

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

**LCB FILE NO. E002-23A**

**The following document is an emergency regulation submitted  
by the agency on 07/21/2023**

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**Form For Filing  
Administrative Regulations**

Agency

Dept. of Business and Industry

Division of Insurance

FOR EMERGENCY  
REGULATIONS ONLY

Effective date July 21, 2023

Expiration date November 21, 2023



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Governor's signature

Classification:     PROPOSED         ADOPTED BY AGENCY         EMERGENCY

**Brief description of action**    This emergency regulation is proposed to clarify applicability of AB 398 (2023 Legis. Session). AB 398 has the potential to eliminate or greatly reduce the availability of certain policies of liability insurance and significantly increase their costs, which will affect all types of Nevada businesses, non-profit entities, and state and local governments. The Division of Insurance seeks to clarify which policies of insurance are subject to the bill for filing purposes by 1) defining "policy of liability insurance", 2) identifying the insurers to which AB 398 does not apply based on existing state and federal law, and 3) providing further guidance on how defense coverage is required to be made available.

**Authority citation other than 233B**    NRS 679B.130(1), AB398, NRS 233B.0613

**Notice date**    N/A

**Date of Adoption by Agency**    July 21, 2023

**Hearing date**    N/A

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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STATEMENT OF EMERGENCY  
Pursuant to NRS 233B.0613.1

July 20, 2023

The Honorable Joe Lombardo  
Governor of the State of Nevada  
Executive Chambers  
101 N. Carson Street, Suite 1  
Carson City, Nevada 89701

Re: Statement of Emergency Concerning Policies of Liability Insurance

Dear Governor Lombardo,

The Nevada Division of Insurance (“Division”) has determined there exists an immediate need for an emergency regulation related to Assembly Bill 398 (“AB 398”), which was passed during the 82<sup>nd</sup> Session of the Nevada Legislature, 2023, amends NRS 679A, and becomes effective October 1, 2023.

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 Division seeks to adopt an emergency regulation to clarify the language of AB 398. The emergency 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). 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 will affect all types of Nevada businesses (events, tourism, gaming, hospitality, retail, construction, technology, healthcare, etc.) non-profit entities, and state and local governments.

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.

The Division has grave concerns regarding carriers leaving the Nevada market altogether due to the impact of this new legislation. As carriers leave the state, there is a potential for a lack of adequate capacity remaining with the carriers that choose to continue selling liability insurance in this state. Additionally, this new legislation will most likely lead to significant increases in the costs of insuring businesses and, without clarification, the Division is projecting even higher costs for liability insurance.

The Division believes that promulgating an emergency regulation will provide some necessary assurances to insurers to try to minimize disruption to Nevada insurance consumers. Thank you for your consideration and assistance in this important matter.

Sincerely,



SCOTT J. KIPPER  
Commissioner of Insurance

Enclosures: Emergency Regulation  
Informational Statement Pursuant to NRS 233B.066.1(a), (g)-(k),.2  
Nevada Secretary of State Form for Filing Administrative Regulations

Cc: Ben Kieckhefer, Chief of Staff, Office of the Governor  
Chris Nielsen, General Counsel, Office of the Governor  
Terry Reynolds, Director, Department of Business and Industry  
Legislative Counsel Bureau  
Administrator, State Library and Archives

## EMERGENCY REGULATION OF THE COMMISSIONER OF INSURANCE

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

AUTHORITY: §§ 1-2, NRS 679B.130 and 233B.0613.

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 defense coverage is required to be made available.

**Section 1.** A new section is added to NAC 679A as follows:

- 1. As used in A.B. 398 (2023 Legis. Session), “policy of liability insurance” means a type of coverage, as defined in NRS 681A.020.1(b), issued under casualty insurance and offered by an insurer authorized pursuant to NRS 680A.060 and NRS 694C.230 to offer the casualty line of authority for third-party liabilities.*
- 2. A.B. 398 (2023 Legislative Session) does not apply to:*
  - a. Risk-retention groups, for which “liability” is defined to include defense costs pursuant to 15 U.S.C. § 3901.*
  - b. Captive insurance that does not cover third-party liability.*

**Section 2.** A new section is added to NAC 679A as follows:

*A policy of liability insurance that is required to be filed for approval with the Division must make defense coverage available at the defense coverage limit selected by the insured, if any. Any defense coverage limit selected, including \$0, must be included on the declaration page. This provision does not apply to policies that do not limit defense costs coverage.*

The Commissioner of Insurance has made a finding that an emergency affecting the pricing and availability of liability insurance policies exist, and the adoption of the Emergency Regulation is appropriate.

Date this 20<sup>th</sup> day of July 2023.

  
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SCOTT J. KIPPER  
Commissioner of Insurance

I, Governor Joe Lombardo, endorse the State of Emergency presented by Commissioner of Insurance, Scott J. Kipper.

Dated this 20<sup>th</sup> day of July 2023.

  
\_\_\_\_\_  
JOE LOMBARDO  
Governor

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STATE OF NEVADA

TERRY REYNOLDS  
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Re: Informational Statement per NRS 233B.066

This informational statement is being submitted pursuant to NRS 233B.066(1), which requires the emergency regulation be accompanied by a statement concerning the regulation which contains certain information required by the statute. The requirements of NRS 233B.066(1)(b)-(f) do not apply to emergency regulations pursuant to NRS 233B.066(2).

1. A clear and concise explanation of the need for the adopted regulation as required by NRS 233B.066(1)(a):

*The emergency regulation is to address Assembly Bill 398 ("AB 398"), which was passed during the 82<sup>nd</sup> 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.*

*It is anticipated that if the emergency regulation is not put into place certain policies of liability insurance will not be available in the Nevada market and, if they are available, they will be available at an increased cost. The emergency regulation is necessary to clarify the regulatory applicability of the language of AB 398 and help ensure the stability of the Nevada insurance market.*

2. The estimated economic effect of the regulation on the business which it is to regulate and on the public as required by NRS 233B.066(1)(g):

Business:

*The regulation will not have a direct economic effect on the business, but will help insurers determine AB398's economic impact. The Division of Insurance is charged with protecting policyholders and for ensuring Nevada has an adequate and healthy insurance market. Insurers have been asking whether AB398 applies to their policies because, if it does, they may not have*

sufficient time to price the changes to their products, they may not be able to write policies given their solvency requirements, or, if they decide they can no longer offer the product, they will have to give their policyholders 60 days' notice. Without the emergency regulation, insurers may be unable or unwilling to offer certain policies of liability insurance to Nevada businesses.

Public:

*The regulation will not have a direct economic effect on the public, but will help insurers determine AB398's economic impact. The Division of Insurance is charged with protecting policyholders and for ensuring Nevada has an adequate and healthy insurance market. By helping to quickly clarify to insurers how AB398 applies for regulatory purposes, insurers can better assess their ability to offer products, which will help consumers of liability insurance products determine if they will have coverage. The effects of a business having or not having affordable liability coverage is expected to affect product and service prices and availability in the general market to the public as a whole.*

3. The estimated cost to the agency for enforcement of the proposed regulation as required by NRS 233B.066(1)(h).

*There is no added cost to Division to enforce this proposed emergency regulation, as the Division reviews policy forms in its ordinary course.*

4. A description of any regulations or other state or government 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, name the regulating federal agency as required by NRS 233B.066(1)(i).

*The proposed emergency regulation does not duplicate or overlap any other state or government agency regulation.*

5. If the regulation includes provisions which are more stringent than a federal regulation which regulates the same activity, a summary of such provisions as required by NRS 233B.066(1)(j).

*Not Applicable.*

6. If the regulation establishes a new fee or increases an existing fee, a statement indicating the total annual amount the agency expects to collect and the manner in which the money will be used as required by NRS 233B.066(1)(k).

*The emergency regulation does not establish a new fee or a fee increase.*