

**REVISED PROPOSED REGULATION OF THE
COMMISSIONER OF INSURANCE**

LCB File No. R029-23

September 27, 2023

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

AUTHORITY: §§ 1-4, NRS 679B.130.

A REGULATION relating to insurance; establishing the policies of insurance to which certain requirements relating to coverage for legal defense costs are applicable; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law authorizes the Commissioner of Insurance to adopt reasonable regulations for the administration of the Nevada Insurance Code. (NRS 679B.130)

Assembly Bill No. 398 of the 2023 Legislative Session (A.B. 398) prohibits an insurer, effective October 1, 2023, from issuing or renewing a policy of liability insurance that contains a provision that: (1) reduces the limit of liability stated in the policy by the costs of defense, legal costs and fees and other expenses for claims; or (2) otherwise limits the availability of coverage for the costs of defense, legal costs and fees and other expenses for claims. (Section 1 of Assembly Bill No. 398, chapter 191, Statutes of Nevada 2023, at page 1110) Because A.B. 398 becomes effective October 1, 2023 and applies only to policies of liability insurance issued or renewed on or after that date, **section 4** of this regulation makes this regulation have the same effective date as A.B. 398. (Section 2 of Assembly Bill No. 398, chapter 191, Statutes of Nevada 2023, at page 1110)

Section 2 of this regulation establishes the types of policies of liability insurance to which the provisions of A.B. 398 apply. Under **section 2**, the requirements of A.B. 398 apply to as a policy of casualty insurance that: (1) provides insurance against legal liability arising from the ownership or operation of a motor vehicle; (2) provides insurance against legal liability arising from the ownership of housing occupied by the owner of the housing; (3) is a policy of general commercial liability insurance; (4) is a policy of commercial automobile insurance; or (5) provides insurance covering the professional liability of certain providers of health care.

Existing law governs captive insurers. (Chapter 694C of NRS) The federal Liability Risk Retention Act of 1986 and existing state law govern risk retention groups. (15 U.S.C. §§ 3901 et seq.; Chapter 695E of NRS) Under the Act and existing state law, a risk retention group is defined, in general, to mean a corporation or association with limited liability: (1) that is organized primarily for and engaged primarily in assuming and spreading the exposure of its members to liability; (2) that, with certain exceptions, is chartered or licensed as a liability insurer under the laws of any state; (3) whose members are engaged in businesses or activities

similar or related with respect to the liability to which they are exposed; (4) that is not engaged in the provision of insurance other than liability insurance for assuming and spreading the liability of the members of the group or reinsurance with respect to the liability of certain other risk retention groups; and (5) that meets certain other characteristics. (15 U.S.C. § 3901; NRS 695E.110) Additionally, the Act and existing state law define “liability” for the purposes of provisions governing risk retention groups to mean, in general, legal liability for damages including costs of defense, legal costs and fees and other expenses for claims because of injuries to other persons, damages to their property or other damage or loss to those persons resulting from or arising out of certain activities. (15 U.S.C. § 3901; NRS 695E.060) **Section 3** of this regulation provides that the provisions of A.B. 398 do not apply to: (1) risk retention groups; or (2) captive insurance that does not cover third-party liability.

Section 3 also exempts from the requirements of A.B. 398 insurers who are not authorized to engage in the business of insurance in this State but who are authorized by existing law to provide certain insurance coverages in this State that cannot be procured from authorized insurers.

Section 1. Chapter 679A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this regulation.

Sec. 2. *As used in section 1 of Assembly Bill No. 398, chapter 191, Statutes of Nevada 2023, at page 1110, “policy of liability insurance” includes only a policy of casualty insurance that:*

- 1. Provides insurance against legal liability arising from the ownership or operation of a motor vehicle, as defined in NRS 485.050;*
- 2. Provides insurance against legal liability arising from the ownership of housing that is occupied by the owner as the primary residence of the owner;*
- 3. Is a policy of commercial general liability insurance;*
- 4. Is a policy of commercial automobile insurance; or*
- 5. Provides insurance covering the professional liability of a provider of health care, as defined in NRS 41A.017.*

Sec. 3. *The provisions of section 1 of Assembly Bill No. 398, chapter 191, Statutes of Nevada 2023, at page 1110, do not apply to:*

- 1. A risk retention group, as defined in NRS 695E.110.*
- 2. Captive insurance that does not cover third-party liability.*
- 3. A nonadmitted insurer, as defined in NRS 685A.0375.*

Sec. 4. This regulation is hereby amended by adding thereto the following transitory language which has the force and effect of law but which will not be codified in the Nevada Administrative Code:

The provisions of this regulation do not apply to a contract for liability insurance existing on October 1, 2023, but the provisions of this regulation do apply to a contract for liability insurance to which the provisions of section 1 of Assembly Bill No. 398, chapter 191, Statutes of Nevada 2023, at page 1110, are applicable pursuant to section 2 and 3 of this regulation, that is issued or renewed on or after October 1, 2023.