



NFADA
NEVADA FRANCHISED
AUTO DEALERS ASSOCIATION



Nevada Division of Insurance

Talk to us. We're here to help.

Vegas Chamber Hosting Webinar w/NV Insurance Commission re: Assembly Bill 398

As outlined in 7/21 Dealer Update, AB 398 will ban policies w/"defense inside the limits"

The Vegas Chamber of Commerce is hosting a webinar tomorrow morning with Nevada Division of Insurance (Division) Commissioner Scott Kipper and Deputy Commissioner Nick Stosic to explain some of the impacts Assembly Bill (AB) 398 (which was passed this past session of the Nevada State Legislature) will have on the insurance market and businesses operating in our state. Further, Messrs. Kipper and Stosic will also explain the Division's proposed emergency regulations and what they intend to do to help Nevada businesses.

As you likely recall from the July 21, 2023 *NV Dealer Update*, the passage of AB 398 and its impending effective date of October 1, 2023, is creating concerns for businesses related to their ability to obtain and afford certain types of insurance coverage such as:

- **medical malpractice**
- **cyber liability**
- **employment practices liability**
- **construction defect coverage**

AB 398 bans what is referred to as "defense inside the limits," which is a policy provision under which amounts paid by the insurer to defend the insured against a claim reduce the policy's applicable limit of insurance by those amounts.

In response to the growing concerns by chambers of commerce, trade associations, the insurance industry, and businesses the Division implemented an emergency regulation and has held several workshops to create permanent regulations for potential adoption on September 12th.

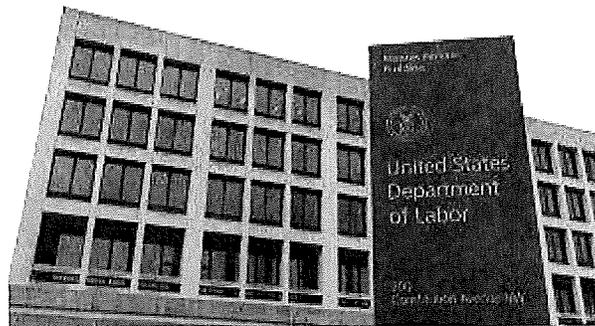
It is important to note that any regulation can only temporarily mitigate and provide clarity to some

of the concerns brought forth by businesses. The Chamber, NFADA, and our fellow trade associations and chambers of commerce believe it will take a legislative fix to address the concerns that have been caused by AB 398 and the negative impact it will have on Nevada's business climate.

As a reminder, below are several highlights of the bill:

- Applies to policies of liability insurance issued by authorized insurers (NRS 679A.030) and non-risk retention group captive insurers (NRS 694C.060) that provide third-party liability coverage.
- Any insurer with a current policy in place must provide its insured 60 days' notice that the policy will be altered or non-renewed.
- As insurers approach the need to reform and reprice policies on such short notice, it has become clear that the admitted market may no longer have an adequate, healthy, and competitive insurance market.
- AB 398 in conjunction with the proposed regulation would make defense coverage separate from the liability – and an insurer must offer some availability of defense coverage, but it does not need to be unlimited.

You can register for tomorrow's webinar by clicking on this [link](#). NFADA would like to thank the Vegas Chamber, and in particular their Vice President of Government Affairs, Paul Moradkhan, for extending an invitation to participate in this webinar to all NFADA members yesterday afternoon. NFADA sincerely appreciates our stellar working relationship and partnership with him and the entire team at the Vegas Chamber.



DOL Proposed Rule Would Significantly Raise the Minimum Salary Level for the “White Collar” OT Exemption

On August 30, 2023, the Wage and Hour Division of the U.S. Department of Labor (DOL) released a Notice of Proposed Rulemaking (NPRM) to revise the “white collar” overtime exemption regulations applicable to executive, administrative, and professional employees. The DOL proposes to substantially increase the minimum salary level needed to qualify as exempt. While the exact salary level that would be included in a final rule is not yet known, it is expected that the salary level will be at least \$1,059 per week (\$55,068 annualized).

Salary Level

The DOL proposes to set the standard salary level at the 35th percentile of weekly earnings of full-time salaried workers in the lowest-wage Census Region (currently the South). In contrast, the current \$684 per week (\$35,568 annualized) salary level was established in 2019 based on a much lower metric – the 20th percentile of weekly earnings of full-time salaried workers in the lowest-wage Census Region and in the retail industry nationally. Using data from 2022, the DOL reports that using the 35th percentile would cause the salary level to jump more than 50%, to \$1,059 per week (\$55,068 annualized). The DOL claims, however, that when it promulgates the final rule it will use the most recent data then available. This could result in a salary level much higher than \$55,068. For example, the DOL projects that by the fourth quarter of 2023, the salary threshold could be as high as \$1,140 per week (\$59,285 annualized), and that by the first quarter of 2024, the salary threshold could be as high as \$1,158 per week (\$60,209 annualized).

HCE Test

The DOL also proposes to significantly raise the total annual compensation needed to qualify for exemption under the streamlined test for highly compensated employees (the “HCE test”). Currently, employees with total annual compensation of \$107,432 qualify for exemption under the HCE test. That figure was calculated in 2019 using the 80th percentile of full-time salaried workers nationally. Under the proposed rule, the amount needed to qualify for the HCE test would be based on the annualized weekly earnings of the 85th percentile of full-time salaried workers nationally. Based on 2022 data, the DOL reports that the HCE test would require total annual compensation of \$143,988. Again, however, the DOL indicates that it will use the most recent data available at the time the final rule is promulgated, which may lead to a much higher annual threshold.

Immediate Impact

The DOL estimates that more than 3.4 million currently exempt employees who earn at least the current salary level of \$684 per week would be impacted by the rule in its first year.

Automatic Updates

The proposed rule would include triannual updates to the salary levels. Every three years, the DOL would update the salary levels using the same methodologies described above, using the most recently available four quarters of data as published by the Bureau of Labor Statistics. The new salary levels would be published at least 150 days before they take effect. The rule would allow the DOL to temporarily delay a scheduled automatic update where unforeseen economic or other conditions warrant.

No Change to Duties Tests

In addition to meeting specific compensation requirements, employees generally must meet certain tests regarding their job duties for an exemption to apply. Significantly, the proposed rule would not make any changes to the duties tests for qualifying as an exempt executive, administrative, or professional employee.

DOL Leadership

Notably, the DOL chose to proceed with the NPRM despite not having a Senate-confirmed Secretary of Labor at the helm (proceeding instead with Acting Secretary of Labor Julie Su) and a vacancy at the Administrator position at the Wage and Hour Division (proceeding instead with Principal Deputy Administrator Jessica Looman). It is anticipated that the DOL’s attempt to promulgate regulations in the absence of a Secretary of Labor will be subject to legal challenge.

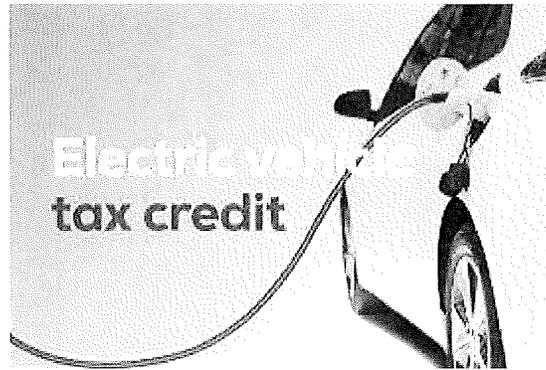
Potential Salary Basis Challenge

Another potential challenge to the proposed rulemaking was foreshadowed in February 2023 by Justice Brett Kavanaugh in his dissenting opinion in *Helix Energy Solutions Group, Inc. v. Hewitt*, 598 U.S. 39 (2023). Justice Kavanaugh stated that the Fair Labor Standards Act focuses on whether the employee performs exempt duties, “not how much an employee is paid or how an employee is paid.” According to Justice Kavanaugh, “it is questionable whether the Department’s regulations—which look not only at an employee’s duties but also at how much an employee is paid and how an employee is paid—will survive if and when the regulations are challenged as inconsistent with the Act.”

Comments

Comments on the proposal are due 60 days after its official publication in the *Federal Register*. The DOL states that it will consider all comments received before publishing a final rule.

Editor’s Note: NFADA would like to thank Robert W. Pritchard, James A. Parenti, Jr., and Brad Kelley attorney partners at Little Mendleson, P.C. and the Littler Workplace Policy Institute (WPI) for the extensive information on this proposed draconian rule. WPI will continue to keep keep NFADA and the of readers of *Littler’s News & Analysis Report* apprised of relevant developments.



IRS Announces Additional Vehicles Qualify for IRS EV Purchase Tax Credit

The Internal Revenue Service has added 8 model year (MY) vehicles to the list of eligible vehicle which qualify for EV Purchase Credits (IRS section 30D).

2023 models qualifying for the full \$7,500 credit:

- Cadillac Lyriq
- Chevrolet Bolt
- Chrysler Pacifica (PHEV)
- Ford F-150 Lightning
- Lincoln Aviator G. Touring (PHEV)
- Tesla Model 3, Y
- Volkswagen ID.4

2023 models qualifying for \$3,750 credit:

- Ford E-Transit
- Ford Escape (PHEV)
- Mustang Mach-E
- Jeep Grand Cherokee (PHEV)
- Jeep Wrangler (PHEV)
- Lincoln Corsair G. Touring (PHEV)
- Rivian R1S
- Rivian R1T

Additional models qualifying in 2024:

- BMW X5 (PHEV) (\$3,750)
- Chevrolet Blazer EV (\$7,500)
- Chevrolet Equinox EV (\$7,500)
- Chevrolet Silverado EV (\$7,500)

There is an additional credit available to purchasers of commercial vehicles, including vehicles purchased by finance companies that are then leased to consumers. Most EV models (including those that do not qualify for the 30D purchase credit) potentially qualify for this credit.

The Department of Energy has a tool on [fueleconomy.gov](https://www.fueleconomy.gov) that provides an updated table of all Section 30D qualifying make/models/variants. NADA members can also visit www.nada.org/ev-incentives for more information on the Section 30D tax credits, on the Section 45W tax credits or on other EV incentives.

To obtain the credit, consumers and dealers do not need to know the qualifying factors (including battery and mineral content and assembly location). The relevant information dealers need includes whether the vehicle qualifies for a tax credit (and if it receives the full \$7,500 or the half credit of \$3,750), the vehicle's MSRP, and the customer's modified adjusted gross income.

Used EVs

The previously-owned clean vehicles credit is a credit of up to \$4,000 for the purchase of an eligible previously-owned clean vehicle with a sale price of \$25,000 or less that is placed in service during a tax year by a qualified buyer. It must be the vehicle's first qualified sale since August 16, 2022, other than to the original owner.

Required Forms

Dealers that sell new or used electric vehicles and fuel cell vehicles must meet reporting requirements for clean vehicle tax credits under the Inflation Reduction Act (IRA) of 2022 and the IRS's guidance for new vehicles (IRC 30D) and used vehicles (IRC 25E).

Recently, many dealers here in Nevada but across the country have asked if completion of forms are needed when leasing vehicles. The IRS has opined that **dealers are not required to provide the forms to customers that lease an EV**. For assistance, NADA's webpage includes the required forms that dealers must provide customers when they sell new or used qualifying EVs: <https://www.nada.org/ev-incentives>.

Beginning in 2024, buyers will be able to transfer credits to dealers at the time of sale, and use the credit amount as a down payment. To participate, dealers will need to register with the IRS. Details on this have not yet been announced but are anticipated in late 2023.



4 Days Left to Save \$100 on NADA Show 2024 Registration

The highly anticipated NADA Show returns to Las Vegas, Feb. 1-4. Below are ten reasons why you can't afford to miss the Auto Industry Event of the Year:

1. Early Bird Savings
Act now to save \$100. Dealers and managers have just 4 days left for the exclusive early bird pricing. Register by midnight Eastern Time on Friday, September 8th, to lock in this special rate. But don't delay, hotel rooms are going fast!
2. Unrivaled Learning
Choose from **100+ workshops and education sessions**, with insights into the latest strategies and emerging trends from world-class speakers. Plus, secure your place now to have your say in Exchange Session topics, a privilege reserved for early bird registrants.

3. *Power-Packed Super Sessions*

Be captivated by not one but two Super Sessions. First, **Unleashing the Combined Power of AI and Human Capital**. Seven accomplished women leaders explore real-life case studies of AI usage in dealerships, focusing on increased efficiency while ensuring compliance.

Then, don't miss the final session of NADA Show 2024, **The Ultimate Tune-Up for Fixed Operations**. Turbocharge your parts and service departments, alongside a chance to compete for free NADA course tuition. Be sure to attend in person, this session won't be recorded!

4. *NEW! Spotlight Series*

We've reimaged the popular Distinguished Speakers Series. Get ready for an engaging lineup — from innovative 20 Group ideas to EV battery insights and brand building with "The Car Mom."

5. *Franchise Meetings*

NADA Show offers unparalleled access to automaker execs. Meet directly with OEMs to learn the latest updates and changes happening within your franchise.

6. *Captivating Main Stage Moments*

Daily Main Stage sessions have moved to the morning to jumpstart your day.

Get motivated! Friday at 9am, veteran nightlife expert Jon Taffer shifts gears, trading bars for cars. Want a preview? Check out the video series where Taffer looks under the hood at Rob Sight Ford in Kansas City, Mo., home of NADA Show 2024 Chairman Bobby Sight.

Community Action! Saturday, racing legend Danica Patrick talks about breaking barriers, setting records and her notable charitable endeavors.

Inspire others! Sunday, Hall of Fame quarterback and philanthropist Kurt Warner shares how he reached the pinnacle of success on the field and his dedication to giving back. And there's lots more on Main Stage, including **2023 NADA Chairman Geoffrey Pohanka** and **2024 NADA Chairman Gary Gilchrist**, and the **TIME Dealer of the Year Award!**

7. *Sold-out Expo!*

Lucky #7: Experience the industry's premier marketplace of products, services and technology. Connect with current providers and shop for new suppliers among 500 exhibitors. Plus, back by popular demand, the EV Solutions Center and the Dealer Learning Lab.

8. *Extended Expo*

This year, we offer more exclusive Expo time each day for extended face-to-face business. Expo now opens at 10am Friday with a "Cocktails and Connections," happy hour that afternoon.

9. *Sphere: the hottest ticket in town ... and around the world!*

Be part of the ultimate NADA Show welcome reception at the mind-blowing Sphere, featuring Postcard from Earth! Experience a jaw-dropping journey through the realms of immersive live entertainment, where you'll feel like you're traveling the globe and venturing into the cosmos.

10. *Nonstop Networking*

NADA Show truly is the Auto Industry Event of the Year, full of nonstop networking with fellow dealers, managers, OEMs, exhibitors and industry affiliates.

Don't let this offer fly away — early bird discounts expire in just 4 days. Be sure to register today to join thousands of your fellow dealers in Las Vegas February 1-4, 2024!



Copyright © 2023 Nevada Franchised Auto Dealers Association, All rights reserved.

You are receiving this email because you are an NFADA member

Our mailing address is:

Nevada Franchised Auto Dealers Association

1 East Liberty Street, Suite #507

Reno, NV 89501

[Add us to your address book](#)

Want to change how you receive these emails?

You can [update your preferences](#) or [unsubscribe from this list](#).

