

LCB File No. R125-99

**PROPOSED REGULATION OF THE DIVISION OF INSURANCE OF THE
DEPARTMENT OF BUSINESS AND INDUSTRY**

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

October 22, 1999

The Department of Business and Industry, Division of Insurance (Division) is proposing new regulations pertaining to captive insurance companies, health insurance for small employers and eligible persons, health maintenance organizations, and service contracts. A workshop has been set for 10:00 a.m., on December 1, 1999, at the offices of the Division, 1665 Hot Springs Road, Suite 152, Carson City, Nevada. The purpose of the workshop is to solicit comments from interested persons on the following general topics addressed in the proposed regulations.

- 1. Captive Insurance Companies. The proposed regulation establishes requirements for the filing of an annual report, the minimum standards for an annual audit, requirements for deposits, and standards for reinsurance. The regulation also prescribes the application form and the letter of credit.**
- 2. Health Insurance for Small Employers and Eligible Persons. The proposed regulations limit the use of medical questionnaires, requires the use of disclosure forms, and prohibits tied insurance sales.**
- 3. Health Maintenance Organizations. The proposed regulations allow fee for service arrangements with providers, amends provisions regarding reserves for premium taxes, and payment on statutory bonds.**
- 4. Service Contracts. The proposed regulations establish the fees and documents that must be filed, requirements for claims, and the processing of terminated contracts.**
- 5. Workers' Compensation. The proposed regulation repeals the requirement for a declination from the State Industrial Insurance System before accessing the residual market, and allows the advisory organization to file special programs under the residual market to meet market needs.**

A copy of this notice and the proposed regulations 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 proposed regulations will be available at the offices of the Division, 1665 Hot Springs Road, Suite 152, 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 regulations 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 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 Notice of Workshop to Solicit Comments on Proposed 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
1665 Hot Springs Road, Suite 152
Carson City, NV 89706

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

Legislative Counsel Bureau
Capitol Complex
Carson City, NV 89710

Blasdel Building
Capitol Complex
Carson City, NV 89710

State Capitol
Capitol Complex
Carson City, NV 89710

Capitol Press Room
State Capitol Basement
Carson City, NV 89710

County Clerk
Courthouse
Carson City, NV 89710

Nevada State Library & Archives
Capitol Complex
Carson City, NV 89710

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

Churchill County Library
553 South Maine Street
Fallon, NV 89406

Las Vegas Library
833 Las Vegas Blvd. North
Las Vegas, NV 89101

Douglas County Library
1625 Library Lane
P.O. Box 337
Minden, NV 89423

Elko County Library
720 Court Street
Elko, NV 89801

Goldfield Public Library
Fourth & Cook Street
P.O. Box 430
Goldfield, NV 89013

Eureka Branch Library
10190 Monroe Street

Humboldt County Library
85 East 5th Street

P.O. Box 293
Eureka, NV 89316

Winnemucca, NV 89445

Battle Mountain Branch Library
P.O. Box 141
Battle Mountain, NV 89820

Lincoln County Library
93 Main Street
P.O. Box 330
Pioche, NV 89043

Lyon County Library
20 Nevin Way
Yerington, NV 89447

Mineral County Library
First & A Street
P.O. Box 1390
Hawthorne, NV 89415

Tonopah Public Library
171 Central Street
P.O. Box 449
Tonopah, NV 89049

Pershing County Library
1125 Central Avenue
P.O. Box 781
Lovelock, NV 89419

Storey County Library
95 South R Street
P.O. Box 14
Virginia City, NV 89440

Washoe County Library
301 South Center Street
P.O. Box 2151
Reno, NV 89505

White Pine County Library
950 Campton Street
Ely, NV 89301

Clark County Library
1401 East Flamingo Road
Las Vegas, NV 89119

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 1665 Hot Springs Road, Suite 152, Carson City, Nevada 89706, or by calling no later than 5 working days prior to the hearing, (702) 687-4270.

DATED this _____ day of _____, 1999.

ALICE A. MOLASKY-ARMAN
Commissioner of Insurance

NOTICE OF INTENT TO ACT UPON REGULATIONS

Notice of Hearing for the Adoption of Regulations of the Department of Business and Industry, Division of Insurance

The Department of Business and Industry, Division of Insurance (Division) will hold a public hearing at 10:00 a.m., on December 1, 1999, immediately following a public workshop, at the offices of the Division, 1665 Hot Springs Road, Suite 152, Carson City, Nevada. The purpose of the hearing is to receive comments from all interested persons regarding the adoption of regulations pertaining to captive insurance companies.

REGULATIONS FOR CAPTIVE INSURANCE COMPANIES

The following information is provided pursuant to the requirements of NRS 233B.060:

1. The proposed regulation is needed to establish effective oversight and regulation of captive insurance companies to encourage the formation of captive insurers and protect the interests of investors and consumers.
2. The proposed regulation includes, but is not limited to, the requirements for annual reporting, the minimum standards for the annual audit, requirements for deposits, and standards for reinsurance. The regulation also prescribes the application form and letter of credit.
3. Estimated economic effect of the regulation:
On the business which it is to regulate:
 - (a) The amendments should have little beneficial impact on the industry.
 - (b) The amendments may have both an immediate and long-term adverse impact on new captive insurance companies for the on-going reporting requirements for the annual report and the annual audit.On the public:

The amended regulation should have no economic impact on the public.
4. The Division anticipates a significant additional expense to enforce the proposed regulation, which cannot be measured at this time.
5. The Division is not aware of any overlap or duplication of the regulation with any state, local or federal regulation.
6. The proposed regulation does not establish any new fees.

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, 1665 Hot Springs Road, Suite 152, Carson City, Nevada 89706. Written submissions must be received by the Division on or before November 29, 1999. 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 proposed regulation 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 regulation to be amended will be available at the offices of the Division, 1665 Hot Springs Road, Suite 152, 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://www.leg.state.nv.us>. Copies will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

Upon adoption of any regulation, the agency, if requested to do so by an interested person, either before adoption or within 30 days thereafter, will 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
1665 Hot Springs Road, Suite 152
Carson City, NV 89706

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

Legislative Counsel Bureau
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Carson City, NV 89710

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900 North Roop Street
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Winnemucca, NV 89445

Battle Mountain Branch Library
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Pioche, NV 89043

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93 Main Street
P.O. Box 330

Lyon County Library
20 Nevin Way
Yerington, NV 89447

Mineral County Library
First & A Street
P.O. Box 1390
Hawthorne, NV 89415

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171 Central Street
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Road, Suite 152, Carson City, Nevada 89706, or by calling no later than 5 working days prior to the hearing, (702) 687-4270.

DATED this _____ day of _____, 19 ____.

ALICE A. MOLASKY-ARMAN
Commissioner of Insurance

LCB File No. R125-99

**PROPOSED REGULATION OF THE DIVISION OF INSURANCE OF THE
DEPARTMENT OF BUSINESS AND INDUSTRY**

CAPTIVE INSURANCE FINANCIAL REGULATION

Section

- § 1. Purpose and authority
- § 2. Annual reporting requirements
- § 3. Annual audit
- § 4. Designation of independent certified public accountant
- § 5. Notification of adverse financial condition
- § 6. Availability and maintenance of working papers of the independent certified public accountant
- § 7. Deposit requirement
- § 8. Qualifying examination
- § 9. Reinsurance
- § 10. Insurance managers and intermediaries
- § 11. Directors
- § 12. Conflict of interest
- § 13. Recission of captive insurer license
- § 14. Acquisition of control of or merger with domestic company
- § 15. Change of business
- § 16. Application Review

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§ 1. Purpose and authority

The purpose of this regulation is to set forth the financial and reporting requirements which the commissioner deems necessary for the regulation of captive insurance companies, as authorized by (AB 635).

§ 2. Annual reporting requirements

1. An association, agency or rental captive insurer doing business in this state shall annually submit to the commissioner a report of its financial condition, verified by oath of two of its executive officers. The audited statement of the financial condition must be:

(a) Prepared in accordance with generally accepted accounting principles of the United States, stated in United States dollars, and must contain the footnotes and opinions of the independent certified public accountant who prepared it.

(b) Accompanied by a statement, prepared by the independent certified public accountant who prepared the audited statement, certifying that the combined tangible net worth of all members of the captive insurer satisfies the requirements of NRS 680A.270 and that all

financial requirements that are established by law, articles of incorporation, bylaws or the business plan of the captive insurer.

2. In addition to the statements and schedules required by law, the captive insurer shall submit the following exhibits and schedules from the “Property/Casualty Insurance annual Statements Blanks” published by the National Association of Insurance Commissioners:

- (a) Exhibit 1- Analysis of Assets;*
- (b) Exhibit 2 – Analysis of Non-Admitted Assets;*
- (c) Schedule A – Real Estate;*
- (d) Schedule B – Mortgage Loans;*
- (e) Schedule BA – Other Long-Term Invested Assets;*
- (f) Schedule C – Collateral Loans;*
- (g) Schedule D – Bonds and Stocks;*
- (h) Schedule DA – Short-Term Investments;*
- (i) Schedule P – Parts 1 through 4 – Analysis of Losses and Loss Expenses; and*
- (j) Schedule X – Unlisted Assets.*

The exhibits must be prepared in accordance with the “Annual Statement Instructions Manual for Property and Casualty” published by the National Association of Insurance Commissioners.

3. A pure captive insurer doing business in this state shall annually submit to the commissioner a report of its financial condition, verified by oath of two of its executive officers. The report shall be that prescribed by the commissioner as “Captive Annual Statement: Pure.”

§ 3. Annual audit

All companies shall have an annual audit by an independent certified public accountant, authorized by the commissioner, and shall file such audited financial report with the commissioner on or before June 30 for the year ending December 31 immediately preceding.

The annual audit report shall be considered part of the company’s annual report of financial condition except with respect to the date by which it must be filed with the commissioner.

The annual audit shall consist of the following:

(A) Opinion of Independent Certified Public Accountant

Financial statements furnished pursuant to this section shall be examined by independent certified public accountants in accordance with generally accepted auditing standards as determined by the American Institute of Certified Public Accountants.

The opinion of the independent certified public accountant shall cover all years presented.

The opinion shall be addressed to the company on stationery of the accountant showing the address of issuance, shall bear original manual signatures and shall be dated.

(B) Report of Evaluation of Internal Controls

This report shall include an evaluation of the internal controls of the company relating to the methods and procedures used in the securing of assets and the reliability of the financial records, including but not limited to such controls as the system of authorization and approval and the separation of duties.

The review shall be conducted in accordance with generally accepted auditing standards and the report filed with the commissioner.

(C) Accountant's Letter

The accountant shall furnish the company, for inclusion in the filing of the audited annual report, a letter stating:

(1) That he is independent with respect to the company and conforms to the standards of his profession as contained in the Code of Professional Ethics and pronouncements of the Financial Accounting Standards Board.

(2) The general background and experience of the staff engaged in audit including the experience in auditing captives or other insurance companies.

(3) That the accountant understands that the audited annual report and his opinions thereon will be filed in compliance with this regulation with the Division of Insurance.

(4) That the accountant consents to the requirements of Section 6 of this regulation and that the accountant consents and agrees to make available for review by the commissioner, his designee or his appointed agent, the work papers as defined in Section 6.

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

(D) Financial Statements

Statements required shall be as follows:

(1) Balance sheet

(2) Statement of gain or loss from operations

(3) Statement of changes in financial position

(4) Statement of changes in capital paid up, gross paid in contributed surplus and unassigned funds (surplus)

(5) Notes to financial statements

The notes to financial statements shall be those required by generally accepted accounting principles:

(a) A reconciliation of differences, if any, between the audited financial report and the statement or form filed with the commissioner must be made for those reporting on a statutory accounting basis.

(b) A summary of ownership and relationship of the company and all affiliated corporations or companies insured by the captive.

(c) A narrative explanation of all material transactions and balances with the company.

(E) Annual Actuarial Certification of Loss Reserves and Loss Expense Reserves by Independent Actuary

The annual audit shall include an opinion as to the adequacy of the company's loss reserves and loss expense reserves in a format acceptable to the commissioner.

The individual who certifies as to the adequacy of reserves shall be approved by the commissioner and shall be a Fellow of the Casualty Actuarial Society, a member in good standing of the American Academy of Actuaries, or an individual who has demonstrated his competence in loss reserve evaluation to the commissioner.

The certification shall be in such form as the commissioner deems appropriate.

§ 4. Designation of independent certified public accountant

Companies, after becoming subject to this regulation, shall within ninety days report to the commissioner in writing, the name and address of the independent certified public accountant retained to conduct the annual audit set forth in this regulation.

§ 5. Notification of adverse financial condition

The board of directors of any captive insurer shall immediately be notified by the captive manager, CPA or actuary of any material change in operations, or structure, and shall report on such to the Division of insurance within 60 days.

§ 6. Availability and maintenance of working papers of the independent certified public accountant

Each company shall require the independent certified public accountant to make available for review by the commissioner or his appointed agent the work papers prepared in the conduct of the audit of the company. The company shall require that the accountant retain the audit work papers for a period of not less than five years after the period reported upon.

The aforementioned review by the commissioner shall be considered investigations and all working papers obtained during the course of such investigations shall be confidential. The company shall require that the independent certified public accountant provide photocopies of any of the working papers which the Division of Insurance considers relevant. Such working papers may be retained by the Division.

“Work Papers” as referred to in this section include, but are not necessarily limited to: schedules, analyses, reconciliations, abstracts, memoranda, narratives, flow charts, copies of company records or other documents prepared or obtained by the accountant and his employees in the conduct of their examination of the company.

§ 7. Deposit requirement

Whenever the commissioner deems that the financial condition of the company warrants additional security, he may require a company to deposit with the Treasurer of this state cash or securities approved by the commissioner or, alternatively, to furnish the commissioner a clean irrevocable letter of credit issued by a bank chartered by the State of Nevada or a member bank of the Federal Reserve System and on a form approved by the commissioner.

The company shall receive interest or dividends from said deposit or exchange the deposits for others of equal value with the approval of the commissioner.

If such company discontinues business, the commissioner shall return such deposit only after being satisfied that all obligations of the company have been discharged.

§ 8. Qualifying examination

In addition to the processing of the application, a qualifying investigation or examination may be performed before an applicant is licensed. Such investigation or examination shall consist of a general survey of the company’s corporate records, including charter, bylaws and minute books; verification of capital and surplus; verification of principal place of business; determination of assets and liabilities; review of accounting systems and underwriting rules; and a review of such other factors as the commissioner deems necessary.

§ 9. Fronting, Reinsurance and Excess Insurance

Any captive insurer authorized to do business in this state may take credit for reserves on risks ceded to a reinsurer subject to the following limitations:

(A) No credit shall be allowed for reinsurance and/or excess insurance where the reinsurance contract does not result in the complete transfer of the risk or liability to the reinsurer. No credit shall be allowed, as an asset or a deduction from liability, to any ceding insurer for reinsurance or excess insurance unless the reinsurance or excess insurance is payable by the assuming insurer on the basis of the liability of the ceding insurer under the contract reinsured without diminution because of the insolvency of the ceding insurer.

(B) A fronting insurer, reinsurer or excess insurer insuring a captive insurer under this section, must give a minimum of 90 days advance notice to the insured and to the commissioner of termination or modification of a treaty or agreement with a captive insurer. Upon notification of termination or modification of a reinsurance treaty or fronting agreement with a captive insurer, the commissioner may order the captive insurer to cease writing any new business until the commissioner approves the modification of the existing fronting agreement or treaty or a replacement agreement or treaty obtained by the captive from the existing fronting insurer, reinsurer or excess insurer or a replacement fronting or reinsurance agreement is obtained from a new fronting insurer, reinsurer or excess insurer and approved by the commissioner.

Fronting, reinsurance and excess insurance under this section shall be effected through a written agreement of reinsurance or written contract setting forth the terms, provisions and conditions governing such reinsurance.

The commissioner in his discretion may require that complete copies of all reinsurance treaties and contracts be filed and/or approved by him.

§ 10. Insurance managers

No person shall, in or from within this state, act as an insurance manager, broker, agent, or salesman for captive business without the authorization of the commissioner. Application for such authorization must be on a form prescribed by the commissioner.

§ 11. Officers and Directors

Every captive insurer shall report to the commissioner within thirty days after any change in its executive officers and directors, including in its report a statement of the business and professional affiliations of any new executive officer or director. Any replacement for an executive officer or director must meet the same standards as in the initial application.

No director, officer, or employee of a captive insurer shall, except on behalf of the captive insurer, accept, or be the beneficiary of, any fee, brokerage, gift, or other emolument because of any investment, loan, deposit, purchase, sale, payment or exchange made by or for the captive insurer but such person may receive reasonable compensation for necessary services rendered to the captive insurer in his or her usual private, professional or business capacity.

Any profit or gain received by or on behalf of any person in violation of this section shall inure to be recoverable by the captive insurer.

§ 12. Conflict of interest

Each captive insurer chartered in this state is required to adopt a conflict of interest statement for officers, directors and key employees. Such statement shall disclose that the individual has no outside commitments, personal or otherwise, that would divert him from his duty to further the interests of the captive insurer he represents but his shall not preclude such person from being a director or officer in more than one insurance company and/or captive insurer.

Each officer, director, and key employee shall file such disclosure with the Board of Directors yearly.

§ 13. Rescission of captive insurer license

The commissioner may, subject to the provisions of this section, by order rescind the license of the captive insurer:

(A) at the request of the captive insurer; or

(B) for any reason provided in (AB 635 § 32).

Before the commissioner rescinds the license of a captive insurer under (A) or (B), the commissioner shall give the captive insurer notice in writing of the grounds on which he proposes to cancel the license, and shall afford the captive insurer an opportunity to make objection in writing within the period of thirty days after receipt of notice. The commissioner shall take into consideration any objection received by him within that period and, if he decides to cancel the license, cause the order of cancellation to be served on the captive insurer.

§ 14. Acquisition of control of or merger with domestic captive insurer

No person other than the issuer shall make a tender offer for or a request or invitation for tenders of, or enter into any agreement to exchange securities for, seek to acquire, or acquire in the open market or otherwise, any voting security of a domestic captive insurer if, after the consummation thereof, such person would, directly or indirectly (or by conversion or by exercise of any right the acquire) be in control of such captive insurer; and no person shall enter into an agreement to merge with or otherwise to acquire control of a domestic captive insurer without the prior written approval of the commissioner. In considering any application for acquisition of control or merger with a domestic captive insurer, the commissioner shall consider all of the facts and circumstances surrounding the application as well as the criteria for establishment of a captive insurer set out in this chapter.

§ 15. Change of business

Any material change in the nature of the captive business from that stated in the captive

insurer's plan of operation filed with the commissioner upon application requires prior approval of the commissioner.

Any change in any other information filed with the application must be filed with the commissioner but does not require prior approval.

§ 16. Application Review

The Commissioner may contract with outside resources such as attorneys, accountants and actuaries for the review of the captive insurer applications. A review panel may be established from a pool of qualified members determined by the Commissioner and the cost of such panel will be borne by the applicant.