

JOE LOMBARDO
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STATE OF NEVADA

TERRY REYNOLDS
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SCOTT J. KIPPER
Commissioner

DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INSURANCE

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**NOTICE OF WORKSHOP
TO SOLICIT COMMENTS ON PROPOSED REGULATIONS
LCB File No. R029-23
AND WORKSHOP AGENDA**

The Nevada Division of Insurance (“Division”) is hosting a workshop to propose the adoption, amendment, or repeal of regulations pertaining to Nevada Administrative Code (“NAC”) chapter(s) 679A.

Date: August 31, 2023
Time: 9:00 a.m.
Location: This workshop 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=m0019bc042f3d0d8b2c8cdcc64304f054>

Meeting Number: 2632 553 1976

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 553 1976

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 Workshop Agenda.

The purpose of the workshop 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.

WORKSHOP AGENDA

1. Open Workshop: 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 workshop presenter will indicate when live public comment will be taken. Public comment may be limited to three minutes per speaker.

4. Close Workshop: 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 meeting presenter, 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 **August 24, 2023**. Written comments may be emailed to regs@doi.nv.gov or mailed 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 workshop via email to regs@doi.nv.gov.

Notice of the workshop 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