

**PROPOSED REGULATION OF THE
COMMISSIONER OF INSURANCE**

LCB File No. R139-99

October 11, 1999

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

AUTHORITY: §§1 and 2, NRS 616A.465, 679B.130; §§3 and 6-9, NRS 616A.465, 616B.446 and 679B.130; §§4 and 5, NRS 616A.465, 616B.353, 616B.446 and 679B.130.

Section 1. NAC 616B.439 is hereby amended to read as follows:

616B.439 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. 2. NAC 616B.484 is hereby amended to read as follows:

616B.484 1. ~~HF~~ *Except as otherwise provided in subsection 3, if* the commissioner determines that the balance in the reserve account is insufficient to pay compensation on behalf of an insolvent ~~insurer~~ *self-insured employer* or if an insolvent *self-insured* employer fails to reimburse the account, the commissioner will 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:*

(a) The reserve account has been used to pay the claims of an insolvent self-insured employer;

(b) That self-insured employer fails to reimburse the reserve account; and

(c) The commissioner determines that the balance of the reserve account is sufficient to pay compensation on behalf of other insolvent self-insured employers, the commissioner may decide not to impose an assessment pursuant to this section against employers certified as self-insured employers on that date.

FLUSH

Sec. 3. NAC 616B.543 is hereby amended to read as follows:

616B.543 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. 4. NAC 616B.549 is hereby amended to read as follows:

616B.549 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. 5. NAC 616B.552 is hereby amended to read as follows:

616B.552 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.

2. The *minimum bond required pursuant to this section is \$100,000.* 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. 6. NAC 616B.579 is hereby amended to read as follows:

616B.579 1. ~~##~~ *Except as otherwise provided in subsection 4, 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 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. 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.

4. *If:*

(a) The account for insolvent associations of public or private employers has been used to pay the claims of an insolvent association;

(b) That association fails to reimburse the account for insolvent associations of public or private employers; and

(c) The commissioner determines that the balance of the account for insolvent associations of public or private employers is sufficient to pay compensation that is due pursuant to chapters 616A to 617, inclusive, of NRS on behalf of other insolvent associations,

FLUSH *the commissioner may decide not to impose an assessment pursuant to this section against associations certified on that date.*

Sec. 7. NAC 616B.594 is hereby amended to read as follows:

616B.594 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.]~~ *advisory organization.*

Sec. 8. NAC 616B.600 is hereby amended to read as follows:

616B.600 ~~[1.]~~ If an association is deemed to be insolvent pursuant to NRS 616B.422, the commissioner may:

~~[(a)]~~ **1.** Invoke the provisions of the indemnity agreement executed by each member of the association;

~~[(b)]~~ **2.** Use the security deposit of the association;

~~[(e)]~~ **3.** Use any solvency bonds deposited with him by or on behalf of the association; and

~~[(d)]~~ **4.** Use the ~~[fund]~~ *account* for insolvent associations of self-insured public or private employers,

FLUSH to pay claims and related expenses.

~~[2.—If the fund for insolvent associations of self-insured public or private employers is used on behalf of an insolvent association, the commissioner may assess all other certified associations to ensure that the balance of the fund is sufficient to pay the claims against the insolvent association and to restore the balance in the fund that existed before any claims against the insolvent association were paid from the fund.]~~

Sec. 9. NAC 616B.585 and 616B.603 are hereby repealed.

TEXT OF REPEALED SECTIONS

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.

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 a 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.