

## NOTICE OF INTENT TO ACT UPON REGULATION AND HEARING AGENDA

Notice of Hearing for the Adoption, Amendment or Repeal of Regulations of  
The Department of Business and Industry, Division of Insurance

The State of Nevada, Department of Business and Industry, Division of Insurance (“Division”), (775) 687-0700, will hold a public hearing at **9:30 a.m. on September 7, 2016**, in the 1<sup>st</sup> Floor Hearing Room at the Division’s offices located at 1818 East College Parkway, Suite 103, Carson City, Nevada 89706. Interested persons may also participate through a simultaneous videoconference conducted in the 3<sup>rd</sup> floor conference room, at the Division’s offices located in the Bradley Building, 2501 East Sahara Avenue, Suite 302, Las Vegas, Nevada 89104. The purpose of the hearing is to receive comments from all interested persons regarding the adoption, amendment or repeal of the regulation(s) that pertain(s) to **chapter(s) 694C** of the Nevada Administrative Code (“NAC”).

The following information is provided pursuant to the requirements of Nevada Revised Statute (“NRS”) 233B.0603 and the directives of the Governor:

### **LCB File No. R080-16. Captive Insurers.** (NAC 694C)

A REGULATION relating to captive insurers; updating certain publications and forms that have been adopted by reference; revising certain financial report and audit requirements; revising provisions relating to service provider and reinsurance contracts; revising the requirements for the disclosure of conflicts of interest by persons holding certain positions with a captive insurer; revising provisions related to reimbursable expenses for examinations by the Commissioner of Insurance; and providing other matters properly relating thereto.

- (1) Why is the regulation necessary and what is its purpose?

*The regulation is necessary in order to meet National Association of Insurance Commissioners (“NAIC”) Accreditation standards for state-chartered risk retention groups (“RRGs”); to allow exemptions/extensions for annual statement and annual audit for all captive insurers; to modify the strict requirements for change in reinsurance to a more manageable requirement; to update information that utilizes addresses, contacts, publications, and prices; and to require notification and approval for material changes.*

- (2) What are the terms or substance of the proposed regulation?

*The updated regulation addresses the following issues:*

- *Clarifies that RRGs must follow traditional insurance company statutes for an annual audit, adding the current practice of RRGs to the NAC.*
- *Clarifies language regarding determining minimum capital and surplus standards.*
- *Clarifies language regarding books, addresses, and prices.*

- *Allows exemptions and extensions to be granted for annual statements and annual audits.*
- *Removes 90 day notice requirement for reinsurance agreements and adds more manageable notice for reinsurance arrangements.*
- *Adds requirements to file copies of notices to the board of directors regarding material changes, copies of service provider agreements, and updated letters of credit.*
- *Clarifies what a material change may be.*
- *Adds a requirement that captives file changes to the conflict of interest policy statements with the board of directors of captive.*
- *Updates language for the way contract examiners get paid.*

(3) What is the anticipated impact of the regulation on the problem(s)?

*Several problems will be addressed in this regulation:*

- *Current practice for RRGs filing annual audits does not match the current regulation. The current practice differs due to national NAIC accreditation standards, which RRGs assume each state has adopted.*
- *Adding language for requiring additional capital will solve certain problems in identifying when the Division can use NRS 694C.250.*
- *Current language has old information regarding books, website, addresses, and prices.*
- *Captive Insurers are currently required to notify the Division 90 days in advance of a reinsurance agreement. However, it is not practicable for reinsurers to notify the captive insurers 90 days in advance. Therefore, to hold the captive insurer to the current 90 day period does not work.*
- *Adding requirements to file copies will address the issue of the Division not having complete files to evaluate the captive insurer and its business plan.*
- *Guidance needed for Division and captive insurers to clarify what material changes typically are.*
- *Clarifies language regarding conflict of interest policy statements.*
- *Examinations are paid for differently (through Purchasing Division contracts) than the current regulation per statute. Therefore, the language needs to be updated.*

(4) Do other regulations address the same problem(s)?

*No other regulation applies to captive insurers unless identified in the captive chapters.*

(5) Are alternate forms of regulation sufficient to address the problem(s)?

*Currently most of the practice has already been implemented. However, NAIC Accreditation standards require these changes to be in regulation and not just in procedures. Other non-accreditation issues also need to be in regulation to be clearly enforced.*

(6) What value does the regulation have to the public?

*Most of the impact to the public is negligible given that corporations tend to utilize captive insurers to insure their own risks.*

(7) What is the anticipated economic benefit of the regulation?

- a. Public
  - 1. Immediate: *Keeps Nevada as an accredited state for financial solvency regulation of RRGs.*
  - 2. Long Term: *Provides clear guidance to members of captive groups on the requirements to maintain licensure in good standing.*
- b. Insurance Business
  - 1. Immediate: *Keeps Nevada as an accredited state for financial solvency regulation.*
  - 2. Long Term: *Provides clear guidance to members of captive groups on the requirements to maintain licensure in good standing.*
- c. Small Businesses
  - 1. Immediate: *Allows exemptions for new startup captives to be exempted from some filing requirements.*
  - 2. Long Term: *Provides clear guidance to members of captive groups on what the regulations and requirements are, and allows for captives to form in the state.*
- d. Small Communities
  - 1. Immediate: *Keeps Nevada as an accredited state for financial solvency regulation.*
  - 2. Long Term: *Provides clear guidance to members of captive groups on what the regulations and requirements are, and allows for captives to form in the state.*
- e. Government Entities
  - 1. Immediate: *Keeps Nevada as an accredited state for financial solvency regulation.*
  - 2. Long Term: *Allows for captives to form in the state by having clear guidance, and provides exemptions for start-up captives, generating business revenue in Nevada.*

(8) What is the anticipated adverse impact, if any?

- a. Public
  - 1. Immediate: *None*
  - 2. Long Term: *None*
- b. Insurance Business
  - 1. Immediate: *None*
  - 2. Long Term: *None*

- c. Small Businesses
  - 1. Immediate: *None*
  - 2. Long Term: *None*
- d. Small Communities
  - 1. Immediate: *None*
  - 2. Long Term: *None*
- e. Government Entities
  - 1. Immediate: *Provides the Division with more clear regulation to enforce.*
  - 2. Long Term: *Provides the Division with more clear regulation to enforce.*

(9) What is the anticipated cost of the regulation, both direct and indirect?

- a. Enactment: *None*
- b. Enforcement: *The Division has the staff and resources to enforce these regulations since they are similar to other standards the Division already enforces.*
- c. Compliance: *Not enacting this regulation could cause certain insurance businesses to leave Nevada since Nevada would not meet NAIC Accreditation standards.*

(10) Does the regulation establish a new fee or increase an existing fee?

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

(11) Provide a statement which identifies the methods used by the agency in determining the impact of the proposed regulation on a small business, prepared pursuant to subsection 3 of NRS 233B.0608.

*Division staff have an understanding of the captive insurance market, and, through empirical evidence, captive insurers would not themselves be confused with a Nevada small business. Additionally, most captive insurers affected by this regulation are affiliates of businesses that are out of state and engage in forms of self-insurance.*

(12) Provide 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, state the name of the regulating federal agency.

*No regulation overlaps with the captive insurer regulation.*

(13) If the regulation is required pursuant to federal law, provide a citation and description of the federal law.

N/A

(14) If the regulation includes provisions which are more stringent than a federal regulation that regulates the same activity, provide a summary of such provisions.

N/A

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, 1818 East College Parkway, Suite 103, Carson City, Nevada 89706. **Written submissions must be received by the Division on or before August 17, 2016.** 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 regulation will be on file at the State Library, 100 North Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the regulation will be available at the offices of the Division, 1818 East College Parkway, Suite 103, Carson City, Nevada 89706, 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://leg.state.nv.us/register/>. Copies of this notice and the proposed regulation will 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.

Notice of the hearing was provided via electronic means to all persons on the agency's e-mail list for administrative regulations, and this Notice of Intent to Act Upon Regulation was posted to the agency's Internet Web site at <http://doi.nv.gov/> and was provided to or posted at the following locations:

Department of Business and Industry  
Division of Insurance  
1818 East College Parkway, Suite 103  
Carson City, Nevada 89706

Department of Business and Industry  
Division of Insurance  
2501 East Sahara Avenue, Suite 302  
Las Vegas, Nevada 89104

Legislative Building  
401 South Carson Street  
Carson City, Nevada 89701

Grant Sawyer Building  
555 East Washington Avenue  
Las Vegas, Nevada 89101

Blasdel Building  
209 East Musser Street  
Carson City, Nevada 89701

Capitol Building Main Floor  
101 North Carson Street  
Carson City, Nevada 89701

Nevada Department of Employment,  
Training and Rehabilitation  
2800 E. Saint Louis Ave.  
Las Vegas, NV 89104

Nevada State Library & Archives  
100 North Stewart Street  
Carson City, Nevada 89701

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

Churchill County Library  
553 South Main Street  
Fallon, Nevada 89406

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

Elko County Library  
720 Court Street  
Elko, Nevada 89801

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

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

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

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

Las Vegas-Clark County Library District  
7060 W. Windmill Lane  
Las Vegas, NV 89113

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

Lyon County Library  
20 Nevin Way  
Yerington, Nevada 89447

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

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

Storey County Clerk  
P.O. Drawer D  
Virginia City, Nevada 89440

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

Washoe County/Downtown Reno Library  
P.O. Box 2151  
Reno, Nevada 89505-2151

White Pine County Library  
950 Campton Street  
Ely, Nevada 89301

Members of the public who would like additional information about the proposed regulation may contact Mike Lynch, Deputy Commissioner, at (775) 687-0758, or via e-mail to [mlynch@doi.nv.gov](mailto:mlynch@doi.nv.gov).

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 to [icommish@doi.nv.gov](mailto:icommish@doi.nv.gov), or at 1818 E. College Parkway, Suite 103, Carson City, Nevada 89706, or by calling (775) 687-0771, no later than five (5) working days prior to the meeting.

DATED this 3<sup>rd</sup> day of August, 2016.

  
BARBARA D. RICHARDSON  
Commissioner of Insurance

### HEARING AGENDA

The State of Nevada, Department of Business and Industry, Division of Insurance

**September 7, 2016 • 9:30 a.m.**

**Location of Hearing:**

Office of the Division of Insurance  
1818 E. College Pkwy., 1<sup>st</sup> Floor Hearing Room  
Carson City, NV 89706  
(Division Offices located in Suite 103)

**Available via Videoconference at:**

Office of the Division of Insurance  
2501 E. Sahara Ave., 3<sup>rd</sup> Floor Conference Room  
Las Vegas, NV 89104  
(Division Offices located in Suite 302)

1. **Call to Order: R080-16.**
2. **Presentation, Discussion and Adoption of Proposed Regulation. (For Possible Action)**  
**LCB File No. R080-16. Captive Insurers.** (NAC 694C)  
A regulation relating to captive insurers; updating certain publications and forms that have been adopted by reference; revising certain financial report and audit requirements; revising provisions relating to service provider and reinsurance contracts; revising the requirements for the disclosure of conflicts of interest by persons holding certain positions with a captive insurer; revising provisions related to reimbursable expenses for examinations by the Commissioner of Insurance; and providing other matters properly relating thereto.
3. **Public Comment.**

**4. Closure: R080-16.**

\* \* \* \* \*

**5. Call to Order: R081-16.**

**6. Presentation, Discussion and Adoption of Proposed Regulation. (For Possible Action) LCB File No. R081-16. Required Industry Reports. (NAC 686A, 687B, 695C, 695D)**

A regulation relating to insurance; revising the requirements for the filing of certain reports and documentation with the Commissioner of Insurance and the Division of Insurance of the Department of Business and Industry; and providing other matters properly relating thereto.

**7. Public Comment.**

**8. Closure: R081-16.**

\* \* \* \* \*

**9. Adjournment.**

Supporting public material for this meeting may be requested from Sue Bell, Legal Secretary, Nevada Division of Insurance, 1818 E. College Parkway, Carson City, Nevada 89706, by e-mail to [suebell@doi.nv.gov](mailto:suebell@doi.nv.gov), or by calling (775) 687-0704.

Note: Any agenda item may be taken out of order; items may be combined for consideration by the public body; and items may be pulled or removed from the agenda at any time. The Hearing Officer, within his/her discretion, may allow for public comment on individual agenda items. Public Comment may be limited to three minutes per speaker.

Members of the public are encouraged to submit written comments for the record.

We are pleased to make reasonable accommodations for attendees with disabilities. Please notify the Commissioner's Assistant, at (775) 687-0771, no later than five (5) working days before the meeting.

NOTICES FOR THIS MEETING HAVE BEEN POSTED IN ACCORDANCE WITH NRS 241 AT THE FOLLOWING LOCATIONS:

Nevada Division of Insurance, 1818 E. College Parkway, Suite 103, Carson City, Nevada 89706

Nevada Division of Insurance, 2501 E. Sahara Avenue, Suite 302, Las Vegas, Nevada 89104

Nevada State Legislative Building, 401 S. Carson Street, Carson City, Nevada 89701

Grant Sawyer State Office Building, 555 E. Washington Avenue, Las Vegas, Nevada 89101

Blasdel State Office Building, 209 E. Musser Street, Carson City, Nevada 89701

Nevada State Capitol, 101 N. Carson Street, Carson City, Nevada 89701

Nevada Dept. of Employment, Training & Rehabilitation, 2800 E. Saint Louis Avenue, Las Vegas, Nevada 89104

The State of Nevada Website ([www.nv.gov](http://www.nv.gov))

The Nevada State Legislature Website ([www.leg.state.nv.us](http://www.leg.state.nv.us))

The Nevada Division of Insurance Website ([www.doi.nv.gov](http://www.doi.nv.gov))



**PROPOSED REGULATION OF THE  
COMMISSIONER OF INSURANCE**

**LCB File No. R080-16**

July 21, 2016

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

AUTHORITY: §§1, 2 and 5-10, NRS 679B.130 and 694C.170; §§ 3 and 4, NRS 679B.130, 694C.170, 694C.390 and 694C.400; §11, NRS 679B.130, 694C.170 and 694C.410.

A REGULATION relating to captive insurers; updating certain publications and forms that have been adopted by reference; revising certain financial report and audit requirements; revising provisions relating to service provider and reinsurance contracts; revising the requirements for the disclosure of conflicts of interest by persons holding certain positions with a captive insurer; revising provisions related to reimbursable expenses for examinations by the Commissioner of Insurance; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Existing law authorizes the Commissioner of Insurance to administer and carry out the provisions of existing law governing captive insurers. (NRS 679B.130, 694C.170) **Sections 1 and 2** of this regulation update certain publications and forms that the Commissioner has adopted by reference.

Existing law requires a captive insurer, including, without limitation, a state-chartered risk retention group that is formed as an association captive insurer, to submit to the Commissioner on or before March 1 of each year a report of its financial condition. Under existing law, the report filed by a captive insurer other than a pure captive insurer must be in the same form as the annual statement of financial condition filed with the Commissioner by insurers authorized to transact insurance in this State. Existing law requires the Commissioner to adopt regulations designating the form in which a pure captive insurer must annually report its financial condition. (NRS 680A.270, 694C.390, 694C.400) **Section 3** of this regulation excludes pure captive insurers and state-chartered risk retention groups from certain requirements for the annual report and prescribes the requirements for the annual report filed by a state-chartered risk retention group. **Section 3** also authorizes the Commissioner to grant an extension of the filing date for the annual report under certain circumstances.

Existing regulations require a captive insurer to have an annual audit by an independent certified public accountant who is authorized by the Commissioner to conduct the audit and

specify the information that must be included in the audit. (NAC 694C.210) **Section 4** of this regulation prescribes the requirements for such an annual audit of a state-chartered risk retention group that is formed as an association captive insurer and revises the information that must be included in the annual audit of a captive insurer. In addition, **section 4** authorizes the Commissioner to grant extensions of the filing date for the annual audit and exemptions from compliance with the requirements for an annual audit under certain circumstances.

Existing regulations authorize the Commissioner to require a captive insurer to provide a security deposit or furnish a letter of credit if the Commissioner determines that the financial condition of a captive insurer warrants additional security. (NAC 694C.240) **Section 5** of this regulation requires a captive insurer that furnishes a letter of credit to furnish to the Commissioner, as soon as practicable, an updated copy of the letter of credit if there are changes to the letter of credit.

**Section 6** of this regulation provides that if a material service provider contract between a captive insurer and a service provider that has been filed with the Division of Insurance of the Department of Business and Industry is amended, the captive insurer must refile the contract within 60 days after the effective date of the amended contract.

Existing law authorizes a captive insurer to reinsure risks ceded by another insurer and to cede risks to a reinsurer that is in compliance with existing law governing reinsurance. (NRS 694C.350) Existing regulations require a captive insurer who is seeking to terminate or modify a reinsurance treaty or agreement held by the captive insurer to provide advance notice of the termination or modification to the insured and the Commissioner. Upon receipt of that notice, the Commissioner has the discretion to order the captive insurer to cease writing new insurance until the Commissioner approves the modification or a replacement reinsurance treaty or agreement obtained by the captive insurer. (NAC 694C.250) **Section 7** of this regulation requires a captive insurer to obtain the approval of the Commissioner to enter into an agreement to cede or assume reinsurance or to terminate an existing reinsurance treaty. **Section 7** also authorizes the Commissioner to order a captive insurer to terminate any reinsurance transaction or prohibit a captive insurer from obtaining reinsurance under certain circumstances.

Under existing regulations, if a material change occurs in the operations of a captive insurer or in its organizational structure, the manager, certified public accountant or actuary of the captive insurer must notice the board of directors of the captive insurer within 60 days after the change occurs. (NAC 694C.260) **Section 8** of this regulation requires the captive insurer to file a copy of this notice with the Commissioner not later than 60 days after it is provided to the board of directors of the captive insurer.

**Section 9** of this regulation defines the term “material change” for the purpose of determining whether a change in the nature of the business of a captive insurer is a material change that requires the prior approval of the Commissioner pursuant to existing regulations.

**Section 10** of this regulation requires the conflict of interest policy of a captive insurer to contain a requirement that an attorney-in-fact, trustee, manager, officer or director of the captive insurer update his or her conflict of interest disclosure within 60 days after any change in the information disclosed.

Existing law requires a captive insurer to pay to the Commissioner the cost of any examination of the captive insurer by the Commissioner. (NRS 694C.410) Under existing regulations, the cost of the examination includes a daily salary for a financial examiner, market conduct examiner or expert assistant. (NAC 694C.295) **Section 11** of this regulation authorizes such an examiner or expert to be paid either a daily salary or at an hourly rate.

**Section 1.** NAC 694C.090 is hereby amended to read as follows:

694C.090 The Commissioner hereby adopts the following publications by reference:

1. The *Property/Casualty Insurance Annual and Quarterly Statement Blanks (ASB-PU)* and the *Property/Casualty Annual and Quarterly 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 Insurance Products and Services Division ~~†~~, ~~2301 McGee Street, Suite 800, Kansas City, Missouri 64108-2662,~~ by telephone at (816) 783-8300, ~~[by fax at (816) 460-7593 or]~~ by electronic mail at [prodserv@naic.org](mailto:prodserv@naic.org) ~~†~~ *or at the Internet address [http://www.naic.org/prod\\_serv\\_alpha\\_listing.htm#](http://www.naic.org/prod_serv_alpha_listing.htm#)*, at a cost of ~~[\$200]~~ *\$225, plus \$32 for shipping*, for ASB-PU and ~~[\$225]~~ *\$250, plus \$32 for shipping*, for ASI-PU.

2. The *most recent edition of the AICPA Professional Standards*, ~~[2007 edition,]~~ 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,~~ by telephone at (888) 777-7077 ~~†, by fax at (800) 362-5066]~~ or at the Internet address ~~[<https://www.epa2biz.com/default.htm>,]~~ *<http://www.aicpastore.com>*, at a cost of ~~[\$119]~~ *\$179* for members of the AICPA or ~~[\$148.75]~~ *\$219* for nonmembers ~~†~~ *or as an online subscription at a cost of \$159 for members of the AICPA or \$199 for nonmembers. If the publication adopted by reference pursuant to this subsection is revised, the Commissioner will review the revision to determine its suitability for this State. If the Commissioner determines that the revision is not suitable for this State, the*

*Commissioner will hold a public hearing to review his or her determination and give notice of that hearing within 90 days after the date of the publication of the revision. If, after the hearing, the Commissioner does not revise his or her determination, the Commissioner will give notice that the revision is not suitable for this State within 90 days after the hearing. If the Commission does not give such notice, the revision becomes part of the publication adopted by reference pursuant to this subsection.*

3. ~~[Original Pronouncements As Amended, 2007-2008 edition, and Current Text, 2007-2008 edition,]~~ FASB Accounting Standards Codification published by the Financial Accounting Standards Board. A copy of ~~[each of these publications]~~ *this publication* may be obtained at the Internet address <http://www.fasb.org> or by telephone at (800) 748-0659 ~~[- The cost of:~~

- ~~— (a) The Original Pronouncements As Amended is \$140.~~
- ~~— (b) The Current Text is \$125.~~
- ~~— (c) Both publications purchased as a set is \$240.]~~ *at a cost of \$895 for the Professional View online subscription or \$240 for the bound edition. The Basic View online subscription is available free of charge.*

4. The *Domestic Per Diem Rates*, published by the General Services Administration. A copy of this publication may be obtained, free of charge, from the General Services Administration at the Internet address <http://www.gsa.gov/perdiem>.

**Sec. 2.** NAC 694C.092 is hereby amended to read as follows:

694C.092 The Commissioner will periodically review:

1. The *Property/Casualty Insurance Annual and Quarterly Statement Blanks (ASB-PU)* and the *Property/Casualty Annual and Quarterly Statement Instructions* ~~[for the Property/Casualty Manual]~~ *(ASI-PU)*, as adopted by reference in subsection 1 of NAC 694C.090;

2. ~~The AICPA Professional Standards, as adopted by reference in subsection 2 of NAC 694C.090;~~

~~—3.]~~ The ~~Original Pronouncements As Amended, and the Current Text,~~ FASB Accounting Standards Codification, as adopted by reference in subsection 3 of NAC 694C.090; and

~~[4.]~~ 3. The *Domestic Per Diem Rates*, as adopted by reference in subsection 4 of NAC 694C.090,

↪ and determine within 30 days after the review whether any change made to a publication listed in ~~subsections~~ **subsection 1** ~~to 4, inclusive,~~ **2 or 3** is appropriate for application in this State. If the Commissioner does not disapprove a change to an adopted publication within 30 days after the review, the change is deemed to be approved by the Commissioner.

**Sec. 3.** NAC 694C.200 is hereby amended to read as follows:

694C.200 1. A report of financial condition filed by an association captive insurer, an agency captive insurer or a rental captive insurer pursuant to NRS 694C.400 must be verified by the oath of two executive officers of the captive insurer.

2. A captive insurer ***other than a pure captive insurer or a state-chartered risk retention group*** shall file with the Commissioner ~~an audited statement~~ **a report** of its financial condition. The ~~audited statement~~ **report** must be:

(a) Prepared in accordance with generally accepted accounting principles in the United States and stated in United States dollars, and must contain the footnotes and opinions of the independent certified public accountant ***or other person*** who prepared the ~~statement;~~ **report;** and

(b) Accompanied by a statement, prepared by the independent certified public accountant ***or other person*** who prepared the ~~audited statement,~~ **report** certifying that all financial

requirements established by law and the articles of incorporation, bylaws and the business plan of the captive insurer have been met.

3. In addition to any other statements and schedules which ~~the~~ a captive insurer *other than a pure captive insurer or a state-chartered risk retention group* is required by law to file, ~~the~~ a captive insurer *other than a pure captive insurer or a state-chartered risk retention group* shall submit to the Commissioner the following exhibits and schedules from the *Property/Casualty Insurance Annual and Quarterly Statements Blanks*, published by the National Association of Insurance Commissioners, which is adopted by reference in NAC 694C.090:

- (a) Exhibit 1 - Analysis of Nonadmitted Assets and Related Items;
- (b) Schedule A - Real Estate;
- (c) Schedule B - Mortgage Loans;
- (d) Schedule BA - Other Long-Term Invested Assets;
- (e) Schedule D - Bonds and Stocks;
- (f) Schedule DA - Short-Term Investments; and
- (g) Schedule P - Parts 1 through 4 - Analysis of Losses and Loss Expenses.

↳ The exhibits and schedules must be prepared in accordance with the *Property/Casualty Annual and Quarterly Statement Instructions*, ~~{for Property/Casualty Manual,}~~ published by the National Association of Insurance Commissioners, which is adopted by reference in NAC 694C.090.

4. A report of financial condition filed by a pure captive insurer pursuant to NRS 694C.400 must be verified by the oath of two executive officers of the pure captive insurer. The report must be on the form prescribed by the Commissioner known as “Captive Annual Statement: Pure.”

5. *A state-chartered risk retention group shall file with the Commissioner an annual and quarterly statement in accordance with the provisions of NAC 680A.160. In addition to the information required by NAC 680A.160, the report must include, without limitation:*

*(a) A reconciliation between the accounting principles identified in paragraph (a) of subsection 2 and the principles identified in NRS 680A.270, unless the report is prepared in accordance with subparagraph (2) of paragraph (b) of subsection 1 of NRS 680A.270; and*

*(b) If an annual report, a copy of the “Statement of Actuarial Opinion,” “Actuarial Opinion Summary” and “Actuarial Report” filed pursuant to NAC 681B.250 to 681B.290, inclusive.*

6. *Upon a showing of good cause by the captive insurer and subject to the provisions of NRS 694C.390 and 694C.400, the Commissioner may grant a reasonable extension of the filing date for the report of financial condition required by this section. Such a request for extension must be submitted to the Commissioner in writing not less than 10 days before the date on which the report of financial condition is due and must contain sufficient details to permit the Commissioner to make an informed decision with respect to the requested extension.*

Sec. 4. NAC 694C.210 is hereby amended to read as follows:

694C.210 1. ~~1A~~ *Except as otherwise provided in subsection 2 or 7, a captive insurer shall have an annual audit by an independent certified public accountant who is authorized by the Commissioner to conduct the audit. The captive insurer shall file the audited financial report with the Commissioner on or before June 30 for the year ending on the immediately preceding December 31.*

2. *Unless exempted pursuant to subsection 7 or NAC 680A.172, 680A.199 or 680A.205, a state-chartered risk retention group shall have an annual audit pursuant to NAC 680A.172 to 680A.211, inclusive. Unless the Commissioner grants an extension pursuant to subsection 5 or NAC 680A.177, a state-chartered risk retention group shall file the audited financial report with the Commissioner on or before June 1 for the year ending on the immediately preceding December 31.*

3. The Commissioner will deem the annual audit conducted pursuant to this section to be a part of the annual report of financial condition of the captive insurer which is filed pursuant to NRS 694C.400.

~~13.1~~ 4. The annual audit required by this section must include:

(a) *A statement, prepared by the independent certified public accountant who conducted the audit, certifying that all financial requirements established by law, the articles of incorporation, the bylaws and the business plan of the captive insurer have been met.*

(b) The opinion of the independent certified public accountant who conducted the audit which states that the financial statements of the captive insurer were examined in accordance with generally accepted auditing standards, as determined by the American Institute of Certified Public Accountants and included in the publication *AICPA Professional Standards*, which is adopted by reference in NAC 694C.090. The opinion must:

- (1) Cover all years presented in the audit;
- (2) Be addressed to the captive insurer on stationery of the accountant; and
- (3) Include the address of the accountant issuing the opinion, original manual signatures and the date on which the opinion was issued.

~~16.1~~ (c) A report of an evaluation of the internal controls of the captive insurer relating to:



- (1) The methods and procedures used in the securing of assets; and
- (2) The reliability of the financial records of the captive insurer, including, without limitation, the controls for the system of authorization and approval, and the separation of duties.

~~(e)~~ (d) A letter from the independent certified public accountant which includes:

- (1) A statement that the accountant is independent with respect to the captive insurer and that he or she conforms to the standards of his or her profession as set forth in the *AICPA Professional Standards*, published by the American Institute of Certified Public Accountants, and adopted by reference in NAC 694C.090, and the pronouncements of the Financial Accounting Standards Board;

- (2) A general description of the background and experience of the staff of the accountant engaged in the audit, including the experience of the staff in auditing captive insurers and other insurance companies;

- (3) A statement that the accountant understands that the audited annual report and his or her opinions thereon will be filed with the Commissioner pursuant to ~~this section;~~ **subsection 1;**

- (4) A statement that the accountant will comply with NAC 694C.230 and consents and agrees to make his or her work papers available for review by the Commissioner or a designee thereof; and

- (5) A statement that the accountant is properly licensed by the appropriate state licensing authority and is a member in good standing of the American Institute of Certified Public Accountants.

~~(d)~~ (e) Financial statements, including:

- (1) A balance sheet;
- (2) A statement of gain or loss from operations;

- (3) A statement of changes in financial position;
- (4) A statement of changes in paid-up capital, gross paid-in contributed surplus and unassigned money or assets; and
- (5) Notes to financial statements required by generally accepted accounting principles, *or as required by any other comprehensive basis of accounting in use by the captive insurer and approved by the Commissioner*, including:

(I) A reconciliation of differences, if any, between the audited financial report and the report filed with the Commissioner pursuant to NRS 694C.400, ~~if the captive insurer is reporting on a statutory accounting basis;~~ *with a written description of the nature of these differences.*

(II) A summary of ownership and relationships of the company and all affiliated corporations or companies insured by the captive insurer; and

(III) A narrative explanation of all material transactions and balances with the captive insurer.

~~(e)~~ (f) An annual actuarial certification of loss reserves and loss expense reserves which includes an opinion of the adequacy of the loss reserves and loss expense reserves of the captive insurer, in a format acceptable to the Commissioner. The person who certifies the adequacy of the reserves must be approved by the Commissioner and must be a Fellow of the Casualty Actuarial Society, *a Fellow of the Society of Actuaries*, a member in good standing of the American Academy of Actuaries or a person who has otherwise demonstrated competence in the evaluation of loss reserves to the Commissioner. The annual actuarial certification must be in such form as the Commissioner determines appropriate.

*5. Upon a showing of good cause by the captive insurer and subject to the provisions of NRS 694C.390 and 694C.400, the Commissioner may grant a reasonable extension of the filing date for the annual audit required by this section. Such a request for extension must be submitted to the Commissioner in writing not less than 10 days before the date on which the audited financial report is due and must contain sufficient details to permit the Commissioner to make an informed decision with respect to the requested extension.*

*6. If an extension for the filing of the audited financial report is granted pursuant to subsection 5, the same extension will be deemed granted for the filing of the Management's Report on Internal Control Over Financial Reporting.*

*7. Upon a showing of good cause by the captive insurer and subject to the provisions of NRS 694C.390 and 694C.400, the Commissioner may grant an exemption from compliance with any provisions of this section if he or she determines, upon review of an application for exemption that compliance with any or all provisions of this section would constitute a financial or organizational hardship on the captive insurer or that the captive insurer has shown other good cause why such an exemption should be granted. A request for an exemption must be submitted in writing not less than 30 days before the date on which the audited financial report is due and must contain sufficient details to permit the Commissioner to make an informed decision with respect to the requested exemption.*

**Sec. 5.** NAC 694C.240 is hereby amended to read as follows:

694C.240 1. If the Commissioner determines that the financial condition of a captive insurer warrants additional security, the Commissioner may require the captive insurer to:

(a) Deposit with the State Treasurer:

(1) Cash; or

(2) Securities which have been approved by the Commissioner; or

(b) Furnish the Commissioner a clean irrevocable letter of credit issued by a bank chartered by the State of Nevada, or a bank that is a member of the United States Federal Reserve System, on a form approved by the Commissioner. *If there is a change to such a letter of credit, the captive insurer shall, as soon as practicable, file an updated copy of the letter of credit with the Commissioner.*

2. A captive insurer may:

(a) Receive interest or dividends from the security deposit; or

(b) With the approval of the Commissioner, exchange the deposit for other deposits of equal value.

~~13.1~~ 4. If the captive insurer discontinues business, the Commissioner will return the deposit to the captive insurer only after being satisfied that all obligations of the captive insurer have been discharged.

**Sec. 6.** NAC 694C.245 is hereby amended to read as follows:

694C.245 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 ~~and~~;  
*and*

*(d) If subsequently amended, must be refiled with the Division within 60 days after the effective date of the amended 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, actuary, 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. 7.** NAC 694C.250 is hereby amended to read as follows:

694C.250 1. ~~1A] Except as approved by the Commissioner, a captive insurer shall give at least 90 days’ advance notice to the insured and the Commissioner of the termination or modification of any reinsurance treaty or agreement held by the captive insurer.]~~ **not:**

*(a) Enter into any agreement to cede reinsurance;*

*(b) Enter into any agreement to assume reinsurance; or*

*(c) Terminate an existing reinsurance treaty, except at its natural expiration as stated within the contract of reinsurance.*

*2. The effective date of any reinsurance agreement or modification of a reinsurance agreement entered into by a captive insurer may be before or after the date of the Commissioner’s approval, except that such effective date must not be before the date on which the captive insurer was initially formed as an insurer domiciled in this State. However, a captive insurer may not enter into or execute a reinsurance agreement before approval by the Commissioner.*

3. *The Commissioner may require a captive insurer to terminate any reinsurance transaction or prohibit a captive insurer from obtaining any or all reinsurance, if the Commissioner:*

*(a) Determines that the terms of a particular reinsurance agreement or agreements pose any material risk or disadvantage to the general public; or*

*(b) Determines that reinsurance is inappropriate when considering the captive insurer's financial condition or the type, nature or volume of business written by the captive insurer.*

4. Upon ~~notification of~~ termination or modification of a reinsurance treaty or agreement held by a captive insurer, the Commissioner may order the captive insurer to cease writing any new business until ~~the~~ :

*(a) The Commissioner approves the modification of the existing reinsurance treaty or agreement, or any replacement reinsurance treaty or agreement obtained by the captive insurer~~;~~*  
*; or*

*(b) The captive insurer ceases to utilize any or all reinsurance, if such cessation is determined to be appropriate by the Commissioner.*

~~2.~~ 5. Reinsurance and excess insurance must be effected through a written agreement of reinsurance, or a written contract setting forth the terms, provisions and conditions governing the reinsurance.

~~3. The Commissioner may require that complete~~

6. *Complete* copies of all reinsurance treaties, agreements and contracts entered into by a captive insurer *must* be ~~;~~

~~(a) Filed by the captive insurer with the Commissioner;~~

~~(b) Approved by the Commissioner; or~~

~~(e) Filed~~ *filed* by the captive insurer with, and approved by, the Commissioner.

**Sec. 8.** NAC 694C.260 is hereby amended to read as follows:

694C.260 If any material change occurs in the operations of a captive insurer or in the organizational structure within the captive insurer ~~+, the~~ :

*1. The manager, certified public accountant or actuary of the captive insurer shall notify the board of directors of the captive insurer of the material change within 60 days after the material change occurs ~~+~~; and*

*2. The captive insurer shall file a copy of the notice required by subsection 1 with the Commissioner not later than 60 days after the date such notice is provided to the board of directors.*

**Sec. 9.** NAC 694C.270 is hereby amended to read as follows:

694C.270 1. A captive insurer shall not, without the prior approval of the Commissioner, make any material change in the nature of its business from that stated in its plan of operation filed with the Commissioner.

2. Any change in any other information filed with the application must be filed with the Commissioner as soon as practicable, but does not require the prior approval of the Commissioner to make the change.

*3. As used in this section, “material change” includes, without limitation:*

*(a) The entry into any agreement to cede reinsurance;*

*(b) The entry into any agreement to assume reinsurance;*

*(c) The termination of an existing reinsurance treaty, except at its natural expiration as stated within the contract of reinsurance;*

*(d) The writing of a new line of business;*

*(e) The exit from an existing line of business;*

*(f) Any change to limits of coverage written by the captive insurer; or*

*(g) The expansion into a new state of a state-chartered risk retention group.*

**Sec. 10.** NAC 694C.290 is hereby amended to read as follows:

694C.290 1. A captive insurer chartered in this State shall adopt a conflict of interest policy for its attorneys-in-fact, trustees, managers, officers and directors. The policy must contain:

(a) A requirement that the attorney-in-fact, trustee, manager, officer or director must annually *and within 60 days after any subsequent change* disclose that he or she has no outside commitments, personal or otherwise, that would divert him or her from the 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 *annually and within 60 days after any subsequent change* provide a complete ~~annual~~ disclosure of each material relationship that he or she has with the captive insurer.

2. Each attorney-in-fact, trustee, manager, officer or director of a captive insurer shall file a disclosure of his or her conflicts of interest with the board of directors or subscribers' advisory committee of the captive insurer annually ~~and~~ *and within 60 days after any subsequent change.*



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, actuary, 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. 11.** NAC 694C.295 is hereby amended to read as follows:

694C.295 Reasonable and proper expenses incurred in an examination conducted pursuant to NRS 694C.410 may include, without limitation:

1. For a financial examiner or market conduct examiner, a daily salary as defined in the *Financial Condition Examiners Handbook*, which is adopted by reference in NAC 679B.033 **H**, *or an hourly rate based upon the rate established in the contract approved by the State Board of Examiners.*

2. For expert assistants, a daily salary *or an hourly rate* based upon the rate established in the contract approved by the State Board of Examiners.

3. The maximum per diem rate for the location of the examination established by the Administrator of General Services in the Federal Trade Regulation System of the General Services Administration, 41 C.F.R. Chapters 300 to 304, inclusive, and set forth in *Domestic Per Diem Rates*, which is adopted by reference in NAC 694C.090.

4. Expenses for transportation, including, without limitation, the cost of airfare, rail fare, taxicab fare and automobile rental and the reimbursement of any personal automobile expenses necessary to reach the location of the examination. The calculation of expenses for transportation may include expenses for transportation incurred by virtue of the length of time necessary to complete the examination.

5. Upon approval of the Commissioner, miscellaneous expenses incurred by the examiner and assistants while performing an examination. Miscellaneous expenses may include, without limitation, expenses for telephone calls, facsimile transmissions and postal charges relating to the examination.

6. An administrative charge, expressed as a percentage of the daily salary *or hourly rate* of the examiner or assistant, as provided in subsections 1 and 2 and as provided in the division budget approved by the Nevada Legislature.

STATE OF NEVADA  
DEPARTMENT OF BUSINESS & INDUSTRY  
DIVISION OF INSURANCE

Determination of Necessity - Small Business Impact Statement  
LCB File No. R080-16

NAC 694C - CAPTIVE INSURERS AMENDMENT TO UPDATE LANGUAGE

EFFECTIVE DATE OF REGULATION:

Upon filing with the Nevada Secretary of State

1. BACKGROUND

The changes are needed to meet NAIC accreditation standards, to allow exemptions so new companies formed on December 31 can get exemptions from year-end filings, and to reduce the 90-day notice requirement for reinsurance contracts.

2. DESCRIPTION OF SOLICITATION

Division staff have an understanding of the captive insurance market, and, through empirical evidence, captive insurers would not themselves be confused with a Nevada small business. Additionally, most captive insurers affected by this regulation are affiliates of businesses that are out of state and engage in forms of self-insurance.

3. DOES THE PROPOSED REGULATION IMPOSE A DIRECT AND SIGNIFICANT ECONOMIC BURDEN UPON A SMALL BUSINESS OR DIRECTLY RESTRICT THE FORMATION, OPERATION OR EXPANSION OF A SMALL BUSINESS? (NRS 233B.0608.1)

NO (answer #4)                       YES (skip to #5)


4. HOW WAS THAT CONCLUSION REACHED? (NRS 233B.0608.3)

Small businesses in Nevada are not impacted by this regulation that sets certain exemptions and other internal management-type requirements. Most of the captive insurers affected by this regulation do not operate in Nevada, but only need a state such as Nevada for licensure and tax and risk management purposes. Sophisticated businesses able to meet the stringent capital requirements are typically not Nevada small businesses.

The regulation does not include any fees which would be burdensome on small businesses, and the proposal will actually help small businesses, if any were to be associated to captive insurers, by reducing the cost of examinations and allowing for exemptions for certain costly audits. As a result, the impact statement is not necessary.

I, BARBARA D. RICHARDSON, Commissioner of Insurance for the State of Nevada, hereby certify to the best of my knowledge or belief a concerted effort was made to determine the impact of the proposed regulation on small businesses, and that this statement was prepared properly and the information contained herein is accurate. (NRS 233B.0608.3)

8/3/14  
(DATE)

  
BARBARA D. RICHARDSON  
Commissioner of Insurance

Small Business Impact Statement  
LCB File No. R080-16

5. SUMMARY OF COMMENTS RECEIVED FROM SMALL BUSINESSES (NRS 233B.0609.1.a)  
N/A

6. ESTIMATED ECONOMIC EFFECT ON SMALL BUSINESSES THE REGULATION IS TO REGULATE (NRS 233B.0609.1.c)  
N/A

7. METHODS CONSIDERED TO REDUCE IMPACT ON SMALL BUSINESSES (NRS 233B.0609.1.d)  
N/A

8. ESTIMATED COST OF ENFORCEMENT (NRS 233B.0609.1.e)  
N/A

9. FEE CHANGES (NRS 233B.0609.1.f)  
N/A

10. DUPLICATIVE PROVISIONS (NRS 233B.0609.1.g)  
N/A

11. HOW WAS THE ANALYSIS CONDUCTED? (NRS 233B.0609.1.b)  
N/A

12. REASONS FOR CONCLUSIONS (NRS 233B.0609.1.h)  
N/A

I, BARBARA D. RICHARDSON, Commissioner of Insurance for the State of Nevada, hereby certify to the best of my knowledge or belief a concerted effort was made to determine the impact of the proposed regulation on small businesses, and that this statement was prepared properly and the information contained herein is accurate. (NRS 233B.0609.2)

8/3/14  
(DATE)

  
BARBARA D. RICHARDSON  
Commissioner of Insurance