

**REVISED PROPOSED REGULATION OF THE COMMISSIONER
OF INSURANCE OF THE DEPARTMENT
OF BUSINESS AND INDUSTRY**

LCB File No. R125-99

December 9, 1999

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

AUTHORITY: §§1, 2 and 4-17, NRS 679B.130 and 694C.170; §3, NRS 679B.130, 694C.170 and 694C.400.

Section 1. Chapter 694C of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 17, inclusive, of this regulation.

Sec. 2. *As used in this chapter, unless the context otherwise requires, the term “work papers” includes, without limitation, schedules, analyses, reconciliations, abstracts, memoranda, narratives, flow charts, copies of records of a captive insurer and any other documents prepared or obtained by an independent certified public accountant and his employees in the conduct of their examination of a captive insurer.*

Sec. 3. 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 shall file with the commissioner an audited statement of its financial condition. The audited statement 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 who prepared the statement; and

(b) Accompanied by a statement, prepared by the independent certified public accountant who prepared the audited statement, 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 the captive insurer is required by law to file, the captive insurer shall submit to the commissioner the following exhibits and schedules from the “Property/Casualty Insurance Annual Statements Blanks” published by the National Association of Insurance Commissioners, which is adopted by reference in section 17 of this regulation:

- (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.*

FLUSH *The exhibits and schedules must be prepared in accordance with the “Annual Statement Instructions for Property/Casualty Manual” published by the National Association of Insurance Commissioners, which is adopted by reference in section 17 of this regulation.*

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 Annual Statement: Pure.”

Sec. 4. 1. A captive insurer shall have an annual audit 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. The commissioner shall 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.

3. The annual audit required by this section must include:

(a) 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 section 17 of this regulation. 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.

(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.

(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 conforms to the standards of his profession as set forth in the AICPA Professional Standards published by the American Institute of Certified Public Accountants, and adopted by reference in section 17 of this regulation, 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 opinions thereon will be filed with the commissioner pursuant to this section;

(4) A statement that the accountant will comply with section 7 of this regulation and that he consents and agrees to make his work papers available for review by the commissioner or his designee; and

(5) A statement that the accountant is properly licensed by the appropriate state licensing authority and that he is a member in good standing of the American Institute of Certified Public Accountants.

(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 including:

(I) A reconciliation of differences, if any, between the audited financial report and the report filed with the commissioner pursuant to NRS 694C.400 if the captive insurer is reporting on a statutory accounting basis;

(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.

(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 member in good standing of the American Academy of Actuaries or a person who has otherwise demonstrated his competence in the evaluation of loss reserves to the commissioner. The annual actuarial certification must be in such form as the commissioner determines appropriate.

Sec. 5. 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 section 4 of this regulation:

- 1. Within 90 days after becoming subject to chapter 694C of NRS; and*
- 2. If the captive insurer changes its independent certified public accountant, within 90 days after making that change.*

Sec. 6. If any material change occurs in the operations of a captive insurer or in the organizational structure within the captive insurer, the manager, certified public accountant or actuary of the captive insurer shall notify the board of directors of the captive insurer of the material change within 60 days after the material change occurs.

Sec. 7. 1. A captive insurer shall ensure that its independent certified public accountant makes available for review by the commissioner or his designee the work papers of the accountant prepared in the conduct of the audit of the captive insurer. The captive insurer shall ensure that the accountant retains the audit work papers for not less than 5 years after the period reported upon in the audit.

2. A review by the commissioner of the work papers of an independent certified public accountant is considered to be an examination of the captive insurer, and all work papers obtained during the course of such an examination are confidential. The captive insurer shall ensure that the independent certified public accountant provides to the division of insurance of the department of business and industry photocopies of any of the work papers which the division considers relevant. The division may retain any copies of work papers provided to it pursuant to this subsection.

Sec. 8. 1. If the commissioner determines that the financial condition of a captive insurer warrants additional security, he may require the captive insurer to:

(a) Deposit with the state treasurer:

(1) Cash; or

(2) Securities which have been approved by the commissioner; or

(b) Furnish the commissioner a clean irrevocable letter of credit issued by a bank chartered by the State of Nevada, or a bank that is a member of the United States Federal Reserve System, on a form approved by the commissioner.

2. A captive insurer may:

(a) Receive interest or dividends from the security deposit; or

(b) With the approval of the commissioner, exchange the deposit for other deposits of equal value.

3. If the captive insurer discontinues business, the commissioner shall return the deposit to the captive insurer only after being satisfied that all obligations of the captive insurer have been discharged.

Sec. 9. *In addition to the processing of an application of a captive insurer for licensure, the commissioner may perform a qualifying investigation or examination of the applicant before the applicant may receive the license. Such an investigation or examination may consist of a general survey of the corporate records of the applicant, including:*

1. The charter, bylaws and minute books of the applicant;

2. Verification of the principal place of business of the applicant;

3. A determination of the assets and liabilities of the applicant;

4. A review of the accounting systems and rules for underwriting of the applicant; and

5. A review of such other factors as the commissioner deems necessary.

Sec. 10. *1. A reinsurer or an excess insurer insuring a captive insurer in accordance with NRS 694C.350 shall give at least 90 days' advance notice to the insured and commissioner of the termination or modification of a reinsurance treaty with the captive insurer. Upon notification of termination or modification of a treaty or agreement with a*

captive insurer, the commissioner may order the captive insurer to cease writing any new business until the commissioner approves the modification of the existing treaty, or a replacement agreement or treaty is obtained by the captive insurer from the existing reinsurer or excess insurer.

2. Reinsurance and excess insurance must be effected through a written agreement of reinsurance, or a written contract setting forth the terms, provisions and conditions governing the reinsurance.

3. The commissioner may require that complete copies of all reinsurance treaties and contracts entered into by a captive insurer be:

- (a) Filed with the commissioner;*
- (b) Approved by the commissioner; or*
- (c) Filed with and approved by the commissioner.*

Sec. 11. *A person shall not act as a manager, a broker or an agent in this state for a captive insurer without the authorization of the commissioner. An application for authorization to act as a manager, a broker or an agent must be made to the commissioner on a form prescribed by the commissioner.*

Sec. 12. 1. *Within 30 days after any change in the executive officers and directors of a captive insurer, the captive insurer shall report the change to the commissioner. The report must include a statement of the business and professional affiliations of the new executive officer or director. The new executive officer or director must meet the same standards that were indicated in the initial application of the captive insurer for that officer or director position.*

2. A director, an officer or an employee of a captive insurer shall not, except on behalf of the captive insurer, accept or be the beneficiary of any fee, brokerage, gift or other emolument because of any investment, loan, deposit, purchase, sale, payment or exchange made by or for the captive insurer, but such a person may receive reasonable compensation for necessary services rendered to the captive insurer in his usual private, professional or business capacity.

3. Any profit or gain received by or on behalf of any person in violation of this section is recoverable by the captive insurer.

Sec. 13. *1. A captive insurer chartered in this state shall adopt a statement for conflict of interest for its managers, officers, directors and key employees. The statement must provide for a disclosure that the manager, officer, director or employee has no outside commitments, personal or otherwise, that would divert him from his duty to further the interest of the captive insurer which he represents, except that the statement for conflict of interest must not preclude the manager, officer, director or employee from being a director or officer in more than one insurance company or captive insurer, or both.*

2. A manager, an officer, a director and a key employee of a captive insurer shall file a disclosure of his conflicts of interest with the board of directors of the captive insurer annually.

Sec. 14. *1. A person other than an issuer shall not:*

(a) Make a tender offer for securities, make a request or invitation for tenders of, or enter into any agreement to, exchange securities for any voting security of a domestic captive insurer; or

(b) Seek to acquire, or acquire in the open market or otherwise, any voting security of a domestic captive insurer,

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if, after the consummation thereof, the person would, directly or indirectly, or by conversion or exercise of any right acquired, be in control of the captive insurer.

2. A person shall not enter into an agreement to merge with, or otherwise acquire control of, a domestic captive insurer without the prior written approval of the commissioner.

3. In considering an application for the acquisition of control or merger with a domestic captive insurer, the commissioner shall consider all the facts and circumstances surrounding the application as well as the criteria for the establishment of a captive insurer set forth in this chapter and chapter 694C of NRS.

Sec. 15. *1. A captive insurer shall not, without the prior approval of the commissioner, make any material change in the nature of its business from that stated in its plan of operation filed with the commissioner .*

2. Any change in any other information filed with the application must be filed with the commissioner as soon as practicable, but does not require the prior approval of the commissioner to make the change.

Sec. 16. *In contracting with outside resources, including attorneys, accountants and actuaries, for the review of the applications for licenses for captive insurers pursuant to NRS 694C.220, the commissioner may establish a review panel from a pool of qualified members as determined by the commissioner.*

Sec. 17. *The commissioner hereby adopts the following publications by reference:*

1. The “Property/Casualty Insurance Annual Statement Blanks” and the “Annual Statement Instructions for the Property/Casualty Manual” published by the National Association of Insurance Commissioners. A copy of these publications may be purchased from

NAIC - Publications, P.O. Box 87-7870, Kansas City, Missouri 64187-7870, or by telephone at (816) 374-7259, for \$125 and \$175, respectively.

2. The “AICPA Professional Standards” published by the American Institute of Certified Public Accountants. A copy of this publication may be obtained from the American Institute of Certified Public Accountants, Order Department, P.O. Box 2209, Jersey City, New Jersey 07303-2209, or by telephone at (888) 777-7077, for \$95 for members of the American Institute of Certified Public Accountants and \$119 for nonmembers.

3. “Original Pronouncements” and “Current Text” published by the Financial Accounting Standards Board. A copy of:

(a) The “Original Pronouncements” may be obtained:

(1) For members of the American Institute of Certified Public Accountants, from the American Institute of Certified Public Accountants, Order Department, P.O. Box 2209, Jersey City, New Jersey 07303-2209, or by telephone at (888) 777-7077, for \$95.

(2) For all others, from John Wiley and Sons, Inc., Distribution Center, 1 Wiley Drive, Somerset, New Jersey 08875-1272, or by telephone at (800) 225-5945, for \$44.95.

(b) The “Current Text” may be obtained:

(1) For members of the American Institute of Certified Public Accountants, from the American Institute of Certified Public Accountants, Order Department, P.O. Box 2209, Jersey City, New Jersey 07303-2209, or by telephone at (888) 777-7077, for \$95.

(2) For all others, from John Wiley and Sons, Inc., Distribution Center, 1 Wiley Drive, Somerset, New Jersey 08875-1272, or by telephone at (800) 225-5945, for \$44.95.