LEGISLATIVE REVIEW OF ADOPTED REGULATIONS
INFORMATIONAL STATEMENT AS REQUIRED BY NRS 233B.066

LCB FILE NO. R029-23

The following statement is submitted by the State of Nevada, Department of Business and Industry, Division of Insurance ("Division") for adopted amendments to Nevada Administrative Code ("NAC") Chapter(s) 679A.

1. A clear and concise explanation of the need for the adopted regulation.

The Division is charged with protecting policyholders and ensuring Nevada has adequate and healthy insurance markets. NRS 679A.140.l(a) & (g). R029-23 is needed to provide clarity to the state's insurance industry regarding how to interpret the provisions of 2023 Nevada Legislature's Assembly Bill 398. This regulation is needed to provide clarity about the definition of liability insurance, the types of insurers and policies the bill applies to, and how insurers shall make defense costs, outside of the limits of liability, available in policies of liability insurance.

2. A description of how public comment was solicited, a summary of public response, and an explanation of how other interested persons may obtain a copy of the summary.

(a) A description of how public comment was solicited:

Public comment was solicited by emailing the proposed regulation, notices of workshops, notice of intent to act upon the regulation, and small business impact statement to persons on the Division's mailing list requesting notification of proposed regulations. The documents were also made available on the website of the Division, http://doi.nv.gov/, the website of the Nevada Legislature, http://www.leg.state.nv.us, and the Nevada Public Notice website, http://www.notices.nv.gov. The documents were also emailed, or mailed where no email address was available, to the main library for each county in Nevada.

Public comment was also solicited at the workshop held on August 10, 2023, and at the hearing held on September 12, 2023. The public workshop and hearing took place virtually via Webex and in person at the Division's offices located at 1818 E. College Pkwy, Carson City, Nevada, 89706 and 3300 W. Sahara Ave., Las Vegas, NV 89102.

(b) A summary of the public response:

During the workshop held on August 10, 2023, 11 members of the public testified in favor of the language contained in the regulation. Some of the testimony provided indicated that they felt the regulation language did not go far enough to limit the expected large rate increases and reduced availability of certain policies of liability insurance due to AB 398 eliminating the ability to obtain liability insurance with defense cost contained within the limits of the liability coverage. No members of the public testified in opposition to the proposed regulation.

During the hearing that was held on September 12, 2023, 8 members of the public testified, and all members testified in favor of the proposed regulation and proposed no amended language. No members of the public testified in opposition to the proposed regulation.

(c) An explanation of how other interested persons may obtain a copy of the summary:

The summary in part 2(b) above reflects the public comments and testimony that transpired regarding regulation R029-23. A copy of said summary may be obtained by contacting the Division at regs@doi.nv.gov.

3. The number of persons who:

(a) Attended the hearing: 9 in person; 149 virtually; 158 total
(b) Testified at the hearing: 9
(c) Submitted to the agency written statements: 5

4. A list of names and contact information, including telephone number, business address, business telephone number, electronic mail address, and name of entity or organization represented, for each person identified above in #3 (b) and (c), as provided to the agency:

Testified at the hearing:

Name	**Entity/Organization Represented**	**Business Address**	**Telephone No./ Business Telephone No.**	**E-Mail Address**
Nick Stosic	Nevada Division of Insurance			nstosic@doi.nv.gov
Emily Osterberg	Henderson Chamber of Commerce			eosterberg@hendersonchamber.com
Virginia Valentine	Nevada Resort Association			virginiavalentine@me.com
Paul Moradkhan	Vegas Chamber			pmoradkhan@vegaschamber.com
Michael Kobayashi	RPX Corporation			mkobayashi@rpxcorp.com
Christian Rataj	NAMIC			crataj@namic.org
Susan Bauman	Nevada Independent Insurance Agents			susan@niia.org
Ashelen Vicuna				avicuna@steptoe.com
Ann Silver	Reno Chamber of Commerce			asilver@thechambernv.org

Submitted to the agency written statements:

Name	Entity/Organization Represented	Business Address	Telephone No./ Business Telephone No.	E-Mail Address
Mark Sektnan, VP	American Property Casualty Insurance Association (APCIA)	N/A	916-449-1370	mark.sektnan@apci.org
Kanani G. Espinoza, DPP.	ROWE LAW GROUP, LTD. on behalf of American Council of Engineering Companies of NV (ACEC)	7435 S. Eastern Ave., Ste. 510 Las Vegas, NV 89123	(702) 301-1069	Kanani@RoweLawNV.com
Christian Rataj, Esq.	National Association of Mutual Insurance Companies (NAMIC)	3601 Vincennes Rd. Indianapolis, IN 46268	317-875-5250 |	crataj@namic.org
Carolyn Turner	Nevada Rural Electric Association (NREA)	1894 E. William Street, Suite 4222, Carson City, NV 89701	775.275.0439	cmturner@nrea.coop
Emily Osterberg	Henderson Chamber of Commerce (HCC)	400 N. Green Valley Pkwy 2nd Floor Henderson, NV 89074	702-565-8951	eosterberg@hendersonchamber.com

5. A description of how comments were solicited from affected businesses, a summary of their responses, and an explanation of how other interested persons may obtain a copy of the summary.

(a) A description of how comments were solicited from affected businesses:

Comments were solicited from affected businesses in the same manner as they were solicited from the public. Please see the description provided above in response to #2(a).

(b) A summary of the responses from affected businesses:

The Division of Insurance has received written public comment from five entities regarding the proposed regulation R029-23. They were provided by the American Property and Casualty Insurance Association (APCIA); the American Council of Engineering Companies of Nevada (ACEC); the Nevada Rural Electric Association (NREA); The National Association of Mutual Insurance Companies (NAMIC); and the Henderson Chamber of Commerce (HCC).

APCIA urged the Division to enact a permanent order reiterating that Nevada AB 398 does not apply to unauthorized insurers and risk retention groups. Their letter further stressed that enacting permanent regulations will foster a better landscape for the insurance market, especially professional liability, cyber, directors and officers and other products.

ACEC comments included, "Our firms carry errors and omissions and/or professional liability insurance due to the nature of our industry and necessity to protect against claims and maintain a healthy business operation. Simply put, without affordable insurance coverage engineering firms cannot remain in business; practicing without insurance is simply not a reasonable option for engineering firms. … If there are limited coverage options, or if firms are priced out of the insurance market, Nevada should expect engineering firms to leave the state or be forced to close their doors. This is particularly true of small engineering firms which make up a significant portion of the industry. Limited coverage options would also pose a threat to local and state government agencies who often contract engineering firms and require liability insurance and indemnification. As such, we encourage the Division to adopt regulations to allow a minimum standard in liability coverage to maintain sufficient licensed insurance carriers in the market."

NREA provided that "In an increasingly complex business environment, access to a stable liability insurance market is critical to the ongoing operations of consumer-owned, not-for-profit public utilities. NREA members utilize a variety of insurance products to mitigate risk to their consumers, including commercial umbrella liability insurance; cyber liability insurance; Directors, Officers and Managers liability insurance; and wildfire liability insurance. An increase in cost or decrease in availability of any of these lines of coverage would ultimately harm rural communities dependent upon consumer-owned utility service. We urge the Division to work with insurers and stakeholders to ensure the continued stability of the liability insurance market for consumer-owned utilities and other small businesses throughout the state."

NAMIC's comments included, "All of the testimony provided to the DOI from consumers and insurers support the conclusion that AB 398 has the potential to eliminate or greatly reduce the availability of certain policies of liability insurance in the state and significantly increase insurance costs for consumers and businesses in Nevada. Consequently, the Proposed Regulation, which seeks to clarify a number of vague and ambiguous provisions in AB 398, is clearly consistent with the regulatory authority and regulatory necessity standard of the Administrative Procedures Act.

The language of AB 398 does not provide insurers with necessary guidance as to how an insurer may comply with the provision in the statute that disallows insurers from issuing or renewing a policy of liability insurance that reduces the liability limit stated within the policy by certain legal defense costs. Consequently, the Proposed Regulation is necessary to provide insurers with a regulatory compliance approach they can use to try and separately price indemnification coverage limits and defense coverage limits, and inform consumers of these coverage options.

In closing, NAMIC supports the Proposed Regulation, because it is a thoughtful, measured and practical regulatory approach to provide insurers necessary guidance for them to comply with AB 398."

HCC wrote, "We are writing on behalf of the Henderson Chamber of Commerce (HCC) and our nearly 1,900 members, most of which are small businesses, to express our support for Proposed Regulation R029-23. … As a community, we must work together to mitigate the effects of AB 398 to prevent the increased challenges on available insurance. We believe the proposed regulation will help to resolve this critical challenge."

(c) An explanation of how other interested persons may obtain a copy of the summary:

The summary in part 5(b) above reflects the public comments and testimony that transpired with regard to regulation R029-23. A copy of said summary may be obtained by email request to regs@doi.nv.gov.

6. If after consideration of public comments, the regulation was adopted without changing any part of the proposed regulation, provide a summary of the reasons for adopting the regulation without change.

Not applicable, as the regulation was modified based upon a suggested language change by the American Property and Casualty Insurance Association.

7. (a) The estimated economic effect of the adopted regulation on the business which it is to regulate:

(1) Both adverse and beneficial effects:

i. Beneficial: This regulation will help carriers remain in Nevada's liability insurance markets, which should provide financial benefits to carriers. Without this regulation, carriers have indicated they would not be able to write policies or would greatly increase the costs of coverage.

ii. Adverse: None

(2) Both immediate and long-term effects:

i. 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.

ii. 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.

(b) The estimated economic effect of the adopted regulation on the public:

(1) Both adverse and beneficial effects:

i. Beneficial: 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.

ii. Adverse: None

(2) Both immediate and long-term effects:

i. Immediate: 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.

ii. Long-Term: 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.

8. The estimated cost to the agency for enforcement of the adopted regulation.

This regulation will not increase the cost for enforcement to the Division of Insurance due to its adoption.

9. A description of any regulations of 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, the name of the regulating federal agency.

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

10. If the regulation includes provisions that are more stringent than a federal regulation which regulates the same activity, a summary of those provisions.

Not applicable

11. If the regulation establishes a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

This regulation does not create a new fee or increase an existing fee.