

**PROPOSED REGULATION OF THE
COMMISSIONER OF INSURANCE**

LCB File No. R071-09

September 15, 2009

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

AUTHORITY: §§1 and 2, NRS 679B.130 and 694C.170.

A REGULATION relating to captive insurers; creating requirements for contracts between a captive insurer and a service provider; revising provisions relating to conflicts of interest for captive insurers; and providing other matters properly relating thereto.

Section 1. Chapter 694C of NAC is hereby amended by adding thereto a new section to read as follows:

- 1. A material service provider contract between a captive insurer and a service provider:*
 - (a) Must be for a period of not more than 5 years;*
 - (b) Requires the approval of the majority of the captive insurer’s directors or subscribers’ advisory committee members for its initial term and for all renewals; and*
 - (c) Must be filed with the Division within 30 days after the effective date of the contract.*
- 2. As used in this section:*
 - (a) “Material service provider contract” means any contract between a captive insurer and a service provider under the terms of which the amount to be paid to the service provider by the captive insurer is greater than \$15,000 during any one 12-month period.*
 - (b) “Service provider” means a captive manager, auditor, accountant, actuarie, investment adviser, attorney, managing general underwriter, managing general agent, attorney-in-fact or*

any other party responsible for underwriting, the determination of rates, the collection of premiums, adjusting and settling claims or the preparation of financial statements.

Sec. 2. NAC 694C.290 is hereby amended to read as follows:

694C.290 1. A captive insurer chartered in this State shall adopt a ~~statement for~~ conflict of interest *policy* for its *attorneys-in-fact, trustees*, managers, officers ~~[,] and~~ directors . ~~[and key employees. The statement must provide for a disclosure that the manager, officer, director or employee has no outside commitments, personal or otherwise, that would divert him from his duty to further the interest of the captive insurer which he represents, except that the statement for conflict of interest must not preclude the manager, officer, director or employee from being a director or officer in more than one insurance company or captive insurer, or both.]~~ *The policy must contain:*

(a) A requirement that the attorney-in-fact, trustee, manager, officer or director must annually disclose that he or she has no outside commitments, personal or otherwise, that would divert him or her from his or her duty to further the interests of the captive insurer that he or she represents;

(b) A clear expression that the attorney-in-fact, trustee, manager, officer or director has a duty of care to protect the interests of the captive insurer above those of any person including, but not limited to, the attorney-in-fact, trustee, manager, officer or director or any service provider; and

(c) A requirement that each attorney-in-fact, trustee, manager, officer or director must provide a complete annual disclosure of each material relationship that he or she has with the captive insurer.

2. ~~[A]~~ *Each attorney-in-fact, trustee, manager, ~~[an]~~ officer ~~[-, a]~~ or director ~~[and a key employee]~~ of a captive insurer shall file a disclosure of his conflicts of interest with the board of directors *or subscribers' advisory committee* of the captive insurer annually.*

3. *Nothing in this section shall be construed to prevent an attorney-in-fact, trustee, manager, officer or director of a captive insurer from being a director or officer in more than one insurance company or captive insurer.*

4. *As used in this section:*

(a) *“Material relationship” means any relationship in which an attorney-in-fact, trustee, manager, officer or director of a captive insurer, any member of such a person’s immediate family or any business with which such a person is affiliated receives compensation or payment of any other items of value from the captive insurer or a consultant or service provider to the captive insurer of an amount greater than \$15,000 within any one 12-month period.*

(b) *“Service provider” means a captive manager, auditor, accountant, actuarie, investment adviser, attorney, managing general underwriter, managing general agent, attorney-in-fact or any other party responsible for underwriting, the determination of rates, the collection of premiums, adjusting and settling claims or the preparation of financial statements.*