

JOE LOMBARDO
Governor

STATE OF NEVADA

TERRY REYNOLDS
Director



SCOTT J. KIPPER
Commissioner

DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INSURANCE

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**NOTICE OF INTENT TO ACT UPON REGULATION
LCB File No. R029-23
AND HEARING AGENDA**

The Nevada Division of Insurance ("Division") is proposing the adoption of regulations pertaining to chapter(s) 679A of the Nevada Administrative Code ("NAC"). The hearing shall take place as follows:

Date: September 12, 2023
Time: 9:00 a.m.
Location: This hearing will be held virtually via Webex, which allows participation by video or telephone. (For help in using Webex, visit <https://help.webex.com>.)

To join by Webex, click on the URL and enter the meeting number and password when prompted.

URL: <https://doinv.webex.com/doinv/j.php?MTID=ma15e6dab8bceaa90a327fdaed0e0c5c6>
Meeting Number: 2632 465 6715

To join by telephone, call the toll-free number and enter the access code when prompted.

Phone-in Access: 1-844-621-3956 United States Toll Free
Access Code: 2632 465 6715

For those wishing to attend in person, the following physical locations are being made available:

Nevada Division of Insurance
1818 E. College Pkwy., Ste. 103
Carson City, NV 89706

Nevada Division of Insurance
3300 W. Sahara Ave.
Nevada Room, Ste. 400, 4th Floor
Las Vegas, NV 89102

Live public comment and written public comment will be taken as designated in the Hearing Agenda.

The purpose of the hearing is to solicit comments from interested persons on the general topic(s) that may be addressed in the proposed regulation; and to assist in determining whether the proposed regulation is likely to impose a direct and significant burden upon a small business or directly restricts the formation, operation, or expansion of a small business.

HEARING AGENDA

1. Open Hearing: R029-23.
2. Presentation of Proposed Regulation.

[R029-23P.pdf \(state.nv.us\)](#)

A REGULATION relating to insurance; concerning policies of liability; defining liability insurance; the applicability of Assembly Bill 398 (2023 Legis. Session) to insurers based on state and federal law; providing further guidance on how coverage is required to be made available; and providing other matters properly relating thereto.

3. Public Comment.

The hearing officer will indicate when live public comment will be taken. Public comment may be limited to three minutes per speaker.

4. Close Hearing: R029-23.

Note: Any agenda item may be taken out of order; items may be combined for consideration by the public body; items may be pulled or removed from the agenda at any time; and discussion relating to an item may be delayed or continued at any time. The hearing officer, within his/her discretion, may allow for public comment on individual agenda items.

A copy of all materials relating to the proposal may be obtained by visiting the Division's internet website at <https://doi.nv.gov/News-Notices/Regulations/> or by contacting the Division (regs@doi.nv.gov or 775-687-0700). Members of the public who would like additional information about a proposed regulation may contact the Division by email to regs@doi.nv.gov. Members of the public are encouraged to submit written comments for the record no later than **September 5, 2023**. Persons wishing to comment upon the proposed actions of the Division may appear at the hearing via Webex or telephone and/or may address their comments, data, views, or arguments in written form, by email to regs@doi.nv.gov or by mail to 1818 E. College Parkway, Suite 103, Carson City, NV 89706.

We are pleased to make reasonable accommodations for attendees with disabilities. Please notify the Division of your request for reasonable accommodation in writing, no later than five (5) working days before the hearing via email to regs@doi.nv.gov.

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.

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

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

This regulation is to provide guidance based upon Assembly Bill 398 ("AB 398"), which was passed during the 82nd Session of the Nevada Legislature, 2023. Effective October 1, 2023, AB 398 amends NRS 679A by 1) disallowing insurers from issuing or renewing a policy of liability insurance that reduces the liability limit stated within the policy, by certain costs, and 2) disallows insurers from limiting the availability of coverage for the costs of defense, legal cost and fees and other expenses for claims.

Discussions with Nevada insurance carriers and Nevada businesses indicated that clarification of the regulatory applicability of the language of AB 398 was necessary to help ensure the stability of the Nevada liability insurance markets, both for availability of coverage and pricing.

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

The Nevada Legislature passed Assembly Bill 398 during the 2023 Session of the Nevada Legislature. AB 398, after October 1, 2023, will disallow insurers from issuing or renewing a policy of liability insurance that reduces the liability limit, stated within the policy, by defense cost, legal costs and fees, and other expenses or for claims. Section 2 of AB 398 disallows insurers from limiting the availability of coverage for the costs of defense, legal cost and fees, and other expenses for claims.

The types of liability policies that are expected to be impacted by AB 398 include but are not limited to: Medical Malpractice; Errors and Omissions and other professional liability policies; Directors and Officers; Cyber Liability; Employment Practices Liability; Pollution and Environmental Impairment; Fiduciary Liability; Construction Defect; Products and Clinical Trial Liability; and Excess and Umbrella policies. A large percentage of Nevada businesses are expected to have one or more of the types of policies impacted by this bill.

There are three areas in AB 398 that the Nevada Division of Insurance (“Division”) has identified as needing regulatory clarity for the industry. The proposed regulation does the following: 1) defines what is a "policy of liability insurance", 2) identifies the insurers to which AB 398 does not apply based on existing state and federal law, and 3) provides further guidance on how defense coverage is required to be made available.

The Division is charged with protecting policyholders and ensuring Nevada has adequate and healthy insurance markets. (NRS 679A.140(1)(a),(g)). Based upon the Division’s discussion

with the insurance industry and a number of different businesses and local governments, without providing clarity about the applicability of this statute, AB 398 has the potential to eliminate or greatly reduce the availability of certain policies of liability insurance and significantly increase their costs, which would affect all types of Nevada businesses (events, tourism, gaming, hospitality, retail, construction, technology, healthcare, etc.) non-profit entities, and state and local governments.

Due to the timing of the effective date of AB 398, and because Nevada state law requires insurers to provide a 60-day notice of cancellation to policyholders if the insurer intends to withdraw from providing insurance for a particular class of insureds, an emergency regulation addressing the topics contained in this proposed regulation, was signed by Governor Joe Lombardo on July 20, 2023. Because emergency regulations are only effective for 120 days, the Division is promulgating this permanent regulation to continue to provide the regulatory clarity needed for AB 398.

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

Based upon conversations with Nevada carriers that write liability insurance and Nevada businesses and local governments, the clarity created by this regulation will help to assist with availability of the types of liability policies impacted by AB 398 and will help reduce some of the expected extremely large rate increases of liability insurance premiums.

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

There are no other regulations that address the issues contained in this regulation, other than the emergency regulation signed by Governor Lombardo on July 20, 2023, which will expire 120 days from the 20th.

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

The Division of Insurance has identified no other forms of regulation that can address the clarity provided by this regulation.

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

Nevada businesses as well as local governments and non-profit entities will benefit from this regulation, which is expected to help with both the availability and pricing of the types of liability insurance products that are written with the cost of defense included in the policy's liability limits. Without this guidance it is expected that numerous carriers would leave Nevada's insurance market, and policies would see extreme price increases.

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

a. Public

1. Immediate: This regulation is expected to impact Nevada consumers, as the availability of liability insurance and lower premium increases will place less pressure on Nevada

businesses to pass on higher costs to consumers. While liability policy premiums are expected to still rise, due to requiring defense costs as a separate coverage, the increases will be lessened by this regulation.

2. Long Term: This regulation is expected to impact Nevada consumers, as the availability of liability insurance and lower premium increases will place less pressure on Nevada businesses to pass on higher costs to consumers. While liability policy premiums are expected to still rise, due to requiring defense costs as a separate coverage, the increases will be lessened by this regulation.

b. Insurance Business

1. Immediate: This regulation's guidance regarding the regulatory interpretation of AB 398 will help the industry properly price their products, based upon the new requirements for policies of liability insurance, which should allow them to remain in the Nevada marketplace. Without this guidance, several carriers indicated they would no longer be able to offer several types of insurance in Nevada that are impacted by this bill.

2. Long Term: This regulation's guidance regarding the regulatory interpretation of AB 398 will help the industry properly price their products, based upon the new requirements for policies of liability insurance, which should allow them to remain in the Nevada marketplace. Without this guidance, several carriers indicated they would no longer be able to offer several types of insurance in Nevada that are impacted by this bill.

c. Small Businesses

1. Immediate: While some Nevada small businesses may not carry one of the types of insurance policies impacted by AB 398, many small businesses do carry these types of policies. Whether it is a medical malpractice policy, errors and omissions for professionals, pollution liability for small contractors, or directors and officers coverage for non-profit entities, this regulation will impact a large number of Nevada businesses, and should help lessen the increased costs of policies of liability insurance impacted by AB 398.

2. Long Term: While some Nevada small businesses may not carry one of the types of insurance policies impacted by AB 398, many small businesses do carry these types of policies. Whether it is a medical malpractice policy, errors and omissions for professionals, pollution liability for small contractors, or directors and officers coverage for non-profit entities, this regulation will impact a large number of Nevada businesses, and should help lessen the increased costs of policies of liability insurance impacted by AB 398.

d. Small Communities

1. Immediate: Small Communities should benefit very similarly to the Public as addressed in sub. A.

2. Long Term: Small Communities should benefit very similarly to the Public as addressed in sub. A.

e. Government Entities

1. Immediate: Many local governments purchase public official liability insurance, which is impacted by AB 398. In addition, increased costs of insurance of the vendors and contractors that contract with local governments will be impacted this legislation. They will

benefit from this regulation through increased availability of coverage and reduced premiums, both in direct and indirect expenditures they make.

2. Long Term: Many local governments purchase public official liability insurance, which is impacted by AB 398. In addition, increased costs of insurance of the vendors and contractors that contract with local governments will be impacted this legislation. They will benefit from this regulation through increased availability of coverage and reduced premiums, both in direct and indirect expenditures they make.

(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: None
 - 2. Long-Term: None

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

- a. Enactment – There will be no anticipated cost to enact this regulation. Meetings for workshops and the hearing will be held at existing Division facilities and through Webex.
- b. Enforcement – This regulation will not create additional costs to enforce the regulation.
- c. Compliance – This regulation will not add any new requirements for the Division of Insurance sections that are charged with ensuring compliance of our licensees.

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

This regulation does not create 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.

See the Small Business Impact Statement for this proposed regulation, which goes into detail regarding the methods used to identify the impacts on Nevada small businesses.

(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.

There are no other state or local government agency regulations that overlap or duplicate with the content and context contained in this regulation.

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

Not applicable


(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.

Not applicable

Notice of the hearing has been provided as follows:

By email to all persons on the Division's e-mail list for noticing of administrative regulations.
By email for posting by the Nevada State Library, Archives and Public Records Administrator.
By email for posting by the Nevada Legislature.
Published to the Nevada Legislature website: <https://leg.state.nv.us/>.
Published to the Division of Insurance website: <https://doi.nv.gov/>.
Published to the State of Nevada Public Notice website: <https://notice.nv.gov/>.

DATED this 8th day of August 2023.


SCOTT J. KIPPER
Commissioner of Insurance

**STATE OF NEVADA
DEPARTMENT OF BUSINESS & INDUSTRY
DIVISION OF INSURANCE**

**Determination of Necessity of Small Business Impact Statement
NRS 233B.0608(1)**

POLICIES OF LIABILITY INSURANCE

EFFECTIVE DATE OF REGULATION:
Upon filing with the Nevada Secretary of State

1. BACKGROUND.

The Nevada Legislature passed Assembly Bill 398 during the 2023 Session of the Nevada Legislature. AB 398, after October 1, 2023, will disallow insurers from issuing or renewing a policy of liability insurance that reduces the liability limit, stated within the policy, by defense cost, legal costs and fees, and other expenses or for claims. Section 2 of AB 398 disallows insurers from limiting the availability of coverage for the costs of defense, legal cost and fees, and other expenses for claims.

The types of liability policies that are expected to be impacted by AB 398 include but are not limited to: Medical Malpractice; Errors and Omissions and other professional liability policies; Directors and Officers; Cyber Liability; Employment Practices Liability; Pollution and Environmental Impairment; Fiduciary Liability; Construction Defect; Products and Clinical Trial Liability; and Excess and Umbrella policies. A large percentage of Nevada businesses are expected to have one or more of the types of policies impacted by this bill.

There are three areas in AB 398 that the Nevada Division of Insurance (“Division”) has identified as needing regulatory clarity for the industry. The proposed regulation does the following: 1) defines what is a "policy of liability insurance", 2) identifies the insurers to which AB 398 does not apply based on existing state and federal law, and 3) provides further guidance on how defense coverage is required to be made available.

The Division is charged with protecting policyholders and ensuring Nevada has adequate and healthy insurance markets. (NRS 679A.140(1)(a),(g)) Based upon the Division’s discussion with the insurance industry and a number of different businesses and local governments, without providing clarity about the applicability AB 398, there is the potential to eliminate or greatly reduce the availability of certain policies of liability insurance and significantly increase their costs, which would affect all types of Nevada businesses (events, tourism, gaming, hospitality, retail, construction, technology, healthcare, etc.) non-profit entities, and state and local governments.

Due to the timing of the effective date of AB 398, and because Nevada state law requires insurers to provide a 60-day notice of cancellation to policyholders if the insurer intends to withdraw from providing insurance for a particular class of insureds, an emergency regulation addressing the topics contained in this proposed regulation, was signed by Governor Joe Lombardo on July 20, 2023. Because emergency regulations are only effective for 120 days, the Division is promulgating this permanent regulation to continue to provide the regulatory clarity needed for implementation of AB 398.

2. DESCRIPTION OF SOLICITATION SHOWING A CONCERTED EFFORT. NRS 233B.0608(1).

Division staff have been meeting with members of the insurance industry and Nevada businesses to help gauge the impact of AB 398 and solicit their input regarding the language in the proposed regulation. The Division also held a Webex meeting on July 21, 2023, with over 360 participants from both the insurance industry and Nevada business owners, to discuss the regulation language. In addition, a workshop and hearing are being held for this regulation, to solicit additional input from Nevada small business owners.

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 YES

4. HOW WAS THAT CONCLUSION REACHED? NRS 233B.0608(3).

This regulation is being promulgated to provide guidance to the industry, specifically with the intent of protecting Nevada's insurance markets. The language in this regulation is intended to help minimize the expected cost increases in certain policies of liability insurance and ensure the continued availability of coverage. As addressed above, the types of insurance policies impacted by AB 398 are purchased by a large percentage of Nevada business owners, and this regulation will positively impact both the costs and availability of the applicable policies of liability insurance, which will benefit small business owners.

I, SCOTT J. KIPPER, Commissioner of Insurance for the State of Nevada, hereby certify that, 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 the information contained in this statement is accurate. (NRS 233B.0608(3))

July 28, 2023
(DATE)



SCOTT J. KIPPER
Commissioner of Insurance

Small Business Impact Statement
NRS 233B.0608(2)-(4) and 233B.0609

NAME OF REGULATION

1. SUMMARY OF COMMENTS RECEIVED FROM SMALL BUSINESSES. NRS 233B.0609(1)(a).

Nevada Division of Insurance (“Division”) staff held several meetings with members of the insurance industry and Nevada businesses to help gauge the impact of AB 398 and solicit their input regarding the language in the proposed regulation. Most of the comments received from small business owners regarding the language proposed in this regulation have come from Nevada insurance agencies. Their comments have strongly supported the need for this regulation to help with the availability and costs of policies of liability insurance in Nevada for Nevada business owners. Additional comments will be solicited at the workshop and hearing for this regulation.

Other interested parties may receive a copy of this summary by contacting Rhonda Kelly, Legal Secretary, Nevada Division of Insurance, at (702) 486-4060 or rlkelly@doi.nv.gov.

HOW WAS THE ANALYSIS CONDUCTED? NRS 233B.0609(1)(b).

Division staff held several meetings with members of the insurance industry and Nevada businesses to help gauge the impact of AB 398 and solicit their input regarding the language in the proposed regulation. In addition, the Division held a Webex meeting on July 21, 2023, with over 360 participants from both the insurance industry and Nevada business owners, to discuss the regulation language. Division staff met several times to analyze the comments we received to help determine that guidance that was needed in this regulation. The Division analyzed potential impacts utilizing different alternative language to determine the necessary guidance that would be most necessary and impactful to insurers and policyholders.

2. ESTIMATED ECONOMIC EFFECT ON SMALL BUSINESSES THE REGULATION IS TO REGULATE. NRS 233B.0609(1)(c).

(a) BOTH ADVERSE AND BENEFICIAL EFFECTS.

- (1) Adverse: This regulation will have no adverse effects on Nevada small businesses.
- (2) Beneficial: This regulation will help ensure that coverage is still available and will allow small business owners to select the limits of defense cost to be included in their coverage.

(b) BOTH DIRECT AND INDIRECT EFFECTS.

- (1) Direct: The ability to select specific limits of defense costs tailored to individual small businesses will provide for lower insurance premiums costs for small business owners.
- (2) Indirect: This regulation is intended to help ensure access to policies of liability insurance in Nevada. More access to carriers and competition will have the indirect effect of limiting cost increases created by AB 398.

3. METHODS CONSIDERED TO REDUCE IMPACT ON SMALL BUSINESSES. NRS 233B.0609(1)(d).

Several meetings were held with members of the insurance industry and with Nevada businesses to help determine the potential impacts regarding product availability and cost increases if additional guidance

was not provided by the Division. Division staff spent considerable amount of time meeting and discussing the impacts to small and large Nevada businesses and the language that was needed in a regulation to help clarify the intent of the bill and minimize the financial impacts to Nevada business owners.

4. ESTIMATED COST OF ENFORCEMENT. NRS 233B.0609(1)(e).

The regulation will not create any additional requirements for Division staff enforcing the law created by this regulation.

5. FEE CHANGES. NRS 233B.0609(1)(f).

This regulation will have no impact on fees.

6. DUPLICATIVE PROVISIONS. NRS 233B.0609(1)(g).

This regulation does not duplicate any existing federal, state, or local standards.


REASONS FOR CONCLUSIONS. NRS 233B.0609(1)(h).

This regulation is being promulgated to provide guidance to the industry, specifically with the intent of protecting Nevada's insurance markets. The language in this regulation is intended to help minimize the expected cost increases in certain policies of liability insurance and ensure the continued availability of coverage. As addressed above, the types of insurance policies impacted by AB 398 are purchased by a large percentage of Nevada business owners, and this regulation will positively impact both the costs and availability of the applicable policies of liability insurance, which will benefit small business owners. There is nothing provided in this regulation which would negatively impact small businesses in this state.

I, SCOTT J. KIPPER, Commissioner of Insurance for the State of Nevada, hereby certify that, 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))

July 28, 2023

(DATE)



SCOTT J. KIPPER
Commissioner of Insurance