

On June 3, 2023, Nevada Assembly Bill (AB) 398 was signed into law and will be **effective as of October 1, 2023**. *The law prohibits an insurer from issuing or renewing a liability policy that erodes the policy limits of liability by the costs of defense.*

Notwithstanding any other provision of law, an insurer –including, without limitation, an insurer listed in NRS 679A.160 –shall not issue or renew 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.

Sec. 2. The act does not apply to any contract for liability insurance existing on October 1, 2023, but does apply to any renewal of such a contract.

Uncertainty among Insurers, Insureds and brokers as to the application of Nevada AB 398 has led to the Nevada Commissioner of Insurance issuing Guidance. Highlights from the Guidance is as follows:

- The law applies to liability insurance issued by authorized (admitted) insurers and non-risk retention group captive insurers (RRGs) providing third-party liability insurance. (Thus, the law would not appear to include E&S policies.)
- AB 398 does not apply to RRGs and captive insurance that does not cover third-party liability.
- "Liability insurance" within the meaning of the statute is "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."
- Defense outside the limit and defense coverage must be made available but are not unlimited. For liability policies, other than liability policies which do not limit defense cost coverage, a separate limit for defense costs may be selected by the insured, including a limit of \$0.
- Any defense coverage limit selected, including \$0, must be included on the declaration page.
- Liability coverage and or defense costs may be subject to self-insured retentions or a deductible.
- Towers of insurance must contain a separate limit for defense coverage for each policy on the tower. Each policy will have its own limit of defense coverage, which must be negotiated between the parties. Individual indemnity policies must have their own limit of liability that cannot be eroded by defense costs.
- Endorsements are part of the contract and must fully comply with AB 398.
- Cyber policies that include first- and third-party indemnity coverage may share the same limit of coverage. However, defense coverage may not erode the per occurrence coverage or annual aggregate limit of liability coverage, and legal defense coverage for third-party claims must be offered as a separate limit of liability.

For more information, visit McGriff.com or contact:

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