



DEPARTMENT OF BUSINESS AND INDUSTRY  
DIVISION OF INSURANCE

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March 7, 2018

Lynn Twaddle, Executive Director  
Nevada Surplus Lines Association (NSLA)  
6490 S. McCarran Blvd #39  
Reno, NV 89509

Via e-mail: [lynnt@nsla.org](mailto:lynnt@nsla.org)

Re: Discontinuation of Routine Imposition of \$50 Late Penalty per Violation of NRS 685A.050

Dear Ms. Twaddle:

In recent correspondence with Mr. Gennady Stolyarov II, Lead Actuary, Property and Casualty Insurance, you provided materials to the Nevada Division of Insurance ("Division") in connection with the history of the \$50 late penalty which is currently being charged to surplus-lines brokers for each untimely filing of the broker's report of due diligence pursuant to NRS 685A.050(1).<sup>1</sup> The evidence you provided suggests that this \$50 late penalty has been in effect since at least 1997, and was processed directly by the Division prior to a letter dated November 21, 2005, wherein then-Commissioner Alice Molasky-Arman requested that the NSLA submit the late penalty notices to surplus-lines brokers on the Division's behalf.

The existence and amount of the aforementioned \$50 penalty are not specified in any Nevada statute or regulation, but rather arise from the more general authority possessed by the Commissioner of Insurance pursuant to NRS 683A.451(2) and NRS 683A.461(3), which are applicable to surplus-lines brokers by way of the applicability provisions of NRS 685A.220(4) and (5).<sup>2</sup> The Division's review of the aforementioned statutes clearly indicates that the Division

<sup>1</sup> The text of NRS 685A.050 can be found at <https://www.leg.state.nv.us/NRS/NRS-685A.html#NRS685ASec050>.

<sup>2</sup> The text of NRS 683A.451 can be found at <https://www.leg.state.nv.us/NRS/NRS-683A.html#NRS683ASec451>.  
The text of NRS 683A.461 can be found at <https://www.leg.state.nv.us/NRS/NRS-683A.html#NRS683ASec461>.  
The text of NRS 685A.220 can be found at <https://www.leg.state.nv.us/NRS/NRS-685A.html#NRS685ASec220>.

has the discretion to impose a penalty in this amount and will continue to have such discretion in the future, especially in connection with any brokers who repeatedly or flagrantly fail to make required filings via the NSLA's electronic reporting system or via any other format specified by the Commissioner.

However, the matter of whether or not the Division should impose a penalty for *every* instance of late filings of reports of due diligence is one that depends on the nature of current requirements in law as well as current technology.

In 2011, NRS 685A.050 was significantly amended. Previously, this statute required the broker to submit an affidavit that due diligence had been conducted. In 2011, the requirement of an affidavit was removed, in recognition of the difficulty and lack of necessity for submitting a notarized affidavit through an electronic reporting system. Instead, the remaining requirement is for the broker to "within 90 days after such insurance is so effected, submit a report, in the form prescribed or accepted by the Commissioner, setting forth facts from which it can be determined whether such insurance is eligible for export under NRS 685A.040." This report of due diligence is current accepted by the Commissioner in electronic format via the NSLA's SLIP system.

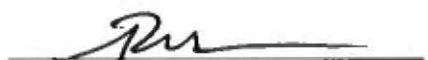
The Division's original justification for the \$50 penalty, as expressed in a 1997 invoice, included a now-obsolete statutory reference, stating that "NRS 685A.050(2) requires that the filing must occur within 90 days of the date the coverage was effected." Senate Bill 289 of the 2011 Legislative Session revised NRS 685A.050(2) to state that "The broker shall keep in his or her office the report prepared pursuant to subsection 1 along with the report of coverage and any other information the Commissioner requires." The 90-day "filing" requirement has been revised to a 90-day "submission" requirement in NRS 685A.050(1), as referenced above. The reference in NRS 685A.050(1) to the "form prescribed or accepted by the Commissioner" again leaves room for Commissioner discretion and allows for a much more flexible electronic reporting format wherein non-substantive oversights could be remedied in a near-instantaneous manner.

Failure to provide a notarized affidavit, which would have constituted a violation of NRS 685A.050 in the past, is a much more serious oversight that is more difficult to remedy than failure to submit an entry in an electronic reporting system. It is the view of the Division that the most immediate appropriate remedy for failure to make an electronic report is to make that report. A penalty may still be appropriate if the broker fails to make the required electronic reports of due diligence on a repeated basis or in flagrant disregard of the law. A penalty may also be appropriate if it is discovered that a more substantive violation occurred, such as the failure to actually perform the required due diligence for a line of business that is not on the list of lines eligible for automatic export. However, the Division considers the original rationale for a routine \$50 penalty for late filings pursuant to NRS 685A.050 to no longer be current.

Accordingly, the NSLA is hereby directed to discontinue routine invoicing of surplus-lines brokers for \$50 penalties associated with late filings of electronic reports of due diligence. If, in the future, the NSLA discovers instances of flagrant or repeated non-compliance by any broker with NRS 685A.050, the NSLA may bring such instances to the Division's attention and, with confirmation from a Division staff member, require the payment of a \$50 penalty or possibly a larger penalty in those situations. For any penalties already invoiced and/or payments of such

penalties in transit to the Division, the relevant payments will still be accepted, unless specifically waived by the Division. It is not intended for this notice to require the reversal of any steps that were taken in the past but simply to amend the routine response to late filings of electronic reports of due diligence going forward.

When the NSLA communicates this change to its members, it is requested that NSLA's communication emphasize that the Commissioner retains the authority to impose penalties for violations of Nevada statutes and regulations and that brokers are expected to comply with all applicable requirements going forward.

  
BARBARA D. RICHARDSON,  
Commissioner of Insurance

Cc: Gennady Stolyarov II, Lead Actuary, Property and Casualty Insurance, Nevada Division of Insurance