

LCB File No. R112-04

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

NOTICE OF WORKSHOPS TO SOLICIT COMMENTS ON PROPOSED REGULATION

The Department of Business and Industry, Division of Insurance (Division), is proposing new regulations pertaining to the failure to prosecute, or otherwise proceed with an administrative hearing, after having requested the hearing; various provisions relating to property and casualty insurance; self-insured workers' compensation; and the 2001 CSO Mortality Table for life insurance. A workshop has been set for 9:00 a.m., on June 24, 2004, at the offices of the Division, 788 Fairview Drive, Suite 300, Carson City, Nevada 89701. Interested parties may also participate through a simultaneous video-conference conducted at the Bradley Building, 2501 East Sahara Avenue, Manufactured Housing Division Conference Room, 2nd Floor, Las Vegas, Nevada 89104. The purpose of the workshop is to solicit comments from interested persons on the following general topics addressed in the proposed regulations.

1. Dismissal of Hearings. The proposed regulation updates and amends the hearings procedures before the Nevada Division of Insurance (Division) to expedite the administrative hearing process within the Division. The proposed regulation amends chapter 679B of the Nevada Administrative Code (NAC).
2. Various Provisions Relating to Property and Casualty Insurance. The proposed regulation defines thin file credit reports and addresses how thin files shall be treated. It clarifies that adverse actions based on credit information cannot be retroactive and describes how multi-policy accounts are to be treated. It updates the list of required filings. It provides for a consent-to-rate procedure that allows for lower rates in addition to higher rates. It updates the address of the National Council on Compensation Insurance. It updates the policy limit for air trip insurance in keeping with inflation. It changes the due dates of the medical malpractice loss prevention and control program report to make them consistent with NRS 680A.290. The proposed regulation amends chapters 686A, 686B and 690B of the NRS.
3. Self-Insured Workers' Compensation:
 - (a) Associations of Public or Private Employers - The proposed regulation will establish guidelines for associations requesting a dividend; will change the reporting threshold from \$50,000 to \$100,000 for medical costs or indemnity; will change the reporting requirements on any accident resulting in the hospitalization of three or more employees to five or more employees; and will update and amend the form numbers and schedules required for annual financial reporting.
 - (b) Self-Insured Employers - The proposed regulation will allow the use of multiple letters of credit to satisfy the tangible net worth requirements and will change the reporting threshold from \$50,000 to \$100,000 for medical costs or indemnity.

4. 2001 CSO Mortality Table for Life Insurance. This regulation adds a new section to chapter 688A of the NAC. The new section provides for adoption, by reference, the *2001 CSO Mortality Table for Use In Determining Minimum Reserve Liabilities and Nonforfeiture Benefits Model Regulation*. The proposed regulation applies to all life insurers doing business in this state.

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, 788 Fairview Drive, Suite 300, Carson City, Nevada 89701, 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 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 to 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
788 Fairview Drive, Suite 300
Carson City, NV 89701

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
P.O. Box 141
Battle Mountain, NV 89820

Lincoln County Library
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
ATTN: Reference
P.O. Box 2151
Reno, NV 89505-2151

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 788 Fairview Drive, Suite 300, Carson City, Nevada 89701, or by calling no later than 5 working days prior to the hearing, (775) 687-4270, extension 260.

NOTICE OF INTENT TO ACT UPON REGULATIONS

Notice of Hearing for the Adoption 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 9:00 a.m., on June 24, 2004, immediately following a public workshop, at the offices of the Division, 788 Fairview Drive, Suite 300, Carson City, Nevada 89701. Interested persons may also participate through a simultaneous video-conference conducted at the Bradley Building, 2501 East Sahara Avenue, Manufactured Housing Division Conference Room, 2nd Floor, Las Vegas, Nevada 89104. The purpose of the hearing is to receive comments from all interested persons regarding the adoption of:

REGULATION CONCERNING SELF-INSURED EMPLOYERS FOR WORKERS' COMPENSATION

The following information is provided pursuant to the requirements of NRS 233B.0603:

1. The purpose of this regulation is to reduce the reporting requirements for serious claims due to inflation; update forms required for the annual financial reporting of associations of self-insured employers; and allow additional flexibility for the self-insured employers to meet the tangible net worth requirements established in statute.
2.
 - (a) The proposed regulation will establish guidelines for associations requesting a dividend; will change the reporting threshold from \$50,000 to \$100,000 for medical costs or indemnity; will change the reporting requirements on any accident resulting in the hospitalization of three or more employees to five or more employees; and will update and amend the form numbers and schedules required for annual financial reporting.
 - (b) The proposed regulation will allow the use of multiple use of letters of credit to satisfy the tangible net worth requirements and will change the reporting threshold from \$50,000 to \$100,000 for medical costs or indemnity.
3. Estimated economic effect of the regulation:

On the business which is to be regulated: The proposed regulation will have a positive impact on the self-insured employers by allowing multiple letters of credit to be used to satisfy the tangible net worth requirements and reduce the reporting requirements for large claims. The proposed regulation will have a positive impact on associations of self-insured employers establishing guidelines for the declaration of dividends, reducing the reporting requirements for serious claims, and updates the forms required for the submission of annual financial filings required by statute.

On the public: None.

4. There should be no additional cost to the Division.
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 is not pursuant to federal regulation.
7. If the regulation includes provisions which are more stringent than a federal regulation that regulates the same activity, a summary of such provisions. Not applicable.
8. The proposed regulation does not establish a new fee or increase an existing fee.

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, 788 Fairview Drive, Suite 300, Carson City, Nevada 89701. Written submissions must be received by the Division on or before June 17, 2004. 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 proposed regulation will be available at the offices of the Division, 788 Fairview Drive, Suite 300, Carson City, Nevada 89701, 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:

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Division of Insurance
788 Fairview Drive, Suite 300
Carson City, NV 89701

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

Section 1. Chapter 616B of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 11, inclusive, of this regulation:

Sec. 2. *As used in sections 3 to 7, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 and 4 of this regulation have the meanings ascribed to them in those sections.*

Sec.3. *“Dividend” is defined as any distribution whether in the form of property or cash made by an association of self-insured public or private employers to its members from earnings or retained earnings.*

Sec. 4. *“Fund year” is defined as the fiscal year used by the association for financial reporting purposes.*

Sec. 5. 1. *A request for a dividend declaration must be submitted to the commissioner not less than 30 days prior to the desired declaration.*

2. *A request for a dividend distribution must be submitted to the commissioner not less than 30 days prior to the desired distribution date.*

Sec. 6. *A request for a dividend distribution must include the following:*

1. *An Actuarial Analysis of Loss Reserves prepared by a member of the American Academy of Actuaries as of not more than 90 days from the date of the request for the dividend.*

2. *An analysis by fund year on a form approved by the commissioner. The analysis will include detail for unrealized gains and losses,*

3. *The proposed date of distribution and the amount of the dividend by fund year.*

4. *A copy of the most recent financial statements.*

5. *Any other information or reports that the commissioner determines are necessary for evaluating the request.*

6. *If deficits exist in any fund year, a plan for making up the deficit pursuant to NRS 616B.422 must be provided to the commissioner before a dividend distribution will be approved.*

Sec. 7. Chapter 616B.433 of NAC is hereby amended to read as follows:

1. To determine the tangible net worth of a self-insured employer, he shall submit to the commissioner all financial statements and accompanying footnotes, including an independent auditor’s opinion. Each statement must be audited. In determining the tangible net worth of a self-insured employer, the following items are disallowed as assets:

(a) Accounts receivable, if they are factored or collateralized.

(b) An inventory, except one held for resale and not collateralized.

- (c) A prepaid expense.
- (d) An unqualified investment.
- (e) An allocated bond fund.
- (f) An investment in an affiliate.
- (g) A restricted fund.
- (h) A reserve.
- (i) A security cost, such as a capitalized bond cost.
- (j) A cash equivalent, unless it is described in the footnotes for the balance sheet by item, and for investments, by duration and nature. A cash flow statement is not a sufficient description.
- (k) A contingency or commitment, including any estimated cost.
- (l) Any book adjustment caused by a change in an accounting policy or a restatement.
- (m) Goodwill or excess cost over the fair market value of assets.
- (n) Any other items listed in the assets that are deemed unacceptable by the commissioner because they cannot be justified or because they do not directly support the insurer's ability to pay a claim.

2. The following factors must be used to review the audited financial statements:

- (a) The auditor's opinion.
- (b) The various financial ratios, including working capital and cash flow.
- (c) Any footnotes related to:
 - (1) A contingency or commitment;
 - (2) A party;
 - (3) A bad debt; or
 - (4) The restructuring of an operation.

3. If any of the factors in subsection 2 are deemed material, the commissioner may deny certification.

4. If, after the adjustments are made pursuant to subsection 1, the employer's statement demonstrates a strong financial position and meets the tests in subsection 2, the commissioner may accept ~~[an irrevocable letter of credit]~~ *as an additional deposit any instrument set forth in NAC 616B.436* in the amount of \$2,500,000 in lieu of the requirement set forth in subsection 1 of NAC 616B.424. *The deposit required under this section cannot be combined with the security deposit required by NRS 616B.300.* ~~[If such a letter of credit is used, the deposit described in subsection 3 of NAC 616B.424 may not be in the form of a letter of credit.]~~

Sec. 8. NAC 616B.436 is hereby amended to read as follows:

1. Except as otherwise provided in subsection 3 of NRS 616B.300, a self-insured employer shall meet the deposit requirement of the self-insured program of workers' compensation by depositing with the commissioner:

- (a) Cash.
- (b) A certificate of deposit, from a financial institution in this state that is insured federally, made payable to the commissioner of insurance and the employer.
- (c) The following securities, if they have a date of maturity that is not more than 1 year:
 - (1) Any obligation guaranteed by the full faith and credit of the United States, including:
 - (I) United States treasury notes;
 - (II) United States treasury bills; and

(III) Internal money market funds related to United States treasury notes or treasury bills, if the account is maintained with a financial institution in this state and does not exceed \$10,000; or

(2) Any obligation of an agency of the United States, including the Federal National Mortgage Association, Federal Home Loan Bank Board and Federal Home Loan Mortgage Corporation, that is guaranteed by the full faith and credit of the United States. If the obligation is an internal money market fund related to the Federal National Mortgage Association, Federal Home Loan Bank Board or Federal Home Loan Mortgage Corporation, the account must be maintained with a financial institution in this state and may not exceed \$10,000.

The securities deposited in compliance with this paragraph must have a fair market value of not less than 105 percent of the employer's expected annual incurred cost of claims, unless reduced by excess insurance in an amount approved by the commissioner.

(d) A surety bond, if it is:

(1) Written by a company authorized and licensed to transact the business of surety insurance in this state; and

(2) Countersigned by a resident agent licensed in this state.

(e) ~~Unless a~~ A letter of credit ~~has been used to establish tangible net worth pursuant to NAC 616B.433, a letter of credit~~ that meets the standards set forth in NAC 616B.439.

(f) Any combination of cash, certificates of deposit, securities guaranteed by the full faith and credit of the United States, surety bonds or letters of credit. Priority of payment in case of loss must be in the order stated in this paragraph.

2. Securities guaranteed by the full faith and credit of the United States that are deposited in accordance with this section will be held in trust and administered by the commissioner of insurance, unless:

(a) The self-insured employer elects to use the services of a custodial financial institution in this state for trust investments;

(b) The custodial financial institution holds and administers the securities on behalf of the commissioner under an agreement approved by the commissioner; and

(c) The custodial financial institution provides monthly statements of the account to the division of insurance. The accuracy of each such statement must be certified monthly by a trust officer of the financial institution.

A deposit made pursuant to this subsection may not be withdrawn except upon written order of the commissioner. A deposit must be revised on or before June 30 each year or as the commissioner determines to be appropriate and necessary.

3. If necessary, the commissioner may select a competent specialist to make an evaluation:

(a) Before accepting for deposit any security of the United States or asset; or

(b) At any time after the security of the United States or asset is deposited with the commissioner or held by a custodial financial institution in this state.

The self-insured employer shall pay the cost of any such evaluation.

Sec. 9. NAC 616B.469 is hereby amended to read as follows:

Each self-insured employer must submit to the division of insurance the following interim reports as a condition for the continuance of his certificate of authority to self-insure:

1. Any injury or disease expected to result in the payment of at least ~~[\$50,000]~~ **\$100,000** for medical costs or indemnity, or which will trigger excess insurance coverage, must be reported to

the commissioner of insurance within 30 days after the actual occurrence of the claim or the projection of the reserve. The report must contain:

- (a) The name of the claimant and the date and type of injury;
- (b) The amount paid to date for medical costs and indemnity;
- (c) The projected amount of reserves that have been established; and
- (d) The amount paid, or anticipated to be paid, by excess insurance.

2. Any injury involving five or more employees for the same accident must be reported to the commissioner of insurance within 30 days after the actual occurrence. The report must contain:

- (a) The names of the claimants and the dates and types of injuries;
- (b) The amount paid to date for medical costs and indemnity;
- (c) The projected amounts of reserves that have been established; and
- (d) The amount anticipated to be paid by excess insurance.

Sec. 10. NAC 616B.570 is hereby amended to read as follows:

1. An association shall submit to the commissioner a report on any injury or disease expected to result in the payment of at least ~~[\$50,000]~~ *\$100,000* for medical costs or indemnity or to trigger the need for excess insurance coverage. The report must be submitted within 30 days after the actual occurrence of the claim or the projection of the reserve, and must contain:

- (a) The name of the claimant and the date and type of injury;
- (b) The amount paid to date for medical costs and indemnity;
- (c) The projected amount of reserves that have been established; and
- (d) The amount paid, or anticipated to be paid, by excess insurance.

2. An association shall submit to the commissioner a report on any accident which is fatal to one or more employees or results in the hospitalization of ~~[three]~~ *five* or more employees. The report must be submitted within 30 days after the actual occurrence, and must contain:

- (a) The names of the claimants and the dates and types of injuries;
- (b) The amount paid to date for medical costs and indemnity;
- (c) The projected amounts of reserves that have been established; and
- (d) The amount anticipated to be paid by excess insurance.

3. The commissioner may withdraw the certification of an association that fails timely to submit the reports required by subsections 1 and 2.

Sec. 11. NAC 616B.609 is hereby amended to read as follows:

1. The audited statement of the financial condition of an association required by NRS 616B.404 must be:

(a) Prepared in accordance with generally accepted accounting principles of the United States, stated in United States dollars, and must contain the footnotes and opinions of the independent certified public accountant who prepared it.

(b) Accompanied by a statement, prepared by the independent certified public accountant who prepared the audited statement, certifying that the combined tangible net worth of all members of the association satisfies the requirements of NRS 616B.353 and that all members meet the financial requirements for membership that are established by law, the bylaws of the association or the underwriting plan of the association.

2. In addition to the statements and schedules required by law, the association shall submit the following exhibits and schedules from the *Property/Casualty Insurance Annual Statement Blanks* published by the National Association of Insurance Commissioners:

(a) Exhibit 1 – ~~[Analysis of Assets]~~ *Analysis of Nonadmitted Assets & Related Items*;

~~[(b) Exhibit 2 – Analysis of Non-Admitted Assets;]~~

~~[(e)]~~ (b) Schedule A - Real Estate;

~~[(d)]~~ (c) Schedule B - Mortgage Loans;

~~[(e)]~~ (d) Schedule BA - Other Long-Term Invested Assets;

~~[(f) Schedule C – Collateral Loans;]~~

~~[(g)]~~ (e) Schedule D - Bonds and Stocks;

~~[(h)]~~ (f) Schedule DA – Short-Term Investments;

~~[(i)]~~ (g) Schedule DB - Derivative Instruments;

~~[(j) Schedule DC – Insurance Futures Options;]~~

~~[(k)]~~ (h) Schedule DM - Aggregate Statement and Market Values of Bonds and Preferred Stock; *and*

~~[(l)]~~ (i) Schedule P - Parts 1 through 4 - Analysis of Losses and Loss Expenses[;]. ~~[and~~

~~(m) Schedule X – Unlisted Assets.]~~

The exhibits must be prepared in accordance with the *Annual Statement Instructions Manual for Property and Casualty* published by the National Association of Insurance Commissioners.

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