement of confidentiality does not apply to any information contained in a report on risk-based capital of an insurer if that information is otherwise included or required to be included in an annual statement of the insurer that is available to the general public.

2. The domestic insurer shall file a copy of its plan or revised plan for risk-based capital, as appropriate, pursuant to this section not later than:

(a) Fifteen days after it receives notice from the insurance commissioner or chief regulatory officer for insurance of the requesting state to file a copy of the plan or revised plan for risk-based capital; or

(b) The date on which the plan or revised plan for risk-based capital must be filed in this state pursuant to sections 21 and 22 of this regulation, whichever is later.

Sec. 24. *The following constitute events that require regulatory action:*

1. The filing by an insurer of a report on risk-based capital which indicates that the total adjusted capital of the insurer is equal to or greater than its authorized control level of risk-based capital but less than its regulatory action level of risk-based capital;

2. Notification by the commissioner to an insurer that the commissioner has adjusted a report on risk-based capital of the insurer in accordance with section 19 of this regulation and that the adjusted report indicates a situation described in subsection 1, except that if the insurer challenges the adjustment pursuant to section 38 of this regulation, the event that requires regulatory action is the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the challenge of the insurer;

3. Failure of an insurer to file a report on risk-based capital by the filing date, unless the insurer has provided an explanation satisfactory to the commissioner for its failure to file the report timely and has cured the failure within 10 days after the prescribed filing date;

4. Failure of an insurer to submit a required plan or revised plan for risk-based capital within the time prescribed in sections 21 and 22 of this regulation;

5. *Notification by the commissioner to an insurer that a plan or revised plan for risk-based capital submitted pursuant to section 21 or 22 of this regulation, as appropriate, is unsatisfactory in the judgment of the commissioner and that the notification constitutes an event that requires regulatory action, except that if the insurer, pursuant to section 38 of this regulation, challenges the determination of the commissioner that the plan or revised plan for risk-based capital is unsatisfactory, the event that requires regulatory action is the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the challenge of the insurer; or*

6. *Notification by the commissioner to an insurer that the commissioner has determined that the insurer has failed to adhere to its plan or revised plan for risk-based capital submitted pursuant to section 21 or 22 of this regulation, as appropriate, and that the failure has had a substantial adverse effect on the ability of the insurer to eliminate the event that requires company action in accordance with its plan or revised plan for risk-based capital, except that if the insurer challenges the determination pursuant to section 38 of this regulation, the event that requires regulatory action is the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the challenge of the insurer.*

Sec. 25. *If an event that requires regulatory action occurs, the insurer shall prepare and submit to the commissioner a plan or revised plan for risk-based capital, as appropriate. The plan or revised plan for risk-based capital must be submitted not later than 45 days after the date on which the event that requires regulatory action occurred.*

Sec. 26. 1. *If an event that requires regulatory action occurs, the commissioner will:*

(a) Perform such examinations and analyses of the assets, liabilities and operations of the insurer, including a review of the plan or revised plan for risk-based capital of the insurer, as he determines are necessary; and

(b) If he performs an examination or analysis pursuant to paragraph (a) and determines that corrective action is necessary, issue a corrective order that specifies such corrective action as he determines is necessary.

2. In determining whether any corrective action is necessary, the commissioner will take into account such factors with respect to the insurer as the commissioner determines are relevant, based on the examination or analysis, or both, conducted by the commissioner of the assets, liabilities and operation of the insurer, including, but not limited to, the results of any sensitivity tests undertaken pursuant to the instructions relating to risk-based capital.

Sec. 27. *1. The commissioner will retain such actuaries, investment experts and other consultants as he determines are necessary to:*

(a) Review the plan or revised plan for risk-based capital, as appropriate, submitted by the insurer pursuant to section 25 of this regulation after the occurrence of an event that requires regulatory action;

(b) Examine or analyze the assets, liabilities and operations of the insurer; and

(c) Formulate the necessary corrective actions that need to be included in a corrective order, if any.

2. The reasonable fees, costs and expenses relating to the retention of actuaries, investment experts and other consultants must be paid by the insurer under examination and by any person

referred to in subsection 1, 2 or 5 of NRS 679B.240 who is associated with the insurer, as directed by the commissioner.

Sec. 28. *The following constitute events that require authorized control:*

1. The filing by an insurer of a report on risk-based capital which indicates that the total adjusted capital of the insurer is equal to or greater than its mandatory control level of risk-based capital but less than its authorized control level of risk-based capital;

2. Notification by the commissioner to an insurer that the commissioner has adjusted a report on risk-based capital of the insurer in accordance with section 19 of this regulation and that the adjusted report on risk-based capital indicates a situation described in subsection 1, except that if the insurer challenges the adjustment pursuant to section 38 of this regulation, the event that requires authorized control is the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the challenge of the insurer; or

3. Failure of an insurer to respond to a corrective order in a manner satisfactory to the commissioner, except that if the insurer challenges the corrective order pursuant to section 38 of this regulation and the commissioner has, after a hearing, rejected the challenge of the insurer or modified the corrective order, the event that requires authorized control is the failure of the insurer to respond, in a manner satisfactory to the commissioner, to the corrective order after the rejection of the challenge of the insurer or the modification of the corrective order by the commissioner.

Sec. 29. *If an event that requires authorized control occurs, the insurer shall prepare and submit to the commissioner a plan or revised plan for risk-based capital, as appropriate. The*

plan or revised plan for risk-based capital must be submitted not later than 45 days after the date on which the event that requires authorized control occurred.

Sec. 30. *1. If an event that requires authorized control occurs, the commissioner will:*

(a) Take such actions as he determines are necessary to cure the event that requires authorized control, including, without limitation, any action authorized by sections 26 and 27 of this regulation with respect to an event that requires regulatory action; or

(b) If he determines it to be in the best interests of the general public and of the policyholders and creditors of the insurer, take such actions as he determines are necessary to place the insurer under the regulatory control of the commissioner pursuant to chapter 696B of NRS.

2. An event that requires authorized control is a sufficient ground for the commissioner to take action pursuant to chapter 696B of NRS, and the commissioner has the rights, powers and duties as are set forth in that chapter. If the commissioner takes action pursuant to this section in response to an adjusted report on risk-based capital, the insurer is entitled to such protections as are afforded to an insurer pursuant to the provisions of chapter 696B of NRS pertaining to summary proceedings.

Sec. 31. *The following constitute events that require mandatory control:*

1. The filing by an insurer of a report on risk-based capital which indicates that the total adjusted capital of the insurer is less than its mandatory control level of risk-based capital; or

2. Notification by the commissioner to an insurer that the commissioner has adjusted a report on risk-based capital of the insurer in accordance with section 19 of this regulation and that the adjusted report on risk-based capital indicates a situation described in subsection 1, except that if the insurer challenges the adjustment pursuant to section 38 of this regulation, the

event that requires mandatory control is the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the challenge of the insurer.

Sec. 32. *1. Except as otherwise provided in this section, if an event that requires mandatory control occurs:*

(a) If the insurer is a life and health insurer, the commissioner will take such actions as he determines are necessary to place the insurer under the regulatory control of the commissioner pursuant to chapter 696B of NRS.

(b) If the insurer is a property and casualty insurer, the commissioner:

(1) Will take such actions as he determines are necessary to place the insurer under the regulatory control of the commissioner pursuant to chapter 696B of NRS; or

(2) May, if the property and casualty insurer is allowing its existing business in this state to expire and is not marketing or writing additional business in this state, allow the insurer to continue the termination of its business in this state under the supervision of the commissioner.

2. An event that requires mandatory control is a sufficient ground for the commissioner to take action pursuant to chapter 696B of NRS, and the commissioner has the rights, powers and duties as are set forth in that chapter. If the commissioner takes action pursuant to this section, the insurer is entitled to such protections as are afforded to an insurer pursuant to the provisions of chapter 696B of NRS pertaining to summary proceedings. The commissioner may delay taking action pursuant to this section for not more than 90 days after the occurrence of the event that requires mandatory control if the commissioner reasonably determines that the conditions which created the event will be eliminated during that period.

Sec. 33. *Sections 34, 35 and 36 of this regulation apply only to foreign insurers that are domiciled in a state which has requirements for reporting risk-based capital.*

Sec. 34. *1. Upon the written request of the commissioner, a foreign insurer shall submit to the commissioner a report of its level of risk-based capital as of the end of the immediately preceding calendar year. The report on risk-based capital must be in such form and contain such information as is required by the instructions relating to risk-based capital, and must be submitted not later than:*

(a) The date on which a domestic insurer must file its report on risk-based capital in this state; or

(b) Fifteen days after the date on which the foreign insurer receives the request from the commissioner,

whichever is later.

2. Upon the written request of the commissioner, a foreign insurer shall forthwith submit to the commissioner a copy of any plan or revised plan for risk-based capital that the foreign insurer has filed with the insurance commissioner or chief regulatory officer for insurance of any other state in which the foreign insurer is transacting the business of insurance.

Sec. 35. *1. The commissioner may require a foreign insurer to file a plan for risk-based capital with the commissioner if an event that requires company action, regulatory action or authorized control occurs to the foreign insurer:*

(a) As determined pursuant to the laws of the state in which the foreign insurer is domiciled if:

(1) That state has enacted laws that provide for the filing of a plan for risk-based capital if such an event occurs; and

(2) The insurance commissioner or chief regulatory officer for insurance of that state fails to require the insurer to file a plan for risk-based capital in the manner required by those laws; or

(b) As determined pursuant to sections 2 to 41, inclusive, of this regulation, if the state in which the foreign insurer is domiciled has not enacted any provisions that provide for the determination of such an event or require the filing of a plan for risk-based capital if such an event occurs.

2. Failure by a foreign insurer to file a plan for risk-based capital as required pursuant to this section is a sufficient ground for the commissioner to order the foreign insurer to cease and desist from writing new business in this state.

Sec. 36. *If an event that requires mandatory control occurs to a foreign insurer and a domiciliary receiver has not been appointed in accordance with the laws relating to rehabilitation and liquidation of the state in which the foreign insurer is domiciled, if any, the commissioner may, pursuant to the provisions of chapter 696B of NRS relating to the liquidation of property of a foreign insurer, apply to a court of competent jurisdiction to appoint the commissioner as receiver.*

Sec. 37. *A notice by the commissioner to an insurer made in accordance with sections 2 to 41, inclusive, of this regulation is effective:*

- 1. Upon dispatch if the notice is sent by registered or certified mail; or*
- 2. Upon receipt by the insurer if the notice is sent in any other manner.*

Sec. 38. *An insurer has the right to a confidential administrative hearing before the division, on the record, subject to the provisions of NRS 679B.310 to 679B.370, inclusive, at which the insurer may challenge:*

1. Any adjustment to the report on risk-based capital made by the commissioner pursuant to section 19 of this regulation;

2. The determination by the commissioner that the plan or revised plan for risk-based capital of the insurer is unsatisfactory, if the commissioner has specified pursuant to section 22 of this regulation that the notification of that determination constitutes an event that requires regulatory action;

3. Any determination by the commissioner that the insurer has failed to adhere to its plan or revised plan for risk-based capital, if the failure has a substantial adverse effect on the ability of the insurer to eliminate an event that requires company action; or

4. Any corrective order issued by the commissioner pursuant to sections 2 to 41, inclusive, of this regulation.

Sec. 39. *1. An insurer may include in its report on risk-based capital and its plan or revised plan for risk-based capital an express statement that the information contained in the report or plan is, and should remain, confidential. If such a statement is included in the report or plan, the commissioner will classify the information contained in the report or plan as confidential.*

2. The result or report of any examination or analysis of an insurer performed, and any corrective order issued by the commissioner, during the course of an investigation of the insurer pursuant to sections 2 to 41, inclusive, of this regulation, are confidential.

3. *The provisions of this section do not apply to any information contained in a report on risk-based capital of an insurer if that information is otherwise included or required to be included in an annual statement of the insurer that is available to the general public.*

Sec. 40. 1. *An insurer, agent, broker or other person transacting insurance in this state shall not make, publish, disseminate, circulate or place before the general public, or directly or indirectly cause to be made, published, disseminated, circulated or placed before the general public:*

(a) In a newspaper, magazine or other publication, notice, circular, pamphlet, letter or poster;

(b) Over any radio or television station, or other electronic medium; or

(c) In any advertisement, announcement or statement that contains an assertion, any representation or statement relating to the level of risk-based capital of an insurer.

2. *If any statement that is materially false or otherwise inappropriate with respect to a comparison regarding the total adjusted capital of an insurer, or if an inappropriate comparison of any other amount to the insurer's level of risk-based capital, is published in any written publication and the insurer presents proof satisfactory to the commissioner of the falsity or inappropriateness of the statement or comparison, the insurer may publish an announcement in a written publication for the sole purpose of rebutting the materially false or inappropriate statement or comparison.*

Sec. 41. 1. *The commissioner will use the instructions relating to risk-based capital and any report, adjusted report, or plan or revised plan for risk-based capital submitted to him or in his possession pursuant to sections 2 to 41, inclusive, of this regulation only to monitor the*

solvency of insurers transacting insurance in this state and to determine the need for corrective action with respect to the solvency of those insurers.

2. Unless otherwise authorized by specific statute, the commissioner will not:

(a) Use any information contained in the instructions relating to risk-based capital or any report, adjusted report, plan or revised plan in making or determining rates for insurers transacting insurance in this state;

(b) Consider or introduce such information as evidence in any rate proceeding; or

(c) Use such information to calculate or derive any elements of an appropriate premium level or rate of return for any line of insurance that an insurer or any affiliate of the insurer is authorized to write.