

Nevada Division of Insurance Supports Council Recommendations on Law AB 398

Tuesday, October 31, 2023

The State of Nevada enacted a law – [AB 398](#) – during its most recent legislative session generally barring the inclusion of defense costs within the coverage limits of a “liability insurance” policy. There has been widespread concern that the enactment of the law would lead to significant marketplace disruption. As the Commissioner himself noted in a letter to the Governor that was sent in support of a temporary [emergency regulation](#) implementing AB 398 – “The Division has grave concerns regarding carriers leaving the Nevada market altogether due to the impact of this new legislation.” – and that the law, if not properly interpreted and applied, will lead to capacity shortages and dramatic premium increases for Nevada businesses.

The Nevada’s Division of Insurance held a hearing on October 30 to consider finalizing a [permanent regulation – R029-23](#) – which would implement AB 398. R029-023 will, if approved, supplant the emergency regulation issued in July and it will apply to any policies of insurance covered by the law (as interpreted by the regulation) issued on or after October 1, 2023 (the effective date of the statute itself; AB 398 does not apply to any policies of insurance issued prior to October 1st). The Department noted at the outset of the hearing that the Nevada Legislative Commission which has to approve all regulations before they can be adopted has pre-approved R029-23 and the Commission noted in so doing that the regulation comports with their legislative intent. The only remaining step is for the Department itself to issue its final approval.

R029-23 clarifies that AB 398 –

- does **not** apply to non-admitted insurers or risk retention groups coverages and
- does **not** apply to captive insurance that does not cover third-party liability.

R029-23 also states that the “policies of liability insurance” encompassed by AB 398 “includes only” “polic[ies] of casualty insurance” that fall into one of five categories:

1. personal automobile insurance
2. homeowners insurance
3. commercial general liability insurance
4. commercial automobile insurance
5. insurance covering the professional liability of a provider of health care

Council members did express concern that there appears to be a disconnect between the five enumerated types of insurance the final regulation would dictate are subject to the AB 398 requirements and the agenda announcing today’s stakeholder hearing which notes that a broader array of policies could be impacted by AB 398. The Council and WSIA [submitted a comment letter](#) to the Department on October 23 generally supporting the final regulation but requesting that the Department’s Frequently Asked Questions related to AB 398 be modified to expressly note that only the five types of policies enumerated in the final regulation are within the ambit of

the AB 398 requirements.

Only three witnesses offered testimony during the hearing – a representative of the state medical association testified that their association opposes the regulation and the statute and is exploring legal action; a representative of the APCIA thanked the Department for its efforts; and The Council also thanked the Department for its efforts and reiterated The Council’s and WSIA’s written request for the Department to revise its FAQs to expressly note that the coverage of AB 398 is limited to the lines of insurance listed in the regulation.

We expect the Department to issue its order finalizing the regulation in short order.