

LCB File No. R064-06

**PROPOSED REGULATION OF THE
COMMISSIONER OF INSURANCE**

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

The Department of Business and Industry, Division of Insurance (Division), is proposing a new regulation pertaining to captive insurers' filing of annual statements and timing of qualifying examinations. A workshop has been set for **9:00 a.m., on June 7, 2006**, 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 regulation.

The proposed amendment to Chapter 694C of the Nevada Administrative Code (NAC) adds a definition for “accountant”, “independent certified public accountant” and “certified public accountant”.

The proposed amendment to NAC 694C.090 updates information concerning identification of sources and prices of items that each captive insurer must obtain for the appropriate documents and instructions for filing its annual statements.

The proposed amendment to NAC 694C.100 will allow the qualifying examination to take place either before or after a captive insurer has been issued its Certificate of Authority. This will allow the new insurer to commence operations prior to the examination and allow the examiner to verify that the insurer is operating in accordance with its approved business plan.

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 **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 Rook 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

Mineral County Library

20 Nevin Way
Yerington, NV 89447

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, (702) 687-4270, extension 260.

SECOND AMENDED
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 7, 2006**, 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:

**PROPOSED REGULATION CONCERNING AMENDMENTS TO CHAPTER 694C OF
THE NEVADA ADMINISTRATIVE CODE (NAC), REGARDING INDEPENDENT
CERTIFIED PUBLIC ACCOUNTANTS, CAPTIVE INSURERS' FILING OF ANNUAL
STATEMENTS AND THE TIMING OF QUALIFYING EXAMINATIONS OF NEW
CAPTIVE INSURERS**

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

1. A statement of the need for and purpose of the proposed regulation:
 - a. Chapter 694C of NAC needs the addition of the definition of “accountant”, “independent certified public accountant” and “certified public accountant”.
 - b. NRS 694C.310(2)(c) requires that each captive insurer enter “. . . into a contract with a qualified and experienced certified public accountant who is approved by the Commissioner” The proposed amendment defines the steps necessary to become an approved independent certified public accountant. The proposed amendment also defines disclosures the independent certified public accountant must make when he discovers adverse findings or if the relationship between the accountant and captive insurer is terminated.
 - c. Concerning NAC 694C.090: NAC 694C.090 was originally adopted on January 27, 2000, and has never been updated or amended. This regulation identifies the publications required for the filing of annual financial statements for captive insurers. The regulation which includes the cost of each item and the location where it can be obtained needs its information updated.
 - d. Concerning NAC 694C.100: NAC 694C.100 was originally adopted on January 27, 2000, and has never been updated or amended. This regulation authorizes the Commissioner to conduct a qualifying examination of a captive insurer applicant prior to its being licensed. The amendment will allow the examination to take place

either before or after the captive has been issued its Certificate of Authority. This will allow the new insurer to commence operations prior to the examination and allow the examiner to verify that the insurer is operating in accordance with its approved business plan.

2. Either the terms or substance of the proposed regulation or a description of the subjects and issues involved:

- a. Section 1 is transitory language adding sections 2 through 7 of Chapter 694C of NAC. Sections 2, 3 and 4 define the requirements of an independent certified public accountant to be “approved by the Commissioner” to act as an auditor in accordance with NRS 694C.400 and NAC 694C.210 and 694C.220. Sections 5, 6 and 7 define the disclosures required by the independent certified public accountant.
- b. Concerning NAC 694C.090: Each captive insurer must obtain the appropriate documents and instructions for filing its annual statements. This regulation identifies the items, sources and prices. Since the items, sources and prices have changed, the regulation must be updated.
- c. Concerning NAC 694C.100: The Commissioner may perform a qualifying examination either before or after the issuance of a Certificate of Authority. Prior to the insurer actually commencing business, the business plan is only theoretical. After it has commenced writing business, the examiner can determine if it is operating in accordance with the approved business plan.

3. Estimated economic effect of the regulation:

a. Additions to Chapter 694C of NAC:

(I) Both adverse and beneficial effects:

There are no adverse effects of this regulation; the beneficial effects include the concise information on how an independent certified public may become “approved” by the Commissioner. Also, the regulation clarifies the duties of the accountant when adverse findings are observed. Finally, the information on the forms, texts and costs are updated for the materials required to complete the annual audit of a captive insurer.

(II) Both immediate and long-term effects:

The immediate and long-term effects are identical; the independent certified public accountant will have knowledge of how to become “approved” by the Commissioner and know his rights in the event that he has been denied approval. Also, the materials required to complete the annual audit are clearly identified in the updating of NAC 694C.090. The costs and locations of where to procure the materials have changed since the regulation was adopted.

b. Concerning NAC 694C.090:

(I) Both adverse and beneficial effects:

Each captive insurer is able to obtain the documents and items necessary to file its annual statement in accordance with NRS 694C.400. Without these documents, the insurer cannot comply. There are no adverse effects.

(II) Both immediate and long-term effects:

Each captive insurer will know the item, source and cost to be able to comply with NRS 694C.400. This regulation will need to be updated anytime that the filing product, location of purchase or the price of the product changes.

c. Concerning NAC 694C.100:

(I) Both adverse and beneficial effects:

Each captive insurer is subject to a qualifying examination; this change will allow the examination to take place after the commencement of operations, thereby allowing verification of compliance with the business plan. There are no adverse effects.

(II) Both immediate and long-term effects:

Since each captive applicant is subject to a qualifying examination, the Commissioner will be able to determine very early if the applicant fails to comply with its business plan.

4. A statement identifying the methods used by the agency in determining the impact on a small business prepared pursuant to subsection 3 of NRS 233B.0608:

The agency is familiar with the requirements of approving independent certified public accountants for insurers licensed in accordance with Chapter 680A of NRS. The provisions of this regulation are nearly identical to those requirements in Chapter 680A of NAC.

Concerning NAC 694C.090: The Division has determined the impact on small business by looking at what businesses would need to procure the products identified in the regulation. Since this regulation only applies to captive insurers authorized under Chapter 694C of NRS, there will be no impact on any other small business.

Concerning NAC 694C.100: The Division determined the impact on small business by looking at what businesses would be subject to a qualifying examination. Since this regulation only applies to new captive insurer applicants, there will be no impact on any

other small business.

5. The estimated cost to the agency for enforcement of the proposed regulation:

No new costs.

Concerning NAC 694C.090: Nominal. The Division must provide this information to every captive insurer authorized in Nevada so that they can comply with NRS 694C.400.

Concerning NAC 694C.100: Nominal. The examinations are conducted by contract examiners.

6. A description of any regulations of other state or local governmental agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary; if the regulation overlaps or duplicates a federal regulation, the notice must include the name of the regulating federal agency:

None.

Concerning NAC 694C.090: None.

Concerning NAC 694C.100: None.

7. If the regulation is required pursuant to federal law, a citation and description of the federal law:

Not applicable.

8. 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.

9. Include a statement indicating whether the regulation establishes a new fee or increases an existing fee:

There are no new fees or increases in existing 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, 788 Fairview Drive, Suite 300, Carson City, Nevada 89701. **Written submissions must be received by the Division on or before May 31, 2006.** 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.

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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
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Yerington, NV 89447

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P.O. Box 781
Lovelock, NV 89419

Washoe County Library
ATTN: Reference
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Reno, NV 89505-2151

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LCB File No. R064-06

**PROPOSED REGULATION OF THE
COMMISSIONER OF INSURANCE**

(This version replaces the initial agency draft posted on 3/30/06)

**PROPOSED REGULATION AMENDMENTS REGARDING CAPTIVE INSURERS
FILING OF ANNUAL STATEMENTS AND THE TIMING OF QUALIFYING
EXAMINATIONS OF NEW CAPTIVE INSURERS**

AUTHORITY: NRS 679B.130 and 694C.170

Section 1. Chapter 694C of NAC is hereby amended by adding thereto the provisions set forth as sections 2 through 7 of this regulation.

Sec. 2. *“Accountant, independent certified public accountant and certified public accountant” means an independent certified public accountant or accounting firm in good standing with the American Institute of Certified Public Accountants and in all states in which the accountant or accounting firm is licensed to practice.*

Sec. 3. *1. Except as otherwise provided in subsection 2, the Commissioner will recognize an independent certified public accountant as a qualified independent certified public accountant if the independent certified public accountant conforms to the standards contained in the Code of Professional Ethics of the American Institute of Certified Public Accountants, and the Rules of Professional Conduct and the regulations of the Nevada State Board of Accountancy, or other similar code.*

2. The Commissioner will not recognize as a qualified independent certified public accountant an independent certified public accountant who:

- (a) *Is not in good standing with the American Institute of Certified Public Accountants and in all states in which the independent certified public accountant is licensed or certified to practice;*
- (b) *Has either directly or indirectly entered into an agreement of indemnity or release from liability with respect to an audit of the captive insurer if the intent or effect of the agreement or release is to shift or limit in any manner the potential liability of the accountant for failure to adhere to applicable auditing or professional standards, whether or not resulting in part from a knowing or other misrepresentation made by the captive insurer or its representatives;*
- (c) *Has been convicted of fraud, bribery, a violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961 to 1968, inclusive, or any dishonest conduct or practices under federal or state law;*
- (d) *Has been found to have violated any provision of title 57 of NRS, or any regulation adopted pursuant thereto, with respect to any previous annual audited financial report submitted pursuant to NRS 694C.400 and NAC 694C.200 to 694C.210, inclusive; or*
- (e) *Has demonstrated a pattern or practice of failing to detect or disclose material information in previous annual audited financial reports filed pursuant to NRS 694C.400 and NAC 694C.200 to 694C.210, inclusive.*

Sec. 4. *The Commissioner will, if he deems it necessary, hold a hearing to determine whether an independent certified public accountant is qualified for the purposes of NRS 694C.400 and NAC 694C.200 to 694C.210, inclusive. If, based on the evidence presented, the Commissioner determines that the accountant is not qualified, the Commissioner will:*

1. *Rule that the accountant is not qualified for purposes of expressing his opinion on the financial statements in the annual audited financial report to be made pursuant to NRS 694C.400 and NAC 694C.200 to 694C.210, inclusive, and require the captive insurer to replace the accountant with an independent certified public accountant who is so approved by the Commissioner in accordance with NRS 694C.310; or*
2. *Take any other action determined to be necessary by the Commissioner.*

↪ If the Commissioner determines, without a hearing, that the accountant is not qualified, the accountant may request a hearing pursuant to NRS 679B.310.

Sec. 5. *1. An independent certified public accountant of an captive insurer required to furnish an annual audited financial report shall report to the board of directors or audit committee of the captive insurer each determination by the accountant that the captive insurer:*

- (a) Has materially misstated its financial condition as reported to the Commissioner as of the date of the balance sheet currently under examination; or*
- (b) Does not, as of that date, meet the minimum requirements for capital and surplus as set forth in chapter 694C of NRS.*

The report must be in writing and provided to the captive insurer not later than 5 business days after the accountant makes such a determination.

2. A captive insurer who receives a report from its independent certified public accountant pursuant to this section shall, not later than 5 business days after the date on which it receives the report from the accountant:

- (a) Forward a copy of the report to the Commissioner; and*
- (b) Provide the independent certified public accountant who made the report with evidence that the captive insurer has forwarded a copy of the report to the Commissioner. If the*

independent certified public accountant does not, within the 5-business-day period, receive evidence from the captive insurer that the captive insurer has forwarded a copy of the report to the Commissioner in accordance with this section, the independent certified public accountant shall file with the Commissioner a copy of its report within the next 5 business days.

3. An independent certified public accountant is not liable in any manner to any person for any statement made in connection with this section if the statement is made in good faith in compliance with this section.

4. If the independent certified public accountant, after the annual audited financial report reviewed by the accountant has been filed pursuant to NRS 694C.400 and NAC 694C.200 to 694C.210, inclusive, becomes aware of any facts which affect his report, the accountant shall take such action as prescribed in Volume 1, Section AU 561 of the Professional Standards of the American Institute of Certified Public Accountants, which is hereby adopted by reference. A copy of the Professional Standards may be obtained from the American Institute of Certified Public Accountants.

Sec. 6. *If, following the audit of the financial statements of a captive insurer, an independent certified public accountant notes any significant deficiency in the captive insurer's structure for internal control, the captive insurer shall, not later than 60 days after the date on which the annual audited financial report is filed with the Commissioner, file a written report which provides a description of the deficiency and of the remedial actions taken or proposed to correct the significant deficiency, if those actions are not otherwise described in the accountant's report filed with the annual audited financial report.*

Sec. 7. *1. If the independent certified public accountant who was the accountant for the most recent filing of the annual audited financial report of a captive insurer is dismissed or resigns, the captive insurer shall:*

(a) Not later than 5 business days after the dismissal or resignation, notify the Commissioner of the dismissal or resignation; and

(b) Not later than 10 business days after notifying the Commissioner of the dismissal or resignation of the accountant, file with the Commissioner a separate letter which sets forth:

(1) Each disagreement which occurred during the 24 months immediately preceding the dismissal or resignation between the accountant and the captive insurer on any matter of accounting principles or practices, disclosure on a financial statement or the scope or procedure of the audit; and

(2) Which disagreements, if not resolved to the satisfaction of the accountant, caused him to make a reference to the subject matter of the disagreement in his opinion filed with the annual audited financial report of the captive insurer.

2. The disagreements required to be reported pursuant to this section include both those resolved to the former accountant's satisfaction and those which have not been resolved to the former accountant's satisfaction.

3. The captive insurer shall request in writing that the former accountant furnish a letter addressed to the captive insurer stating whether the accountant agrees with the statements contained in the captive insurer's letter filed pursuant to subsection 1 and, if not, stating the reasons he does not agree.

4. *Upon receipt of the accountant's response letter, the captive insurer shall file with the Commissioner a copy of the response letter from the former accountant and any written response of the captive insurer to the accountant's response letter.*

5. *For the purposes of this section, a disagreement between the captive insurer and its accountant is a disagreement which occurs between the captive insurer and the accountant at the decision-making level and includes, without limitation, a disagreement between the personnel of the captive insurer responsible for preparation of the financial statements of the captive insurer and the personnel of the independent certified public accountant responsible for rendering its opinion on those statements*

Sec. 8. NAC 694C.090 is hereby amended to read as follows:

The ~~fe~~ Commissioner hereby adopts the following publications by reference:

1. The *Property/Casualty Insurance Annual Statement Blanks (ASB-PU)* and the *Annual Statement Instructions for the Property/Casualty Manual (ASI-PU)*, published by the National Association of Insurance Commissioners. A copy of these publications may be purchased from NAIC-Publications *Customer Service*, ~~[P.O. Box 87-7870,]~~ *2301 McGee Street, Suite 800*, Kansas City, Missouri ~~[64187-7870,]~~ *64108-2662*; by telephone at ~~[(816) 374-7259,]~~ *(816)783-8300*; *by fax at (816) 460-7593; or by e-mail at prodserv@naic.org.* ~~[for \$125 and \$175, respectively.]~~ *The costs for these publications are as follows: ASB-PU: \$200.00; ASI-PU: \$225.*

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, ~~for~~ by telephone at (888) 777-7077, *or by fax at (800) 362-5066.* ~~[for \$95 for members of the American Institute of Certified Public Accountants and \$119 for nonmembers.]~~ *This publication is available*

on CD-ROM at a cost of \$245.00 for members of the AICPA or \$306.25 for non-members. The publication is available in loose leaf binder at a cost of \$315.00 for members of AICPA or \$393.75 for non-members.

3. *Original Pronouncements and Current Text*, published by the Financial Accounting Standards Board. A copy of ~~[:]~~ *these publications may be obtained Online at www.fasb.org or by calling (800) 748-0659. The cost of each publication is as follows:*

(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.] are \$125.00.~~

~~[(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.] is \$110.00.~~

~~[(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.]~~

(c) The cost for both publications purchased as a set is \$215.00.

Sec. 9. NAC 694C.100 is hereby amended to read as follows:

690C.100 ~~[In addition to the processing of an application of a captive captive insurer for licensure, the] The [e]C~~Commissioner may perform a qualifying investigation or examination of the applicant *either* before *or after* the applicant may receive the ~~[License.]~~ *certificate of authority*. 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. NAC 694C.220 is hereby amended to read as follows:

1. A captive captive insurer shall report to the commissioner in writing the name and address of the independent certified public accountant whom the captive captive insurer has retained to conduct the annual audit required to be filed pursuant to NAC 694C.210~~[;]~~

~~[1.]~~ Within 90 days after becoming subject to chapter 694C of NRS; and

~~[2.—If the captive captive insurer changes its independent certified public accountant, within 90 days after making that change.]~~

2. *The captive insurer shall obtain a letter from the independent certified public accountant and file a copy of the letter with the Commissioner which states that the accountant is aware of the provisions of title 57 of NRS, and the regulations adopted pursuant thereto, that relate to accounting and financial matters, and affirms that the accountant will express his opinion on the financial statements in terms of their conformity to the accounting practices prescribed or otherwise permitted by NRS 694C.400 , and the regulations adopted pursuant thereto, specifying such exceptions as he deems appropriate.*