

**PROPOSED REGULATION OF THE
COMMISSIONER OF INSURANCE**

LCB File No. R029-23

August 25, 2023

EXPLANATION – Matter in *italics* is new; matter in **green bold underlining** is material proposed to be added; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §§ 1-5, NRS 679B.130.

A REGULATION relating to insurance; defining “policy of liability insurance” for certain purposes; clarifying the applicability of certain prohibitions relating to policies of liability insurance; setting forth certain requirements for certain policies of liability insurance concerning defense coverage; 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)

Existing law defines “casualty insurance” to include “liability insurance,” which is defined to mean insurance against legal liability for the death, injury or disability of any human being, or for damage to property, including liability resulting from negligence in rendering expert, fiduciary or professional services, and provisions of medical, hospital, surgical, disability benefits to injured persons and funeral and death benefits to dependents, beneficiaries or personal representatives of persons killed, irrespective of legal liability of the insured, when issued as an incidental coverage with or supplemental to liability insurance. (NRS 681A.020) **Section 2** of this regulation defines “policy of liability insurance” for the purposes of the provisions of A.B. 398 to mean a policy that: (1) provides for liability insurance, as defined within the definition of casualty insurance set forth under existing law; and (2) is issued by a person who holds a certificate of authority as an insurer or a license as a captive insurer issued by the Commissioner authorizing the person to offer such liability insurance.

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 4 of this regulation requires a policy of liability insurance subject to the provisions of A.B. 398 that is required to be filed for approval with the Commissioner and which limits defense coverage to: (1) make defense coverage available at a limit selected by the insured; and (2) include the limit for defense coverage selected by the insured on the declarations page of the policy. **Section 4** defines “defense coverage” to mean coverage for the costs of defense, legal costs and fees and other expenses for claims.

Section 1. Chapter 679A of NAC is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 4 of this regulation.

Sec. 2. *As used in section 1 of Assembly Bill No. 398, chapter 191, Statutes of Nevada 2023, at page 1110, and section 4 of this regulation, “policy of liability insurance” means a policy that:*

1. Provides for casualty insurance of the type described in paragraph (b) of subsection 1 of NRS 681A.020; and

2. Is issued to a policyholder in the State of Nevada by a person who holds a certificate of authority pursuant to NRS 680A.060 or a license pursuant to NRS 694C.230 authorizing the person to offer casualty insurance of the type described in paragraph (b) of subsection 1 of NRS 681A.020.

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.

Sec. 4. 1. *If a policy of liability insurance subject to the provisions of section 1 of Assembly Bill No. 398, chapter 191, Statutes of Nevada 2023, at page 1110, limits defense coverage and is required to be filed for approval with the Commissioner:*

(a) The policy of liability insurance must make defense coverage available at the limit for defense coverage selected by the insured; and

(b) The limit for defense coverage selected by the insured, including, without limitation, a limit of \$0, must be included on the declarations page of the policy.

2. As used in this section, “defense coverage” means coverage for the costs of defense, legal costs and fees and other expenses for claims.

Sec. 5. This regulation becomes effective on October 1, 2023.