

Chapter 694C of NAC

LCB File No. T034-09

**PROPOSED TEMPORARY REGULATION OF  
THE COMMISSIONER OF INSURANCE**

**NOTICE OF WORKSHOPS TO SOLICIT COMMENTS ON  
PROPOSED TEMPORARY REGULATIONS**

The State of Nevada Department of Business and Industry, Division of Insurance (Division), (775) 687-4270, is proposing the adoption of temporary regulations pertaining to chapter 694C of the Nevada Administrative Code (NAC). Workshops have been set for **9:00 a.m., on May 8, 2009**, 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, Real Estate Division Conference Room, 2<sup>nd</sup> Floor, Las Vegas, Nevada 89104. The purpose of the workshops is to solicit comments from interested persons on the following general topics that may be addressed in the proposed temporary regulations.<sup>1</sup>

**Officers and Directors of Captive Insurers.** The proposed temporary regulation will amend NAC 694C.280 and require prior approval of the board of directors or subscribers advisory committee for performance and payment of services rendered to the captive by an officer, director or employee of a captive insurance company.

**Captive Insurer Conflict of Interest and Disclosure.** The proposed temporary regulation will amend NAC 694C.290 relating to captive insurers and conflict of interest statements to enhance disclosure requirements.

A copy of all materials relating to the proposals may be obtained at the workshops or by contacting the Division, 788 Fairview Drive, Suite 300, Carson City, Nevada 89701, (775) 687-4270. A reasonable fee for copying may be charged.

This Notice of Workshops to Solicit Comments on Proposed Temporary 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  
Capitol Press Room

Department of Business and Industry  
Division of Insurance  
2501 East Sahara Avenue, Suite 302  
Las Vegas, NV 89104  
Donald W. Reynolds Press Center

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<sup>1</sup> NRS 233B.063(3) An agency may adopt a temporary regulation between August 1 of an even-numbered year and July 1 of the succeeding odd-numbered year without following the procedure required by this section and NRS 233B.064, but any such regulation expires by limitation on November 1 of the odd-numbered year. A substantively identical permanent regulation may be subsequently adopted.

Capitol Building Basement  
Carson City, NV 89710

102 North Curry Street  
Carson City, NV 89701

Legislative Counsel Bureau  
401 South Carson Street  
Carson City, NV 89701

Office of the Attorney General  
100 North Carson Street  
Carson City, NV 89701

Blasdel Building  
209 East Musser Street  
Carson City, NV 89701  
Office of the Governor  
Capitol Building  
Carson City, NV 89710

Nevada State Library & Archives  
100 North Stewart Street  
Carson City, NV 89701  
Carson City Courthouse  
885 East Musser Street  
Carson City, NV 89701

Carson City Library  
900 North Roop Street  
Carson City, NV 89701

Churchill County Library  
553 South Main Street  
Fallon, NV 89406

Clark County District Library  
833 Las Vegas Boulevard North  
Las Vegas, NV 89101

Douglas County Library  
P.O. Box 337  
Minden, NV 89423

Elko County Library  
720 Court Street  
Elko, NV 89801

Esmeralda County Library  
P.O. Box 430  
Goldfield, NV 89013

Eureka Branch Library  
P.O. Box 293  
Eureka, NV 89316

Humboldt County Library  
85 East 5<sup>th</sup> Street  
Winnemucca, NV 89445

Lander County Library  
P.O. Box 141  
Battle Mountain, NV 89820

Lincoln County Library  
P.O. Box 330  
Pioche, NV 89043-0330

Lyon County Library  
20 Nevin Way  
Yerington, NV 89447

Mineral County Public Library  
P.O. Box 1390  
Hawthorne, NV 89415

Pershing County Library  
P.O. Box 781  
Lovelock, NV 89419

Storey County Public Library  
P.O. Box 14  
Virginia City, NV 89440

Tonopah Public Library  
P.O. Box 449  
Tonopah, NV 89049

Washoe County Library  
P.O. Box 2151  
Reno, NV 89505-2151

White Pine County Library  
950 Campton Street  
Ely, NV 89301

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.

DATED this \_\_\_\_\_ day of April, 2009.

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SCOTT J. KIPPER  
Commissioner of Insurance

## NOTICE OF INTENT TO ACT UPON TEMPORARY REGULATION

### Notice of Hearing for the Adoption of Temporary Regulations of the Department of Business and Industry, Division of Insurance<sup>2</sup>

The State of Nevada Department of Business and Industry, Division of Insurance (Division), will hold a public hearing at **9:00 a.m., on May 22, 2009**, 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 E. Sahara Avenue, Real Estate Division Conference Room, 2<sup>nd</sup> Floor, Las Vegas, Nevada 89104. The purpose of the hearing is to receive comments from all interested persons regarding the adoption of the temporary regulation that pertains to Nevada Administrative Code (NAC) 694C.290.

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

1. The need for and the purpose of the proposed temporary regulation or amendment.

To provide guidance to captive insurance companies regarding the content of conflict of interest statements.

2. Either the terms or substance of the regulation to be adopted, amended, or repealed, or a description of the subjects and issues involved.

Requires captive insurance company board members to disclose to the Board matters of possible self dealing related to the captive and any business interest of a board member which may be in conflict with the goals of the captive insurance company.

3. The estimated economic effect of the regulation on the business that it is to regulate and on the public.

None.

4. The estimated cost to the agency for the enforcement of the proposed temporary regulation.

None.

5. A description of and citation to any regulations of other state or local governmental agencies that the proposed regulation overlaps or duplicates, and a statement explaining why the duplication or overlapping is necessary. If the proposed regulation overlaps or duplicates a federal regulation, the notice must include the name of the regulating federal agency.

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<sup>2</sup> NRS 233B.063(3) An agency may adopt a temporary regulation between August 1 of an even-numbered year and July 1 of the succeeding odd-numbered year without following the procedure required by this section and NRS 233B.064, but any such regulation expires by limitation on November 1 of the odd-numbered year. A substantively identical permanent regulation may be subsequently adopted.

None.

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

Not applicable.

7. If the temporary regulation includes provisions which are more stringent than a federal regulation that regulates the same activity, a summary of such provisions.

Not applicable.

8. Whether the proposed temporary regulation establishes a new fee or increases an existing fee.

The proposed regulation does not establish a new fee or increase an existing fee.

9. 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.

Captive insurance companies are already required to submit conflict of interest statements. This regulation clarifies and enhances the amount of disclosure required. There is no impact on a small business.

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 15, 2009**. 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 temporary regulation to be amended 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 temporary regulation to be amended 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 temporary 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 of this notice and the proposed temporary regulation 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 does not apply to a public body subject to the Open Meeting Law.

Upon adoption of any regulation, the agency, if requested to do so by an interested person, either before adoption or within 30 days thereafter, shall 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:

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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Capitol Building Basement  
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Elko County Library  
720 Court Street  
Elko, NV 89801

Esmeralda County Library  
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Goldfield, NV 89013

Eureka Branch Library  
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Eureka, NV 89316

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Winnemucca, NV 89445

Lander County Library  
P.O. Box 141  
Battle Mountain, NV 89820

Lincoln County Library  
P.O. Box 330  
Pioche, NV 89043-0330

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Mineral County Public Library

20 Nevin Way  
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P.O. Box 1390  
Hawthorne, NV 89415

Pershing County Library  
P.O. Box 781  
Lovelock, NV 89419

Storey County Public Library  
P.O. Box 14  
Virginia City, NV 89440

Tonopah Public Library  
P.O. Box 449  
Tonopah, NV 89049

Washoe County Library  
P.O. Box 2151  
Reno, NV 89505-2151

White Pine County Library  
950 Campton Street  
Ely, NV 89301

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DATED this \_\_\_\_\_ day of April, 2009.

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SCOTT J. KIPPER  
Commissioner of Insurance

LCB File No. T034-09

**PROPOSED TEMPORARY REGULATION OF  
THE COMMISSIONER OF INSURANCE**

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: Statement; disclosure. (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. "Material relationship" means, but is not limited to the receipt in any one 12-month period of compensation or payment of any other item of value by such person, a member of such person's immediate family or any business with which such person is affiliated from the captive insurance company or a consultant or service provider to the captive insurance company of an amount greater than \$5,000 or other remuneration equal to \$5,000.*

*d. Regarding material service provider contracts:*

*(i) The term of any material service provider contract with a captive insurance company shall not exceed five years. Any such contract, or its renewal, shall require the approval of the majority of the captive insurance company's directors or subscribers advisory committee members;*

*(ii) "Service providers" shall include managers, auditors, accountants, actuaries, investment advisors, attorneys, managing general underwriters, managing general agents or other party responsible for underwriting, determination of rates, collection of premium, adjusting and settling claims and/or the preparation of financial statements;*

*(iii) Any material service provider contract shall be submitted for prior approval by the Commissioner at least 30 days prior to the effective date; and*

*(iv) A service provider contract with a captive insurance company is deemed material if the*

*amount to be paid by the captive insurance company under such contract is greater than \$5,000 during 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.

**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.*