

**ADOPTED REGULATION OF THE  
COMMISSIONER OF INSURANCE**

**LCB File No. R102-09**

Effective January 28, 2010

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

AUTHORITY: §1, NRS 616B.300 and 679B.130; §§2 and 3, NRS 616B.353, 616B.446 and 679B.130; §4, NRS 679B.130; §5, NRS 679B.130 and 680A.300.

A REGULATION relating to insurance; eliminating certain restrictions regarding countersignatures and residency requirements; and providing other matters properly relating thereto.

**Section 1.** NAC 616B.436 is hereby amended to read as follows:

616B.436 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 ~~[ ]~~ *any of the following:*

- (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:
  - (I) 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 Housing Finance 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 Housing Finance 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]~~ *an insurer* authorized and licensed to transact the business of surety insurance in this State; and

(2) Countersigned by a ~~[resident agent licensed in this State.]~~ *producer of insurance appointed by the insurer.*

(e) 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, 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.

***4. As used in this section, “producer of insurance” has the meaning ascribed to it in NRS 679A.117.***

**Sec. 2.** NAC 616B.534 is hereby amended to read as follows:

616B.534 1. Each association shall maintain a policy of specific and aggregate excess insurance with a self-insured retention of no less than \$100,000.

2. The policy of excess insurance and any proof of that insurance must be countersigned by a ~~licensed resident agent of~~ ***producer of insurance appointed by*** the insurer which issued the policy.

3. The Commissioner will review the amount of insurance required for an association and may adjust the amount if he determines that changed conditions warrant an adjustment.

*4. As used in this section, “producer of insurance” has the meaning ascribed to it in NRS 679A.117.*

**Sec. 3.** NAC 616B.540 is hereby amended to read as follows:

616B.540 **1.** Except as otherwise provided in paragraph (e) of subsection 1 of NRS 616B.353, an association shall satisfy the requirement to make a security deposit by depositing with the Commissioner:

~~1.~~ (a) Cash;

~~2.~~ (b) A certificate of deposit, from a financial institution in this State that is insured federally, made payable to the Commissioner and the association;

~~3.~~ (c) A surety bond, if it is:

~~(a)~~ (1) Written by ~~a company~~ *an insurer* authorized and licensed to transact the business of surety insurance in this State; and

~~(b)~~ (2) Countersigned by a ~~resident agent licensed in this State;~~

~~4.~~ *producer of insurance appointed by the insurer;*

(d) A letter of credit that meets the standards set forth in NAC 616B.543; or

~~5.~~ (e) Any combination of cash, certificates of deposit, surety bonds or letters of credit.

→ Priority of payment in case of loss must be in the order stated in this section.

*2. As used in this section, “producer of insurance” has the meaning ascribed to it in NRS 679A.117.*

**Sec. 4.** NAC 680A.110 is hereby amended to read as follows:

680A.110 Insurance companies licensed to do an insurance business in Nevada may merchandise any type of insurance permitted by the Division through any type of vending machine under the following conditions:

1. All policy forms must be filed with, and approved by, the Commissioner in accordance with the filing procedures for other policy forms.
2. Reasonable means, as determined by the Commissioner, must be provided for informing the prospective purchaser of the coverage and restrictions of the policy.
3. The name of the insurer, the location of its home office, the name of the responsible ~~[agent]~~ *producer of insurance appointed by the insurer* and his office address, and the serial number of the machine must be clearly displayed on each machine.
4. Prompt refund of money inserted in a defective machine and for which no insurance, or a lesser amount than paid for, must be provided to the applicant or prospective applicant.
5. Vending machines must be constructed and operated to retain a copy of the application showing the date of application, name and address of the applicant and of the beneficiary and the amount of insurance afforded by each policy issued.
6. All machines must be operated under the supervision of a ~~[duly licensed resident agent of]~~ *producer of insurance appointed by* the ~~[company]~~ *insurer* issuing the policies.
7. Vending machines must be constructed and operated to affix the facsimile signature of the ~~[licensed resident agent of]~~ *producer of insurance appointed by* the ~~[company]~~ *insurer* upon all policies issued therefrom, unless the ~~[resident agent]~~ *producer of insurance appointed by the insurer* is on the premises and personally countersigns them.

**Sec. 5.** NAC 680A.410 is hereby amended to read as follows:

680A.410 1. ~~Commissions and fees for countersignatures must be paid to a countersigning resident agent on all premiums collected on policies of property and casualty insurance of agents and brokers other than resident agents and brokers which insure risks located in Nevada.~~

~~—(a) The insurer must provide for payment of fees and commissions.~~

~~—(b) Fees and commissions must be paid on premiums developed by audit and on anniversary installments.~~

~~—2.] Countersignature fees and commissions may be negotiated [upwards from the minimum set by law] for [additional] services required of [the] a countersigning [agent, but may not be negotiated below the legal minimum.] *producer of insurance appointed by an insurer.*~~

~~[3.—The]~~

2. A countersigning ~~[agent]~~ *producer of insurance appointed by an insurer* shall maintain complete records of countersignature transactions, including daily reports, correspondence, names of ~~[nonresident]~~ agents and brokers who wrote the policies, and evidence of fees and commissions charged.

~~[4.—The]~~

3. A countersigning ~~[agent]~~ *producer of insurance appointed by an insurer* shall handle normal problems arising between agents and customers, and is answerable to the Division for complaints and problems relating to policies which he has countersigned.

~~[5.]~~ 4. All commissions on property and casualty insurance which was sold by an agent or broker who is not licensed in Nevada and which covers a risk located in Nevada must be paid to ~~[the] a~~ countersigning ~~[resident agent.]~~ *producer of insurance appointed by the applicable insurer.*

## NOTICE OF ADOPTION OF PROPOSED REGULATION

The Commissioner of Insurance adopted regulations assigned LCB File No. R102-09 which pertain to chapters 616B and 680A of the Nevada Administrative Code.

### INFORMATIONAL STATEMENT

A workshop was held on December 14, 2009, and a hearing was held on December 21, 2009, at the offices of the Department of Business and Industry, Division of Insurance (“Division”), 788 Fairview Drive, Suite 300, Carson City, Nevada 89701, with a simultaneous video-conference conducted at the Bradley Building, 2501 E. Sahara Avenue, 2<sup>nd</sup> Floor Conference Room, Las Vegas, Nevada 89104, regarding the adoption of the regulation concerning elimination of producer residency requirements for countersignatures.

Public comment was solicited by posting notice of the hearing at the following public locations: the Division’s Web-site, Division’s Carson City and Las Vegas offices, Carson City Courthouse, Office of the Attorney General, Capitol Building Lobby, Capitol Building Press Room, Blasdel Building, and Legislative Counsel Bureau; and by providing notice of the hearing to the Donald W. Reynolds Press Center, Nevada State Library, Carson City Library, Churchill County Library, Clark County District Library, Douglas County Library, Elko County Library, Esmeralda County Library, Eureka Branch Library, Humboldt County Library, Lander County Library, Lincoln County Library, Lyon County Library, Mineral County Library, Pershing County Library, Storey County Library, Tonopah Public Library, Washoe County Library, and White Pine County Library.

The Division maintains a list of interested parties, comprised mainly of insurance companies, agencies and other persons regulated by the Division. These persons were notified of the hearing and that copies of the regulation could be obtained from or examined at the offices of the Division in Carson City.

In addition to Division staff, the workshop was attended by two individuals in Carson City and one individual in Las Vegas. In addition to Division staff, the hearing was attended by one individual in Carson City, and no members of the public attended in Las Vegas. The proposed regulation was presented orally by Brett J. Barratt, Chief Insurance Assistant, on behalf of the Division. The Division did not receive any written comments.

The economic impact of the regulation is as follows:

- (a) On the business it is to regulate: The beneficial economic impact the subject amended regulations have on the business they regulate is that they will ease the ability of insurers and Nevada licensed producers to write policies covering Nevada risks without the added burden of requiring that policies produced by a nonresident producer be countersigned by a resident producer. The adverse economic affect on the business the amended regulations regulate is that Nevada licensed resident producers who were acting as countersigning agents for

nonresident Nevada producers will no longer be paid a five percent commission under the previous version of NRS 680A.300. Because the amended regulations merely implement and clarify new law passed by the 2009 Legislature in SB 426, the amended regulations themselves do not impact the business they regulate.

- (b) On the small businesses: Some of the businesses impacted by the amended regulations are small business. Therefore, the above response also applies here.
- (c) On the public: None.

The Division will not incur any additional expense to enforce this regulation.

The Division is not aware of any overlap or duplication of the regulation with any state, local or federal regulation.

Based upon the comments received at the workshop and hearing, the proposed regulation, LCB File No. R102-09, was adopted as amended, as follows:

**Explanation:** Language in *blue bold italics* is new language in the original proposed regulation; **green bold** is new language adopted at the regulation hearing; and ~~red strikethrough~~ is deleted language in the original proposed regulation.

1. Subsection 1(d)(2) of Section one is amended as follows:

Countersigned by a ~~resident agent licensed in this State;~~ *producer of insurance appointed by the insurer.*

2. Subsection 1(c)(2) of Section three is amended as follows:

Countersigned by a ~~resident agent licensed in this State;~~ *producer of insurance appointed by the insurer.*

3. Subsection 7 of Section four is amended as follows:

Vending machines must be constructed and operated to affix the facsimile signature of the ~~licensed resident agent of~~ *producer of insurance appointed by* the company upon all policies issued therefrom, unless the ~~resident agent~~ *producer of insurance appointed by the insurer* is on the premises and personally countersigns them.



STATE OF NEVADA  
DEPARTMENT OF BUSINESS AND INDUSTRY  
DIVISION OF INSURANCE

IN THE MATTER OF THE

CAUSE NO. **09.0403**

LCB File No. **R102-09**

**REGULATION RELATING TO  
ELIMINATION OF RESIDENCY  
REQUIREMENTS RELATED TO  
COUNTERSIGNATURES**

**SUMMARY OF  
PROCEEDINGS AND ORDER**

**SUMMARY OF PROCEEDINGS**

A public workshop, as required by Nevada Revised Statute (“NRS”) 233B.061, on the proposed regulation relating to the elimination of residency requirements related to countersignatures was held before Amy L. Parks, Esq., Chief Insurance Counsel (“Hearing Officer”), on December 14, 2009, at the offices of the Department of Business and Industry, Division of Insurance (“Division”), in Carson City, Nevada, and video-conferenced to the Bradley Building in Las Vegas, Nevada. A public hearing on the proposed regulation was also held before the Hearing Officer, on December 21, 2009, at the Division offices in Carson City, Nevada, and video-conferenced to the Bradley Building in Las Vegas, Nevada. The regulation is proposed under the authority of: §1, NRS 616B.300 and 679B.130; §§2 and 3, NRS 616B.353, 616B.446 and 679B.130; §4, NRS 679B.130; §5, NRS 679B.130 and 680A.300.

The workshop was attended by two interested parties in Carson City and one interested party in Las Vegas. During the workshop, Brett J. Barratt, Esq., Chief Insurance Assistant, orally presented the proposed regulation on behalf of the Division. One interested party in Carson City made oral comments at the workshop. The Division received no written comments at the workshop.

The hearing was attended by one interested party in Carson City and was not attended by any interested parties in Las Vegas. At the hearing, Brett J. Barratt, Esq., Chief Insurance Assistant, orally presented the proposed regulation. The Division received no written comments at the hearing.

Mr. Barratt explained that proposed amendments update the subject regulations consistent with the decision of the Ninth Circuit in Council of Insurance Agents & Brokers v. Molasky-Arman, 522 F.3d 925 (9<sup>th</sup> Cir. 2008) and statutory changes made pursuant to that decision during the 2009 Legislative Session, pursuant to Senate Bill 426. Mr. Barratt further explained that Nevada's countersignature law, NRS 680A.300 was declared unconstitutional and violative of the Privileges and Immunities Clause of the United States Constitution "because it discriminates against Nevada licensed nonresident insurance producers by denying them the same rights and privileges afforded to Nevada licensed resident producers."

Based upon the information and comments received at the workshop and hearing, the proposed regulation, LCB File Number R102-09, is revised and adopted as follows:

**Explanation:** Language in *blue bold italics* is new language in the original proposed regulation; **green bold** is new language adopted at the regulation hearing; and ~~red strikethrough~~ is deleted language in the original proposed regulation.

2. Subsection 1(d)(2) of Section one is amended as follows:

Countersigned by a ~~{resident agent licensed in this State.}~~ *producer of insurance appointed by the insurer.*

2. Subsection 1(c)(2) of Section three is amended as follows:

Countersigned by a ~~{resident agent licensed in this State.}~~ *producer of insurance appointed by the insurer.*

3. Subsection 7 of Section four is amended as follows:

Vending machines must be constructed and operated to affix the facsimile signature of the ~~{licensed resident agent of}~~ *producer of insurance appointed by* the company upon all policies issued therefrom, unless the ~~{resident agent}~~ *producer of insurance appointed by the insurer* is on the premises and personally countersigns them.

