

Chapter 694C of NAC

LCB File No. T034-09

**ADOPTED TEMPORARY REGULATION OF
THE COMMISSIONER OF INSURANCE**

Filed with the Secretary of State on July 29, 2009

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

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

A TEMPORARY REGULATION relating to captive insurers and conflict of interest statements to enhance disclosure requirements.

Section 1. Chapter 694C.290 of NAC is hereby amended as follows:

NAC 694C.290 Conflict of interest *policy and* ~~[:Statement;]~~ disclosure ~~[:]~~; *Material Service Provider Contracts*. (NRS 679B.130, 694C.170)

1. A captive insurer chartered in this State shall adopt a ~~statement for~~ conflict of interest *policy* for its *attorney in fact, trustee*, 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~~ *policy must contain the following provisions:*

(a) A requirement that the attorney in fact, manager, officer, director, or trustee, must annually disclose that he has no outside commitments, personal or otherwise, that would divert him from his duty to further the interests of the captive insurer which he represents, except that the statement for conflict of interest must not preclude the attorney in fact,

manager, officer, director or trustee from being a director or officer in more than one insurance company or captive insurer, or both.

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

(c) A requirement that each attorney in fact, manager, officer, director, or trustee must provide a complete annual disclosure of each material relationship that each has with the captive insurance company. A "material relationship" exists when the attorney in fact, manager, officer, director or trustee, a member of such person's immediate family or any business with which such person is affiliated receives compensation or payment of any other items of value from the captive insurance company or a consultant or service provider to the captive insurance company of an amount greater than \$15,000 within any one 12-month period.

2. ~~[A]~~ Every manager, ~~[an]~~ officer, ~~[a]~~ director, *trustee, and attorney in fact* ~~[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. *Contracts between a captive insurer and service providers are subject to the following:*

(a) "Service provider" means captive managers, auditors, accountants, actuaries, investment advisors, attorneys, managing general underwriters, managing general agents, attorneys in fact, or any other party responsible for underwriting, the determination of rates, the collection of premium, adjusting and settling claims or the preparation of financial statements.

(b) "Material service provider contract" means a contract between a captive insurer and a service provider under 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.

(c) The term of any material service provider contract with a captive insurer or risk retention group shall not exceed five years.

(d) A material service provider contract, or its renewal, shall require the approval of the majority of the captive insurer's directors or subscribers advisory committee members.

(e) A material service provider contract shall be filed with the Division within 30 days after the effective date of the material service provider contract.

Sec. 2. *Effective date. Pursuant to NRS 233B.063, as a temporary regulation, sections 1 to 2 become effective as of the date filed with the Secretary of State and remain in effect until November 1, 2009, unless otherwise replaced or repealed prior to that date.*

NOTICE OF ADOPTION OF TEMPORARY REGULATION
LCB File No. T033-09

The Commissioner of Insurance adopted temporary regulations assigned LCB File No. T033-09 which pertain to chapter 694C of the Nevada Administrative Code.

INFORMATIONAL STATEMENT

A workshop was held on May 8, 2009, and a hearing was held on May 22, 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, Real Estate Division Conference Room, 2nd Floor, Las Vegas, Nevada 89104, regarding the adoption of the temporary regulation concerning officers and directors of captive insurance companies.

Public comment was solicited by posting notice of the hearing in the following public locations: the Division’s Carson City and Las Vegas offices, Carson City Courthouse, Office of the Attorney General, the Donald W. Reynolds Press Center, Capitol Building Lobby, Capitol Building Press Room, Blasdel Building, Legislative Counsel Bureau, 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 general 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.

The workshop was attended by seven (7) interested parties in Carson City and six (6) interested parties in Las Vegas. The hearing was attended by three (3) interested parties in Carson City and one (1) interested party in Las Vegas. The Division did not receive any written comments but did receive oral testimony from the industry and interested parties regarding the proposed changes to NAC 694C.290.

The rule-making process began on April 9, 2009, when the Nevada Captive Insurance Association filed petitions pursuant to NAC 679B.482 to amend NAC 694C.280 and NAC 694C.290. The Commissioner approved the petitions on April 17, 2009.

Based upon the testimony received at the public workshop and formal hearing, amendments were made to the temporary regulation as it was initially proposed. After considering the record and the recommendation of the hearing officer, the Commissioner has

issued an order adopting the temporary regulation, LCB File No. T034-09, as amended, as a temporary regulation of the Division.

The new language being added to NAC 694C.290 requires a captive attorney in fact, manager, officer, director, or trustee to disclose that he has no outside affiliations diverting him from furthering the interests of the captive, and requires the captive manager, officer, or director to exercise a duty of care to protect the interests of the captive. The new language also requires that a material relationship contract be pre-approved by the Division. It defines a material relationship between a captive and a person or a person's immediate family, as well as any other business, to mean compensation exceeding \$15,000 within a 12-month period for services performed on behalf of the captive. Please see the enclosed Summary of Proceedings and Order, including the amended temporary regulation attached as Exhibits "A" and "B".

The economic impact of the regulation is as follows:

- (a) On the business it is to regulate: None.
- (b) On Small Business: None.
- (c) On the public: None.

The Division does not anticipate an expense to enforce the proposed regulation. The Division is not aware of any overlap or duplication of the regulation with any state, local or federal regulation.

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INSURANCE

IN THE MATTER OF THE

CAUSE NO. **09.0161**
LCB FILE NO. **T034-09**

**TEMPORARY REGULATION
CONCERNING CONFLICT OF
INTEREST POLICIES OF
CAPTIVE INSURANCE
COMPANIES**

**SUMMARY OF
PROCEEDINGS
AND ORDER**

SUMMARY OF PROCEEDINGS

A public workshop, as required by NRS 233B.061, on the proposed temporary regulation to amend NAC 694C.290 concerning conflict of interest policies of captive insurance companies was held before Amy L. Parks, Hearing Officer, on May 8, 2009, in Carson City, Nevada, and video-conferenced to the Bradley Building in Las Vegas, Nevada. A public hearing on the proposed temporary regulation to amend NAC 694C.290 was held before the Hearing Officer on May 22, 2009, in Carson City, Nevada, and video-conferenced to the Bradley Building in Las Vegas, Nevada. The regulation is proposed under the authority of NRS 679B.130. This rule-making process began on April 9, 2009, when the Nevada Captive Insurance Association filed petitions pursuant to NAC 679B.482 to amend NAC 694C.280 and NAC 694C.290. The Commissioner approved the petitions on April 17, 2009.

The Department of Business and Industry, Division of Insurance (“Division”), did not receive any written comments but did receive oral testimony from the industry and interested parties regarding the proposed changes to NAC 694C.290. The workshop was attended by seven (7) interested parties in Carson City and six (6) interested parties in Las Vegas. Gary Cooper, representing the Division, provided testimony before the Hearing Officer. The hearing was attended by three (3) interested parties in Carson City and one (1) interested party

in Las Vegas. The Hearing Officer asked that Division staff address the proposed changes to NAC 694C.290.

Mr. Cooper testified at the workshop that new proposed language is being added to NAC 694C.290 requiring that a captive attorney in fact, manager, officer, director, or trustee disclose that he has no outside affiliations diverting him from furthering the interests of the captive. Language has been added that requires the captive manager, officer, or director to exercise a duty of care protecting the interests of the captive.

The Division also explained that the proposed language would define a material relationship between a captive and a person or a person's immediate family, as well as any other business, to mean compensation exceeding \$5,000 within a 12 month period for services performed on behalf of the captive. Finally, the proposed language would require this material relationship contract to be pre-approved by the Division.

Mr. Robert Vogel, representing Pro Group Captive Management Services, testified at the workshop that he did not oppose the new language added to NAC 694C.290, but wanted the \$5,000 compensation amount increased to \$15,000 and the material relationship contract be post-approved by the Division as opposed to pre-approved. Ms. Erin McMullen, Esq., representing Nevada Contractors Insurance Company, testified at the workshop that her client had no problems with the proposed language changes to NAC 694C.290, provided the changes are based upon the new language proposed at the workshop.

Mr. Gary Hills, representing Wilmington Trust SP Services, testified at the workshop that the format and paragraph positions, specifically paragraph 1, subparagraph (d), could be more logically placed within the regulation.

Mrs. Alice Molasky-Arman, representing Western Insurance Company, testified at the formal hearing that the definitions found within the proposed amended language to NAC 694C.290 should be placed in the usual definitions section of the captive regulations chapter as opposed to being left in the revised NAC 690C.290 regulation.

of interest policies of captive insurance companies, Division's Cause No. 09.0161, LCB File No. T034-09, be adopted, as amended, as a temporary regulation of the Division.

SO ORDERED this 23rd day of June, 2009.

/s/
SCOTT J. KIPPER
Commissioner of Insurance