

LCB File No. R139-99

**PROPOSED REGULATION OF THE DIVISION OF INSURANCE OF THE
DEPARTMENT OF BUSINESS AND INDUSTRY**

**NOTICE OF WORKSHOPS TO SOLICIT COMMENTS ON
PROPOSED REGULATIONS**

September 3, 1999

The Department of Business and Industry, Division of Insurance (Division) is proposing new regulations pertaining to consolidated insurance programs; amendments to regulations on associations of public and private self-insured employers; and new regulations for chapter 686B of NAC regarding the \$36,000 limitation on payroll and the administration of the Appeals Panel. A workshop has been set for 10:00 a.m., on October 13, 1999, at the offices of the Division, 1665 Hot Springs Road, Suite 152, Carson City, Nevada. The purpose of the workshop is to solicit comments from interested persons on the following general topics addressed in the proposed regulations.

- 1. New regulations for consolidated insurance programs, including owner-controlled and contractor-controlled programs, which establish requirements for the filing of the program; certifications regarding the safety coordinator and claims administrators; submission of the plan for the pre-bid conference; and disclosure of other lines of insurance to be included in the program.**
- 2. Amendments to regulations for associations of self-insured public and private employers concerning letters of credit; assessments for the insolvency fund; security deposits; deposit bond for third-party administrators and association administrators; addition of members; assessments paid by members; and deletion of the loss-ratio requirement.**
- 3. New regulations for chapter 686B of NAC to establish a method of prorating the \$36,000 limitation on payroll on a monthly basis, and address the administration of the Appeals Panel.**

A copy of this notice and the proposed regulations will be on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the proposed regulations will be available at the offices of the Division, 1665 Hot Springs Road, Suite 152, Carson City, Nevada 89706, and 2501 East Sahara Avenue, Suite 302, Las Vegas, Nevada 89104, and in all counties in which an office of the agency is not maintained, at the main public library, for inspection and copying by members of the public during business hours. This notice and the text of the proposed regulations are also available in the State of Nevada Register of Administrative Regulations which is prepared and published monthly

by the Legislative Counsel Bureau pursuant to NRS 233B.0653 and on the Internet at

<http://www.leg.state.nv.us>. Copies will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

This Notice of Workshop to Solicit Comments on Proposed Regulations has been sent all persons on the agency's mailing list for administrative regulations and posted at the following locations:

Department of Business and Industry
Division of Insurance
1665 Hot Springs Road, Suite 152
Carson City, NV 89706

Department of Business and Industry
Division of Insurance
2501 East Sahara Avenue, Suite 302
Las Vegas, NV 89104

Legislative Counsel Bureau
Capitol Complex
Carson City, NV 89710

Blasdel Building
Capitol Complex
Carson City, NV 89710

State Capitol
Capitol Complex
Carson City, NV 89710

Capitol Press Room
State Capitol Basement
Carson City, NV 89710

County Clerk
Courthouse
Carson City, NV 89710

Nevada State Library & Archives
Capitol Complex
Carson City, NV 89710

Carson City Library
900 North Roop Street
Carson City, NV 89701

Churchill County Library
553 South Maine Street
Fallon, NV 89406

Las Vegas Library
833 Las Vegas Blvd. North
Las Vegas, NV 89101

Douglas County Library
1625 Library Lane
P.O. Box 337
Minden, NV 89423

Elko County Library
720 Court Street
Elko, NV 89801

Goldfield Public Library
Fourth & Cook Street
P.O. Box 430
Goldfield, NV 89013

Eureka Branch Library
10190 Monroe Street
P.O. Box 293
Eureka, NV 89316

Humboldt County Library
85 East 5th Street
Winnemucca, NV 89445

Battle Mountain Branch Library

Lincoln County Library

P.O. Box 141
Battle Mountain, NV 89820

93 Main Street
P.O. Box 330
Pioche, NV 89043

Lyon County Library
20 Nevin Way
Yerington, NV 89447

Mineral County Library
First & A Street
P.O. Box 1390
Hawthorne, NV 89415

Tonopah Public Library
171 Central Street
P.O. Box 449
Tonopah, NV 89049

Pershing County Library
1125 Central Avenue
P.O. Box 781
Lovelock, NV 89419

Storey County Library
95 South R Street
P.O. Box 14
Virginia City, NV 89440

Washoe County Library
301 South Center Street
P.O. Box 2151
Reno, NV 89505

White Pine County Library
950 Campton Street
Ely, NV 89301

Clark County Library
1401 East Flamingo Road
Las Vegas, NV 89119

Members of the public who are disabled and require special accommodations or assistance at the hearing are requested to notify the Commissioner's secretary in writing at 1665 Hot Springs Road, Suite 152, Carson City, Nevada 89706, or by calling no later than 5 working days prior to the hearing, (702) 687-4270.

DATED this 7th day of September, 1999.

Alice A. Molasky-Arman /s/
ALICE A. MOLASKY-ARMAN
Commissioner of Insurance

LCB File No. R139-99

**PROPOSED REGULATION OF THE DIVISION OF INSURANCE OF THE
DEPARTMENT OF BUSINESS AND INDUSTRY**

NOTICE OF INTENT TO ACT UPON REGULATIONS

Notice of Hearing for the Amendment of Regulations of the Department of
Business and Industry, Division of Insurance

The Department of Business and Industry, Division of Insurance (Division) will hold a public hearing at 10:00 a.m., on October 13, 1999, immediately following a public workshop, at the offices of the Division, 1665 Hot Springs Road, Suite 152, Carson City, Nevada. The purpose of the hearing is to receive comments from all interested persons regarding the amendment of regulations pertaining to associations of self-insured public and private employers.

**REGULATIONS FOR ASSOCIATIONS OF SELF-INSURED
PUBLIC AND PRIVATE EMPLOYERS**

The following information is provided pursuant to the requirements of NRS 233B.060:

1. The proposed regulation is needed to address certain changes mandated by the 1999 Nevada Legislature and to respond to changes in the business and insurance environment.
2. The proposed regulation amends the provisions concerning letters of credit; assessments for the insolvency fund; security deposits; deposit bonds for third-party administrators and association administrators; addition of members; assessments paid by members; and deletion of the loss-ratio requirement.
3. Estimated economic effect of the regulation:
On the business which it is to regulate:
 - (a) The amendments should have an immediate and long-term beneficial impact on the industry as it removes or eases some requirements that have a financial impact.
 - (b) The amendments should have neither an immediate nor long-term adverse impact on associations of self-insured employers.On the public:

The amended regulation should have no economic impact on the public.
4. The Division doesn't anticipate any additional expense to enforce the proposed regulation.
5. The Division is not aware of any overlap or duplication of the regulation with any state, local or federal regulation.
6. The proposed regulation does not establish any new fees.

Persons wishing to comment upon the proposed action of the Division may appear at the scheduled public hearing or may address their comments, data, views or arguments, in written form, to the Division, 1665 Hot Springs Road, Suite 152, Carson City, Nevada 89706. Written submissions must be received by the Division on or before October 6, 1999. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Division may proceed immediately to act upon any written submissions.

A copy of this notice and the proposed regulation will be on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the regulation to be amended will be available at the offices of the Division, 1665 Hot Springs Road, Suite 152, Carson City, Nevada 89706, and 2501 East Sahara Avenue, Suite 302, Las Vegas, Nevada 89104, and in all counties in which an office of the agency is not maintained, at the main public library, for inspection and copying by members of the public during business hours. This notice and the text of the proposed regulation are also available in the State of Nevada Register of Administrative Regulations which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653 and on the Internet at <http://www.leg.state.nv.us>. Copies will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

Upon adoption of any regulation, the agency, if requested to do so by an interested person, either before adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption, and incorporate therein its reason for overruling the consideration urged against its adoption.

This notice of hearing has been posted at the following locations:

Department of Business and Industry
Division of Insurance
1665 Hot Springs Road, Suite 152
Carson City, NV 89706

Department of Business and Industry
Division of Insurance
2501 East Sahara Avenue, Suite 302
Las Vegas, NV 89104

Legislative Counsel Bureau
Capitol Complex
Carson City, NV 89710

Blasdel Building
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Eureka, NV 89316

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Battle Mountain, NV 89820

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171 Central Street
P.O. Box 449
Tonopah, NV 89049

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95 South R Street
P.O. Box 14
Virginia City, NV 89440

White Pine County Library
950 Campton Street
Ely, NV 89301

Fallon, NV 89406

Douglas County Library
1625 Library Lane
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Minden, NV 89423

Goldfield Public Library
Fourth & Cook Street
P.O. Box 430
Goldfield, NV 89013

Humboldt County Library
85 East 5th Street
Winnemucca, NV 89445

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Mineral County Library
First & A Street
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Hawthorne, NV 89415

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Lovelock, NV 89419

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301 South Center Street
P.O. Box 2151
Reno, NV 89505

Clark County Library
1401 East Flamingo Road
Las Vegas, NV 89119

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calling no later than 5 working days prior to the hearing, (702) 687-4270.

DATED this 7th day of September, 1999.

Alice A. Molasky-Arman /s/
ALICE A. MOLASKY-ARMAN
Commissioner of Insurance

LCB File No. R139-99

**PROPOSED REGULATION OF THE DIVISION OF INSURANCE OF THE
DEPARTMENT OF BUSINESS AND INDUSTRY**

**REGULATION CONCERNING ASSOCIATIONS OF SELF-INSURED
PUBLIC AND PRIVATE EMPLOYERS**

Authority: NRS 616B.446

Section 1. NAC 616B.418 is hereby amended to read as follows:

"Program of self-insurance" means a program of self-insured ~~{workmen's}~~ *workers'* compensation established pursuant to chapters 616A to 616D, inclusive, of NRS for which an employer has obtained a certificate from the commissioner of insurance.

Sec. 2. NAC 616B.439 is hereby amended to read as follows:

1. A letter of credit submitted by a self-insured employer to meet the requirements for his deposit pursuant to NAC 616B.436 must:

(a) Include a clause stating that no document other than the demand for payment under the terms of the letter is necessary for payment.

(b) Be irrevocable.

(c) Be valid for at least 1 year. The letter must not expire unless written notice is given by the issuer. It must be renewable automatically, unless the issuer gives written notice to the commissioner and the employer at least 90 days before the expiration date.

(d) Be issued by a ~~{financial institution that is insured federally and located in Nevada. If a financial institution that issues a letter of credit requests another financial institution to confirm and~~

~~undertake its letter, the issuing institution shall designate, in writing, the confirming institution as its agent to receive and pay drafts]~~ *bank chartered by this state or a bank that is a member of the United States Federal Reserve System and has been approved by the commissioner.*

(e) Include a clause stating that it is not subject to any conditions or qualifications outside the letter. The letter may be the individual obligation of the financial institution issuing it, but must not be contingent upon the institution's ability to perfect any lien or security interest. The letter must not contain references to any other agreements, documents or persons.

(f) Include a clause stating that the obligation of the financial institution under the letter is not contingent upon reimbursement.

2. The heading of the letter of credit may include a boxed section containing the name of the applicant and other appropriate notations. If such a section is present it must be marked clearly to indicate that the information is for internal identification only, and does not affect the terms of the letter or the financial institution's obligations under the letter.

Sec. 3. NAC 616B.478 is hereby amended to read as follows:

1. If, during the initial year of self-insurance, the employer adds an activity for which employees are covered by self-insurance, the employer must pay an additional assessment which is equivalent to 0.5 percent of the expected annual expenditures for claims applicable to the activity which was added.

2. Each self-insured employer will be assessed an annual assessment equal to .25 percent of the security deposit established for the self-insured employer on June 30th before the assessment. The commissioner will mail, by regular mail, each self-insured employer a notice specifying the amount of the assessment and the date that it is due, at least 20 days before that date.

3. The annual assessment established in subsection 2 will not be imposed:

(a) In the fiscal year in which a self-insured employer is first certified; or

(b) *On a self-insured employer who has been continuously certified for 15 or more years if the commissioner determines the account to protect against insolvency is sufficient; or*

(c) If the balance of the reserve account exceeds:

(1) Three million dollars; or

(2) An amount equivalent to 20 percent of the aggregate of security deposits required of all self-insured employers,
whichever is the greater amount.

Sec. 4. NAC 616B.484 is hereby amended to read as follows:

1. If the commissioner determines that the balance in the reserve account is insufficient to pay compensation on behalf of an insolvent insurer or if an insolvent employer fails to reimburse the account, the commissioner ~~will~~ *may* assess all employers certified as self-insurers on the date of the assessment, an amount determined by the commissioner to either pay claims or restore the balance of the reserve account. After determining the amount necessary for the assessment, the commissioner will mail, by regular mail, each self-insured employer a notice specifying the amount of the assessment and the date that it is due, at least 20 days before that date.

2. Each self-insured employer shall remit, on the date specified in the notice, to the commissioner the total amount of the assessment. Failure by a self-insured employer to pay an assessment is prima facie evidence that the employer has intentionally failed to comply with the regulations of the commissioner and is grounds for the imposition of a fine or the withdrawal of the certification as a self-insured employer pursuant to NRS 616B.318.

3. If the reserve account has been used to pay the claims of an insolvent employer who has failed to reimburse the account, the commissioner may determine that the balance of the account is sufficient and not impose a special assessment against all employers certified as self-insurers on that date.

Sec. 5. NAC 616B.543 is hereby amended to read as follows:

1. A letter of credit deposited pursuant to NAC 616B.540 must:

(a) Include a statement that no document other than the demand for payment under the terms of the letter is necessary for payment.

(b) Be irrevocable.

(c) Be valid for at least 1 year and automatically renew for each following year unless written notice is given by the issuer to the commissioner and the association at least 90 days before the date of renewal.

(d) Be issued by a ~~[financial institution that is insured federally and located in this state. If a financial institution that issues a letter of credit requests another financial institution to confirm and undertake its letter, the issuing institution shall designate, in writing, the confirming institution as its agent to receive and pay drafts]~~ *bank chartered by this state or a bank that is a member of the United States Federal Reserve System and has been approved by the commissioner.*

(e) Include a statement that it is not subject to any conditions or qualifications other than the terms stated in the letter. The letter may be the individual obligation of the financial institution issuing it, but must not be contingent upon the institution's ability to perfect any lien or security interest. The letter must not contain references to any other agreements, documents or persons.

(f) Include a statement that the obligation of the financial institution under the letter is not contingent upon reimbursement.

2. The heading of the letter of credit may include a boxed section containing the name of the association and other appropriate notations. If such a section is present, it must be marked clearly to indicate that the information is for internal identification only, and does not affect the terms of the letter or the financial institution's obligations under the letter.

Sec. 6. NAC 616B.549 is hereby amended to read as follows:

1. Except as otherwise provided in subsection 2, a third-party administrator of an association shall deposit with the commissioner a bond in the amount of \$1,000 for each \$100,000, or portion thereof, of the association's money which he will control in the next calendar year, less the amount of any bond that he must file pursuant to NRS 683A.0857. The commissioner may require a third-party administrator to increase the amount of the bond if there is an increase in the amount of the association's money that he controls.

2. The maximum bond required pursuant to this section is ~~[\$400,000]~~ **\$500,000**.

3. On or before April 1 of each year, a third-party administrator of an association shall file with the commissioner a statement of the actual amount of the association's money that he controlled in the previous calendar year and the amount of the association's money that he expects to control in the next calendar year.

Sec. 7. NAC 616B.552 is hereby amended to read as follows:

1. Except as otherwise provided in subsection 2, an association's administrator shall deposit with the commissioner a bond in the amount of \$1,000 for each \$100,000, or portion thereof, of the

association's money which he will control. *The minimum amount of the bond required of an association's administrator is \$100,000.*

2. The maximum bond required pursuant to this section is ~~[\$400,000]~~ *\$500,000.*

3. On or before April 1 of each year, the association's administrator shall file with the commissioner a statement of the actual amount of the association's money that he controlled in the previous calendar year and the amount of the association's money that he expects to control in the next calendar year.

Sec. 8. NAC 616B.576 is hereby amended to read as follows:

1. Except as otherwise provided in subsection 3, an association shall pay to the commissioner for deposit in the account for insolvent associations of self-insured public or private employers an annual assessment equal to 0.5 percent of the amount of the security that it is required to have on deposit pursuant to NRS 616B.353 on June 30 next preceding the date on which the assessment is due.

2. At least 20 days before the assessment is due, the commissioner will notify the association, by regular mail, of its obligation to pay the assessment pursuant to subsection 1. The notice will include:

(a) The amount of money the association must pay; and

(b) The date on which the assessment is due.

3. The commissioner will not collect the annual assessment from an association:

(a) For the fiscal year in which the association is first issued its certification; or

(b) *That has been continuously certified for 15 or more years if the commissioner determines the balance in the account for insolvent associations is sufficient; or*

(c) If the balance of the account for insolvent associations of self-insured public or private employers exceeds:

(1) Three million dollars; or

(2) An amount equal to 20 percent of the aggregate amount of the security required to be deposited by all certified associations pursuant to NRS 616B.353, whichever is greater.

Sec. 9 NAC 616B.579 is hereby amended to read as follows:

1. If the commissioner determines that the balance in the account for insolvent associations of self-insured public or private employers is not sufficient to pay compensation that is due pursuant to chapters 616A to 617, inclusive, of NRS on behalf of an insolvent association or if an insolvent association or its surety fails to reimburse the account pursuant to NAC 616B.582, the commissioner ~~will~~ *may* collect an additional assessment from all certified associations. The additional assessment will be in an amount calculated to pay all compensation that is due pursuant to chapters 616A to 617, inclusive, of NRS or to reimburse the account for insolvent associations of self-insured public or private employers.

2. At least 20 days before the additional assessment is due, the commissioner will notify each association, by regular mail, of its obligation to pay the additional assessment pursuant to subsection

1. The notice will include:

(a) The amount of money the association must pay; and

(b) The date on which the additional assessment is due.

3. *If the account for insolvent associations is used to pay the claims of an insolvent association that failed to reimburse the account, the commissioner may determine that the*

balance of the account is sufficient and not impose the additional assessment against all certified associations.

(4) For the purposes of NRS 616B.428, the failure of an association timely to pay the additional assessment pursuant to this section is prima facie evidence that the association intentionally failed to comply with a provision of a regulation adopted by the commissioner pursuant to chapters 616A to 616D, inclusive, of NRS.

Sec. 10. NAC 616B.594 is hereby amended to read as follows:

If an association has received approval from the commissioner pursuant to subsection 2 of NRS 616B.407 to calculate the annual assessment required to be paid by each member of the association, it may use the rates and classifications, including experience modification factors, established by ~~[the system]~~ *the commissioner's advisory organization.*

Sec. 11. NAC 616B.585 and 616B.603 are hereby repealed.

Text of repealed sections.

NAC 616B.585: **Addition of members to association.**

The addition of members to an association constitutes a change in the information submitted in the initial application and must be reported to the commissioner no later than 30 days after the change.

When an association notifies the commissioner of the addition of a member to the association, it shall submit all the information and assurances for the new member that were provided for the original members.

NAC 616B.603: **Determination and consideration of loss ratio.**

Except as otherwise provided in this section, an employer with a loss ratio of 115 percent or higher under any program or contract of insurance for workers' compensation may not join an association. The commissioner may allow an employer with a loss ratio higher than 115 percent to join an association if the employer demonstrates to the commissioner that its loss ratio is the result of an unusual circumstance, such as a single loss, a claim that should have been subrogated or a claim that should have been submitted to the subsequent injury fund. The commissioner will determine the loss ratio of a prospective member of an association by taking the average of the loss ratios of the prospective member for the 3 most recent fiscal years ending not less than 1 year before the date of application by the prospective member.