

ASSEMBLY BILL NO. 326—COMMITTEE ON COMMERCE AND LABOR

FEBRUARY 25, 1999

Referred to Committee on Commerce and Labor

SUMMARY—Makes various changes concerning industrial insurance. (BDR 53-105)

FISCAL NOTE: Effect on Local Government: Yes.
Effect on the State or on Industrial Insurance: Yes.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to industrial insurance; requiring an insurer to reimburse an injured employee for the expense of a second determination of disability under certain circumstances; revising the provisions governing the effect on the availability of compensation of a preexisting condition and of an aggravation of an industrial injury or disease that is not related to employment; revising the provisions governing the determination and provision of compensation for permanent total disability, temporary total disability and permanent partial disability; expanding the maximum length of certain programs of vocational rehabilitation; authorizing vocational rehabilitation services to be provided outside of this state under certain circumstances; authorizing a claimant to bring and maintain certain causes of action against an insurer or third-party administrator if the claimant does not accept a benefit penalty; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE
AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 **Section 1.** NRS 616A.070 is hereby amended to read as follows:
2 616A.070 “Benefit penalty” means an additional amount of money that
3 , ***except as otherwise provided in NRS 616D.120 and section 11 of this***
4 ***act***, is payable to a claimant if the administrator has determined that a
5 violation of any of the provisions of paragraphs (a) to (d), inclusive, of
6 subsection 1 of NRS 616D.120 has occurred.
7 **Sec. 2.** NRS 616A.465 is hereby amended to read as follows:
8 616A.465 1. Except as otherwise provided in this section, the
9 division shall:
10 (a) Regulate insurers pursuant to chapters 616A to 617, inclusive, of
11 NRS; and

(b) Investigate insurers regarding compliance with statutes and the division's regulations.

2. The commissioner is responsible for reviewing rates, investigating the solvency of insurers, authorizing private carriers pursuant to chapter 680A of NRS and certifying:

(a) Self-insured employers pursuant to NRS 616B.300 to 616B.330, inclusive, and 616B.336;

(b) Associations of self-insured public or private employers pursuant to NRS 616B.350 to 616B.446, inclusive; and

(c) Third-party administrators pursuant to chapter 683A of NRS.

3. The department of administration is responsible for contested claims relating to industrial insurance pursuant to NRS 616C.310 to 616C.385, inclusive. The administrator is responsible for administrative appeals pursuant to NRS 616B.215.

4. The Nevada attorney for injured workers is responsible for legal representation of claimants pursuant to NRS 616A.435 to 616A.460, inclusive, and 616D.120.

5. The division is responsible for the investigation of complaints. ~~If~~ *Except as otherwise provided in subsection 3 of section 11 of this act, if* a complaint is filed with the division, the administrator shall cause to be conducted an investigation which includes a review of relevant records and interviews of affected persons. If the administrator determines that a violation may have occurred, the administrator shall proceed in accordance with the provisions of NRS 616D.120 and 616D.130.

Sec. 3. NRS 616C.100 is hereby amended to read as follows:

616C.100 1. If an injured employee disagrees with the percentage of disability determined by a physician or chiropractor, the injured employee may obtain a second determination of the percentage of disability. If the employee wishes to obtain such a determination, he must select the next physician or chiropractor in rotation from the list of qualified physicians or chiropractors maintained by the administrator pursuant to subsection 2 of NRS 616C.490. If a second determination is obtained, the injured employee shall pay for the determination. *If the physician or chiropractor selected to make the second determination finds a higher percentage of disability than the first physician or chiropractor, the insurer shall pay to the employee an amount equal to the maximum allowable fee established by the administrator pursuant to NRS 616C.260 for the type of service performed, or the usual fee of that physician or chiropractor for such service, whichever is less.*

2. The results of a second determination made pursuant to subsection 1 may be offered at any hearing or settlement conference.

1 **Sec. 4.** NRS 616C.175 is hereby amended to read as follows:

2 616C.175 1. ~~{An employee is not entitled to compensation pursuant~~
3 ~~to the provisions of chapters 616A to 616D, inclusive, of NRS if:~~

4 ~~—(a) He has}~~ *The resulting condition of an employee who:*

5 (a) *Has* a preexisting condition from a cause or origin that did not arise
6 out of or in the course of his current or past employment; and

7 (b) ~~{He subsequently}~~ *Subsequently* sustains an injury by accident
8 arising out of and in the course of his employment which aggravates,
9 precipitates or accelerates his preexisting condition,

10 *shall be deemed to be an injury by accident that is compensable pursuant*
11 *to the provisions of chapters 616A to 616D, inclusive, of NRS,* unless
12 ~~{information from a physician or chiropractor establishes to the satisfaction~~
13 ~~of}~~ the insurer *can prove by clear and convincing evidence* that the
14 ~~{subsequent injury}~~ *preexisting condition* is the primary cause of the
15 resulting condition.

16 2. ~~{An employee is not entitled to compensation pursuant to the~~
17 ~~provisions of chapters 616A to 616D, inclusive, of NRS if:~~

18 ~~—(a) He sustains}~~ *The resulting condition of an employee who:*

19 (a) *Sustains* an injury by accident arising out of and in the course of his
20 employment; and

21 (b) ~~{He subsequently}~~ *Subsequently* aggravates, precipitates or
22 accelerates the injury in a manner that does not arise out of and in the
23 course of his employment,

24 *shall be deemed to be an injury by accident that is compensable pursuant*
25 *to the provisions of chapters 616A to 616D, inclusive, of NRS,* unless the
26 *insurer can prove by clear and convincing evidence that the* injury
27 described in paragraph ~~{(a)}~~ (b) is the primary cause of the resulting
28 condition.

29 **Sec. 5.** NRS 616C.440 is hereby amended to read as follows:

30 616C.440 1. Except as otherwise provided in this section and NRS
31 616C.175, every employee in the employ of an employer, within the
32 provisions of chapters 616A to 616D, inclusive, of NRS, who is injured by
33 accident arising out of and in the course of employment, or his dependents
34 as defined in chapters 616A to 616D, inclusive, of NRS, is entitled to
35 receive the following compensation for permanent total disability:

36 (a) In cases of total disability adjudged to be permanent, compensation
37 per month of 66 2/3 percent of the average monthly wage.

38 (b) If there is a previous disability, as the loss of one eye, one hand, one
39 foot or any other previous permanent disability, the percentage of disability
40 for a subsequent injury must be determined by computing the percentage of
41 the entire disability and deducting therefrom the percentage of the previous
42 disability as it existed at the time of the subsequent injury, but such a
43 deduction for a previous award for permanent partial disability must be

1 made in a reasonable manner and must not be more than the total amount
2 which was paid for the previous award for permanent partial disability.

3 (c) If the character of the injury is such as to render the employee so
4 physically helpless as to require the service of a constant attendant, an
5 additional allowance may be made so long as such requirements continue,
6 but the allowance may not be made while the employee is receiving
7 benefits for care in a hospital or facility for intermediate care pursuant to
8 the provisions of NRS ~~616C.255 and~~ 616C.265.

9 2. Except as otherwise provided in NRS 616B.185 and 616B.186, an
10 injured employee or his dependents are not entitled to accrue or be paid any
11 benefits for a permanent total disability during the time the injured
12 employee is incarcerated. The injured employee or his dependents are
13 entitled to receive such benefits when the injured employee is released from
14 incarceration if he is certified as permanently totally disabled by a
15 physician or chiropractor.

16 3. An employee is entitled to receive compensation for a permanent
17 total disability only so long as the permanent total disability continues to
18 exist. The insurer has the burden of proving that the permanent total
19 disability no longer exists.

20 4. If an employee who has received compensation in a lump sum for a
21 permanent partial disability pursuant to NRS 616C.495 is subsequently
22 determined to be permanently and totally disabled, the compensation for
23 the permanent total disability must be reduced as follows:

24 (a) If the employee has not received a minimum lump sum, the
25 ~~employee's~~ insurer *of the employee's employer* shall deduct from the
26 compensation for the permanent total disability an amount equal to the
27 monthly installment rate for awards for permanent partial disability until
28 the ~~employee reaches the age upon which his disability was calculated;~~
29 *insurer has deducted an amount that equals the amount it has already*
30 *paid out as a lump sum;* or

31 (b) If the employee received a minimum lump sum, the ~~employee's~~
32 insurer *of the employee's employer* shall deduct from the compensation for
33 the permanent total disability an amount of not more than 10 percent of the
34 rate of compensation for a permanent total disability until the lump sum is
35 recovered.

36 The provisions of this subsection are retroactive for all claims for
37 compensation for a permanent total disability remaining open on ~~July 1,~~
38 ~~1995.~~ *October 1, 1999.*

39 **Sec. 6.** NRS 616C.475 is hereby amended to read as follows:

40 616C.475 1. Except as otherwise provided in this section, NRS
41 616C.175 and 616C.390, every employee in the employ of an employer,
42 within the provisions of chapters 616A to 616D, inclusive, of NRS, who is
43 injured by accident arising out of and in the course of employment, or his

dependents, is entitled to receive for the period of temporary total disability, $66 \frac{2}{3}$ percent of the average monthly wage.

2. Except as otherwise provided in NRS 616B.185 and 616B.186, an injured employee or his dependents are not entitled to accrue or be paid any benefits for a temporary total disability during the time the injured employee is incarcerated. The injured employee or his dependents are entitled to receive such benefits when the injured employee is released from incarceration if he is certified as temporarily totally disabled by a physician or chiropractor.

3. If a claim for the period of temporary total disability is allowed, the first payment pursuant to this section must be issued by the insurer within 14 working days after receipt of the initial certification of disability and regularly thereafter.

4. Any increase in compensation and benefits effected by the amendment of subsection 1 is not retroactive.

5. Payments for a temporary total disability must cease when:

(a) A physician or chiropractor determines that the employee is physically capable of any gainful employment for which the employee is suited, after giving consideration to the employee's education, training and experience;

(b) The employer offers the employee light-duty employment or employment that is modified according to the limitations or restrictions imposed by a physician or chiropractor pursuant to subsection 7; or

(c) Except as otherwise provided in NRS 616B.185 and 616B.186, the employee is incarcerated.

6. Each insurer may, with each check that it issues to an injured employee for a temporary total disability, include a form approved by the division for the injured employee to request continued compensation for the temporary total disability.

7. A certification of disability issued by a physician or chiropractor must:

(a) Include the period of disability and a description of any physical limitations or restrictions imposed upon the work of the employee;

(b) Specify whether the limitations or restrictions are permanent or temporary; and

(c) Be signed by the treating physician or chiropractor authorized pursuant to NRS 616B.515 or 616B.527.

8. If certification of disability specifies that the physical limitations or restrictions are temporary, the employer of the employee at the time of his accident is not required to comply with NRS 616C.545 to 616C.575, inclusive, and 616C.590 or the regulations adopted by the division governing vocational rehabilitation services if the employer offers the employee a position that ~~is~~ :

1 (a) *Is* substantially similar to the employee's position at the time of his
2 injury in relation to the location of the employment ~~{ }~~ *and* the hours he is
3 required to work ; and ~~{the salary he will be paid.}~~

4 (b) *Provides a gross wage that is equal to or greater than the gross*
5 *wage the employee was earning at the time of his injury.*

6 **Sec. 7.** NRS 616C.490 is hereby amended to read as follows:

7 616C.490 1. Except as otherwise provided in NRS 616C.175, every
8 employee, in the employ of an employer within the provisions of chapters
9 616A to 616D, inclusive, of NRS, who is injured by an accident arising out
10 of and in the course of employment is entitled to receive the compensation
11 provided for permanent partial disability. As used in this section,
12 "disability" and "impairment of the whole man" are equivalent terms.

13 2. Within 30 days after receiving from a physician or chiropractor a
14 report indicating that the injured employee may have suffered a permanent
15 disability and is stable and ratable, the insurer shall schedule an
16 appointment with ~~{a}~~ *the* rating physician or chiropractor *selected pursuant*
17 *to this subsection* to determine the extent of the employee's disability.
18 *Unless the insurer and the injured employee otherwise agree to a rating*
19 *physician or chiropractor:*

20 (a) The insurer shall select ~~{a}~~ *the rating* physician or chiropractor from
21 ~~{a group}~~ *the list of qualified* rating physicians and chiropractors
22 designated by the administrator, to determine the percentage of disability in
23 accordance with the American Medical Association's Guides to the
24 Evaluation of Permanent Impairment as adopted and supplemented by the
25 division pursuant to NRS 616C.110.

26 (b) Rating physicians and chiropractors must be selected in rotation
27 from the list of qualified physicians and chiropractors designated by the
28 administrator, according to their area of specialization and the order in
29 which their names appear on the list.

30 3. At the request of the insurer, the injured employee shall, before an
31 evaluation by a rating physician or chiropractor is performed, notify the
32 insurer of:

33 (a) Any previous evaluations performed to determine the extent of any
34 of the employee's disabilities; and

35 (b) Any previous injury, disease or condition sustained by the employee
36 which is relevant to the evaluation performed pursuant to this section.

37 The notice must be on a form approved by the administrator and provided
38 to the injured employee by the insurer at the time of the insurer's request.

39 4. Unless the regulations adopted pursuant to NRS 616C.110 provide
40 otherwise, a rating evaluation must include an evaluation of the loss of
41 motion, sensation and strength of an injured employee if the injury is of a
42 type that might have caused such a loss. No factors other than the degree of
43 physical impairment of the whole man may be considered in calculating the

entitlement to compensation for a permanent partial disability. *A rating evaluation of the spinal region must determine the percentage of disability as it existed before any surgical procedures were performed on the spinal region, unless the physician or chiropractor determines that the injured employee experienced major complications from the surgical procedure. If the physician or chiropractor determines that an injured employee experienced major complications from a surgical procedure performed on the spinal region, he shall include the effect of the complications when determining the percentage of disability of that injured employee.*

5. The rating physician or chiropractor shall provide the insurer with his evaluation of the injured employee. After receiving the evaluation, the insurer shall, within 14 days, provide the employee with a copy of the evaluation and notify the employee:

(a) Of the compensation to which he is entitled pursuant to this section; or

(b) That he is not entitled to benefits for permanent partial disability.

6. Each 1 percent of impairment of the whole man must be compensated by a monthly payment:

(a) Of 0.5 percent of the claimant's average monthly wage for injuries sustained before July 1, 1981;

(b) Of 0.6 percent of the claimant's average monthly wage for injuries sustained on or after July 1, 1981, and before June 18, 1993; ~~and~~

(c) Of 0.54 percent of the claimant's average monthly wage for injuries sustained on or after June 18, 1993 ~~and~~, *and before October 1, 1999; and*

(d) Of 0.6 percent of the claimant's average monthly wage for injuries sustained on or after October 1, 1999.

Compensation must commence on the date of the injury or the day following the termination of temporary disability compensation, if any, whichever is later, and must continue on a monthly basis for 5 years or until the claimant is 70 years of age, whichever is later.

7. Compensation benefits may be paid annually to claimants who will be receiving less than \$100 a month.

8. Where there is a previous disability, as the loss of one eye, one hand, one foot, or any other previous permanent disability, the percentage of disability for a subsequent injury must be determined by computing the percentage of the entire disability and deducting therefrom the percentage of the previous disability as it existed at the time of the subsequent injury.

9. The division may adopt schedules for rating permanent disabilities resulting from injuries sustained before July 1, 1973, and reasonable regulations to carry out the provisions of this section.

10. The increase in compensation and benefits effected by the amendment of this section is not retroactive for accidents which occurred before July 1, 1973.

11. This section does not entitle any person to double payments for the death of an employee and a continuation of payments for a permanent partial disability, or to a greater sum in the aggregate than if the injury had been fatal.

Sec. 8. NRS 616C.555 is hereby amended to read as follows:

616C.555 1. A vocational rehabilitation counselor shall develop a plan for a program of vocational rehabilitation for each injured employee who is eligible for vocational rehabilitation services pursuant to NRS 616C.590. The counselor shall work with the insurer and the injured employee to develop a program that is compatible with the injured employee's age, sex and physical condition.

2. If the counselor determined in the written assessment developed pursuant to NRS 616C.550 that the injured employee has existing marketable skills, the plan must consist of job placement assistance only. When practicable, the goal of job placement assistance must be to aid the employee in finding a position which pays a gross wage that is equal to or greater than 80 percent of the gross wage that he was earning at the time of his injury. An injured employee must not receive job placement assistance for more than 90 days after the date on which he was notified that he is eligible only for job placement assistance because:

(a) He was physically capable of returning to work; or

(b) It was determined that he had existing marketable skills.

3. If the counselor determined in the written assessment developed pursuant to NRS 616C.550 that the injured employee does not have existing marketable skills, the plan must consist of a program which trains or educates the injured employee and provides job placement assistance. Except as otherwise provided in NRS 616C.560, such a program must not exceed ~~1~~:

~~—(a) If the injured employee has incurred a permanent physical impairment of less than 6 percent, 6 months.~~

~~—(b) If the injured employee has incurred a permanent physical impairment of 6 percent or more, but less than 11 percent, 9 months.~~

~~—(c) If the injured employee has incurred a permanent physical impairment of 11 percent or more, 1 year.~~

~~[The percentage of the injured employee's permanent physical impairment must be determined pursuant to NRS 616C.490.]~~

4. A plan for a program of vocational rehabilitation must comply with the requirements set forth in NRS 616C.585.

5. A program of vocational rehabilitation must not commence before the treating physician or chiropractor, or an examining physician or

1 chiropractor determines that the injured employee is capable of safely
2 participating in the program.

3 6. If, based upon the opinion of a treating or an examining physician or
4 chiropractor, the counselor determines that an injured employee is not
5 eligible for vocational rehabilitation services, the counselor shall provide a
6 copy of the opinion to the injured employee, the injured employee's
7 employer and the insurer.

8 7. A plan for a program of vocational rehabilitation must be signed by
9 a certified vocational rehabilitation counselor.

10 8. If an initial program of vocational rehabilitation pursuant to this
11 section is unsuccessful, an injured employee may submit a written request
12 for the development of a second program of vocational rehabilitation which
13 relates to the same injury. An insurer shall authorize a second program for
14 an injured employee upon good cause shown.

15 9. If a second program of vocational rehabilitation pursuant to
16 subsection 8 is unsuccessful, an injured employee may submit a written
17 request for the development of a third program of vocational rehabilitation
18 which relates to the same injury. The insurer, with the approval of the
19 employer who was the injured employee's employer at the time of his
20 injury, may authorize a third program for the injured employee. If such an
21 employer has terminated operations, his approval is not required for
22 authorization of a third program. An insurer's determination to authorize or
23 deny a third program of vocational rehabilitation may not be appealed.

24 10. The division shall adopt regulations to carry out the provisions of
25 this section. The regulations must specify the contents of a plan for a
26 program of vocational rehabilitation.

27 **Sec. 9.** NRS 616C.560 is hereby amended to read as follows:

28 616C.560 1. A program for vocational rehabilitation developed
29 pursuant to subsection 3 of NRS 616C.555 may be extended:

30 (a) Without condition or limitation, by the insurer at his sole discretion;
31 or

32 (b) In accordance with this section if:

33 (1) The injured employee makes a written request to extend the
34 program within 30 days after he receives written notification that he is
35 eligible for vocational rehabilitation services; and

36 (2) There are exceptional circumstances which make it unlikely that
37 the injured employee will obtain suitable gainful employment as a result of
38 vocational rehabilitation which is limited to the period for which he is
39 eligible.

40 An insurer's determination to grant or deny an extension pursuant to
41 paragraph (a) may not be appealed.

42 2. If an injured employee has incurred a permanent physical
43 impairment of less than 11 percent:

1 (a) The total length of the program, including any extension, must not
2 exceed ~~1 year~~ 2 years.

3 (b) "Exceptional circumstances" shall be deemed to exist for the
4 purposes of paragraph (b) of subsection 1, if:

5 (1) The injured employee lacks work experience, training, education
6 or other transferable skills for an occupation which he is physically capable
7 of performing; or

8 (2) Severe physical restrictions as a result of the industrial injury have
9 been imposed by a physician which significantly limit the employee's
10 occupational opportunities.

11 3. If an injured employee has incurred a permanent physical
12 impairment of 11 percent or more:

13 (a) The total length of the program, including any extension, must not
14 exceed ~~2~~ 3 years.

15 (b) "Exceptional circumstances" shall be deemed to exist for the
16 purposes of paragraph (b) of subsection 1, if the injured employee has
17 suffered:

18 (1) The total and permanent loss of sight of both eyes;

19 (2) The loss by separation of a leg at or above the knee;

20 (3) The loss by separation of a hand at or above the wrist;

21 (4) An injury to the head or spine which results in permanent and
22 complete paralysis of both legs, both arms or a leg and an arm;

23 (5) An injury to the head which results in a severe cognitive
24 functional impairment which may be established by a nationally recognized
25 form of objective psychological testing;

26 (6) The loss by separation of an arm at or above the elbow and the
27 loss by separation of a leg at or above the knee;

28 (7) An injury consisting of second or third degree burns on 50 percent
29 or more of the body, both hands or the face;

30 (8) A total bilateral loss of hearing;

31 (9) The total loss or significant and permanent impairment of speech;
32 or

33 (10) A permanent physical impairment of 50 percent or more
34 determined pursuant to NRS 616C.490, if the severity of the impairment
35 limits the injured employee's gainful employment to vocations that are
36 primarily intellectual and require a longer program of education.

37 4. The insurer shall deliver a copy of its decision granting or denying
38 an extension to the injured employee and the employer. Except as
39 otherwise provided in this section, the decision shall be deemed to be a
40 final determination of the insurer for the purposes of NRS 616C.315.

41 **Sec. 10.** NRS 616C.580 is hereby amended to read as follows:

42 616C.580 1. ~~Vocational~~ Except as otherwise provided in this
43 section, vocational rehabilitation services must not be provided outside of

1 this state. *If an injured employee lives within 50 miles from any border of*
2 *this state on the date of injury, he may receive vocational rehabilitation*
3 *services at a location within 50 miles from any border of this state and*
4 *within 50 miles from his residence if such services are available at such*
5 *location.*

6 2. An injured employee, who:

7 (a) Is eligible for vocational rehabilitation services pursuant to NRS
8 616C.590; and

9 (b) Resides outside of this state ~~H~~ *but does not qualify to receive*
10 *vocational rehabilitation services outside of this state pursuant to*
11 *subsection 1,*

12 may execute a written agreement with the insurer which provides for the
13 payment of compensation in a lump sum in lieu of the provision of
14 vocational rehabilitation services pursuant to NRS 616C.595. The amount
15 of the lump sum must not exceed \$15,000.

16 3. An injured employee who resides outside of this state *but does not*
17 *qualify to receive vocational rehabilitation services outside of this state*
18 *pursuant to subsection 1* may receive the vocational rehabilitation services
19 to which he is entitled pursuant to NRS 616C.545 to 616C.575, inclusive,
20 and 616C.590 if he relocates to ~~this~~ :

21 (a) *This state ; or*

22 (b) *A location within 50 miles from any border of this state,*
23 *at his own expense ~~H~~, if such services are available at such location.*

24 **Sec. 11.** Chapter 616D of NRS is hereby amended by adding thereto a
25 new section to read as follows:

26 1. *A cause of action may be brought and maintained against an*
27 *insurer or a third-party administrator, by a claimant who has not*
28 *accepted a benefit penalty pursuant to NRS 616D.120, which alleges that*
29 *the insurer or third-party administrator has, with knowledge of or*
30 *reckless disregard for his lack of a justification, denied or unreasonably*
31 *delayed payment of compensation to that claimant.*

32 2. *A claimant may pursue a cause of action against an insurer or*
33 *third-party administrator pursuant to subsection 1 and file a complaint*
34 *with the administrator alleging a violation of any of the provisions of*
35 *paragraphs (a) to (d), inclusive, of subsection 1 of NRS 616D.120 but*
36 *may not accept a benefit penalty from that insurer or third-party*
37 *administrator unless he first waives, in writing, all rights to:*

38 (a) *Proceed in the previously instituted action; and*

39 (b) *Bring any future action against the insurer or third-party*
40 *administrator pursuant to subsection 1.*

41 *Such a claimant must deliver to the insurer or third-party administrator*
42 *the written waiver within 5 days after the insurer or third-party*
43 *administrator attempts to deliver the benefit penalty to the claimant.*

1 **3. If a claimant who has brought a cause of action against an**
2 **insurer or third-party administrator pursuant to subsection 1 does not**
3 **wish to participate in an investigation conducted by the administrator**
4 **pursuant to NRS 616D.130 against that insurer or third-party**
5 **administrator, the claimant may notify the administrator that he is**
6 **pursuing a cause of action against that insurer or third-party**
7 **administrator pursuant to subsection 1 and is waiving his right to receive**
8 **a benefit penalty from that insurer or third-party administrator. If a**
9 **claimant notifies the administrator that he is pursuing a cause of action**
10 **against an insurer or third-party administrator pursuant to subsection 1,**
11 **the administrator shall not require the claimant to participate in the**
12 **investigation concerning that insurer or third-party administrator and**
13 **shall not impose a benefit penalty on that insurer or third-party**
14 **administrator.**

15 **4. A claimant who:**

16 **(a) Wishes to preserve his right to bring or maintain a cause of action**
17 **against an insurer or third-party administrator pursuant to subsection 1;**
18 **and**

19 **(b) Is offered a benefit penalty by that insurer or third-party**
20 **administrator pursuant to an order of the administrator issued pursuant**
21 **to subsection 3 of NRS 616D.120,**
22 **must refuse to accept the benefit penalty and must deliver to the insurer**
23 **or third-party administrator a written refusal to accept the benefit penalty**
24 **within 5 days after the insurer or third-party administrator attempts to**
25 **deliver the benefit penalty.**

26 **Sec. 12.** NRS 616D.010 is hereby amended to read as follows:

27 616D.010 Except as otherwise provided in NRS 616A.020, 616B.600
28 and 616C.190, **and section 11 of this act**, no penalty or remedy provided in
29 this chapter or chapter 616A, 616B or 616C of NRS is exclusive of any
30 other penalty or remedy, but is cumulative and in addition to every other
31 penalty or remedy and may be exercised without exhausting and without
32 regard to any other penalty or remedy provided by those chapters or any
33 other statute.

34 **Sec. 13.** NRS 616D.030 is hereby amended to read as follows:

35 616D.030 1. ~~1. No~~ **Except as otherwise provided in section 11 of this**
36 **act, no** cause of action may be brought or maintained against an insurer or
37 a third-party administrator who violates any provision of this chapter or
38 chapter 616A, 616B, 616C or 617 of NRS.

39 2. ~~The~~ **Except as otherwise provided in section 11 of this act, the**
40 administrative fines provided for in NRS 616B.318 and 616D.120 are the
41 exclusive remedies for any violation of this chapter or chapter 616A, 616B,
42 616C or 617 of NRS committed by an insurer or a third-party
43 administrator.

Sec. 14. NRS 616D.050 is hereby amended to read as follows:

616D.050 1. Appeals officers, the administrator, the manager and the manager's designee, in conducting hearings or other proceedings pursuant to the provisions of chapters 616A to 616D, inclusive, of NRS or regulations adopted pursuant to those chapters may:

(a) ~~Issue~~ *Except as otherwise provided in subsection 3 of section 11 of this act, issue* subpoenas requiring the attendance of any witness or the production of books, accounts, papers, records and documents.

(b) Administer oaths.

(c) Certify to official acts.

(d) ~~Call~~ *Except as otherwise provided in subsection 3 of section 11 of this act, call* and examine under oath any witness or party to a claim.

(e) Maintain order.

(f) Rule upon all questions arising during the course of a hearing or proceeding.

(g) Permit discovery by deposition or interrogatories.

(h) Initiate and hold conferences for the settlement or simplification of issues.

(i) Dispose of procedural requests or similar matters.

(j) Generally regulate and guide the course of a pending hearing or proceeding.

2. Hearing officers, in conducting hearings or other proceedings pursuant to the provisions of chapters 616A to 616D, inclusive, of NRS or regulations adopted pursuant to those chapters, may:

(a) Issue subpoenas requiring the attendance of any witness or the production of books, accounts, papers, records and documents that are relevant to the dispute for which the hearing or other proceeding is being held.

(b) Maintain order.

(c) Permit discovery by deposition or interrogatories.

(d) Initiate and hold conferences for the settlement or simplification of issues.

(e) Dispose of procedural requests or similar matters.

(f) Generally regulate and guide the course of a pending hearing or proceeding.

Sec. 15. NRS 616D.120 is hereby amended to read as follows:

616D.120 1. Except as otherwise provided in this section, if the administrator determines that an insurer, organization for managed care, health care provider, third-party administrator or employer has:

(a) Through fraud, coercion, duress or undue influence:

(1) Induced a claimant to fail to report an accidental injury or occupational

disease;

1 (2) Persuaded a claimant to settle for an amount which is less than
2 reasonable;

3 (3) Persuaded a claimant to settle for an amount which is less than
4 reasonable while a hearing or an appeal is pending; or

5 (4) Persuaded a claimant to accept less than the compensation found
6 to be due him by a hearing officer, appeals officer, court of competent
7 jurisdiction, written settlement agreement, written stipulation or the
8 division when carrying out its duties pursuant to chapters 616A to 617,
9 inclusive, of NRS;

10 (b) Refused to pay or unreasonably delayed payment to a claimant of
11 compensation found to be due him by a hearing officer, appeals officer,
12 court of competent jurisdiction, written settlement agreement, written
13 stipulation or the division when carrying out its duties pursuant to chapters
14 616A to 616D, inclusive, or chapter 617 of NRS, if the refusal or delay
15 occurs:

16 (1) Later than 10 days after the date of the settlement agreement or
17 stipulation;

18 (2) Later than 30 days after the date of the decision of a court, hearing
19 officer, appeals officer or division, unless a stay has been granted; or

20 (3) Later than 10 days after a stay of the decision of a court, hearing
21 officer, appeals officer or division has been lifted;

22 (c) Refused to process a claim for compensation pursuant to chapters
23 616A to 616D, inclusive, or chapter 617 of NRS;

24 (d) Made it necessary for a claimant to initiate proceedings pursuant to
25 chapters 616A to 616D, inclusive, or chapter 617 of NRS for compensation
26 found to be due him by a hearing officer, appeals officer, court of
27 competent jurisdiction, written settlement agreement, written stipulation or
28 the division when carrying out its duties pursuant to chapters 616A to
29 616D, inclusive, or chapter 617 of NRS;

30 (e) Failed to comply with the division's regulations covering the
31 payment of an assessment relating to the funding of costs of administration
32 of chapters 616A to 617, inclusive, of NRS;

33 (f) Failed to provide or unreasonably delayed payment to an injured
34 employee or reimbursement to an insurer pursuant to NRS 616C.165; or

35 (g) Intentionally failed to comply with any provision of, or regulation
36 adopted pursuant to, this chapter or chapter 616A, 616B, 616C or 617 of
37 NRS,

38 the administrator shall impose an administrative fine of \$1,000 for each
39 initial violation, or a fine of \$10,000 for a second or subsequent violation.

40 2. Except as otherwise provided in chapters 616A to 616D, inclusive,
41 or chapter 617 of NRS, if the administrator determines that an insurer,
42 organization for managed care, health care provider, third-party
43 administrator or employer has failed to comply with any provision of this

chapter or chapter 616A, 616B, 616C or 617 of NRS, or any regulation adopted pursuant thereto, the administrator may take any of the following actions:

(a) Issue a notice of correction for:

(1) A minor violation, as defined by regulations adopted by the division; or

(2) A violation involving the payment of compensation in an amount which is greater than that required by any provision of this chapter or chapter 616A, 616B, 616C or 617 of NRS, or any regulation adopted pursuant thereto.

The notice of correction must set forth with particularity the violation committed and the manner in which the violation may be corrected.

~~{Nothing in}~~ *The provisions of* this section ~~{authorizes}~~ *do not authorize* the administrator to modify or negate in any manner a determination or any portion of a determination made by a hearing officer, appeals officer or court of competent jurisdiction or a provision contained in a written settlement agreement or written stipulation.

(b) Impose an administrative fine for:

(1) A second or subsequent violation for which a notice of correction has been issued pursuant to paragraph (a); or

(2) Any other violation of this chapter or chapter 616A, 616B, 616C or 617 of NRS, or any regulation adopted pursuant thereto, for which a notice of correction may not be issued pursuant to paragraph (a).

The fine imposed may not be greater than \$250 for an initial violation, or more than \$1,000 for any second or subsequent violation.

(c) Order a plan of corrective action to be submitted to the administrator within 30 days after the date of the order.

3. ~~{If}~~ *Unless a claimant has notified the administrator that, pursuant to subsection 3 of section 11 of this act, he is pursuing a cause of action against an insurer or third-party administrator and waiving his right to receive a benefit penalty, if* the administrator determines that a violation of any of the provisions of paragraphs (a) to (d), inclusive, of subsection 1 has occurred, the administrator shall order the insurer, organization for managed care, health care provider, third-party administrator or employer to pay to the claimant a benefit penalty in an amount equal to 50 percent of the compensation due or \$10,000, whichever is less. In no event may a benefit penalty be less than \$500. The benefit penalty is for the benefit of the claimant and *, except as otherwise provided in this subsection,* must be paid directly to him within 10 days after the date of the administrator's determination. *If the claimant has, pursuant to section 11 of this act, brought an action against an insurer or third-party administrator who is subject to an order of the administrator pursuant to*

1 *this section, the insurer or third-party administrator is not required to*
2 *pay the penalty to the claimant if the claimant:*

3 *(a) Refuses to deliver a written waiver pursuant to subsection 2 of*
4 *section 11 of this act; or*

5 *(b) Delivers to the insurer or third-party administrator a written*
6 *refusal to accept the benefit penalty pursuant to subsection 4 of section*
7 *11 of this act.*

8 Proof of the payment of the benefit penalty, *the claimant's refusal to*
9 *deliver a written waiver or the claimant's refusal to accept the benefit*
10 *penalty* must be submitted to the administrator within 10 days after the date
11 of his determination unless an appeal is filed pursuant to NRS 616D.140.

12 Any compensation to which the claimant may otherwise be entitled
13 pursuant to chapters 616A to 616D, inclusive, or chapter 617 of NRS must
14 not be reduced by the amount of any benefit penalty received pursuant to
15 this subsection.

16 4. In addition to any fine or benefit penalty imposed pursuant to this
17 section, the administrator may assess against an insurer who violates any
18 regulation concerning the reporting of claims expenditures used to calculate
19 an assessment an administrative penalty of up to twice the amount of any
20 underpaid assessment.

21 5. If:

22 (a) The administrator determines that a person has violated any of the
23 provisions of NRS 616D.200, 616D.220, 616D.240, 616D.300, 616D.310
24 or 616D.350 to 616D.440, inclusive; and

25 (b) The fraud control unit for industrial insurance established pursuant
26 to NRS 228.420 notifies the administrator that the unit will not prosecute
27 the person for that violation,
28 the administrator shall impose an administrative fine of not more than
29 \$10,000.

30 6. Two or more fines of \$1,000 or more imposed in 1 year for acts
31 enumerated in subsection 1 must be considered by the commissioner as
32 evidence for the withdrawal of:

33 (a) A certificate to act as a self-insured employer.

34 (b) A certificate to act as an association of self-insured public or private
35 employers.

36 (c) A certificate of registration as a third-party administrator.

37 7. The commissioner may, without complying with the provisions of
38 NRS 616B.327 or 616B.431, withdraw the certification of a self-insured
39 employer, association of self-insured public or private employers or third-
40 party administrator if, after a hearing, it is shown that the self-insured
41 employer, association of self-insured public or private employers or third-
42 party administrator violated any provision of subsection 1.

1 **Sec. 16.** NRS 616D.140 is hereby amended to read as follows:

2 616D.140 1. If a person wishes to contest a decision of the
3 administrator to impose an administrative fine or benefit penalty pursuant
4 to this chapter or chapter 616A, 616B, 616C or 617 of NRS, he must file a
5 notice of appeal with the division within 10 days after receipt of the
6 administrator's decision, showing why the proposed fine or benefit penalty
7 should not be imposed.

8 2. If a notice of appeal is filed as required by subsection 1, the
9 administrator shall, in accordance with the provisions of NRS 233B.121,
10 issue a notice of hearing that must include a date for a hearing on the
11 matter, which must be no sooner than 30 days after the notice of appeal is
12 filed. The administrator may grant a continuance of the hearing upon a
13 showing of good cause.

14 3. ~~HH~~ *Except as otherwise provided in this subsection, if* a notice of
15 appeal is not filed as required by this section, the imposition of the fine or
16 benefit penalty shall be deemed a final order and is not subject to review by
17 any court or agency. *If the claimant on whose behalf a benefit penalty is*
18 *imposed:*

19 (a) *Refused to deliver to an insurer or third-party administrator a*
20 *written waiver pursuant to subsection 2 of section 11 of this act; or*

21 (b) *Delivered a written refusal to accept the benefit penalty pursuant*
22 *to subsection 4 of section 11 of this act,*
23 *the imposition of a benefit penalty against the insurer or third-party*
24 *administrator shall not be deemed a final order pursuant to this*
25 *subsection.*

26 4. Except as otherwise provided in NRS 616B.086, a hearing held
27 pursuant to this section must be conducted by the administrator or a person
28 designated by him. A record of the hearing must be kept but it need not be
29 transcribed unless it is requested by the person against whom the order or
30 notice of violation has been issued and that person pays the cost of
31 transcription. The administrator shall render a written decision on the
32 appeal.

33 5. An administrative fine imposed pursuant to this chapter or chapter
34 616A, 616B, 616C or 617 of NRS must be paid to the division. If the
35 violation for which the fine is levied was committed by a person while
36 acting within the course and scope of his agency or employment, the fine
37 must be paid by his principal or employer. The fine may be recovered in a
38 civil action brought in the name of the division in a court of competent
39 jurisdiction in the county in which the violation occurred or in which the
40 person against whom the fine is levied has his principal place of business.

1 6. ~~[A]~~ *Except as otherwise provided in subsection 3 of NRS*
2 *616D.120, a* benefit penalty imposed pursuant to NRS 616D.120 must be
3 paid to the claimant on whose behalf it is imposed. If such payment is not
4 made within the period required by NRS 616D.120 ~~[H]~~ *and the insurer or*
5 *third-party administrator cannot demonstrate that the claimant refused*
6 *to deliver a written waiver or delivered a written refusal to accept the*
7 *benefit penalty pursuant to subsection 2 or 4 of section 11 of this act,* the
8 benefit penalty may be recovered in a civil action brought by the
9 administrator on behalf of the claimant in a court of competent jurisdiction
10 in the county in which the claimant resides, in which the violation occurred
11 or in which the person who is required to pay the benefit penalty has his
12 principal place of business.

13 7. Any party aggrieved by a decision of the administrator rendered
14 pursuant to this section may appeal the decision directly to the district
15 court.

16 **Sec. 17.** NRS 617.366 is hereby amended to read as follows:

17 617.366 1. ~~[An employee is not entitled to compensation pursuant to~~
18 ~~the provisions of this chapter if:~~

19 ~~—(a) He has]~~ *The resulting condition of an employee who:*

20 (a) *Has* a preexisting condition from a cause or origin that did not arise
21 out of and in the course of his current or past employment; and

22 (b) ~~[He subsequently]~~ *Subsequently* contracts an occupational disease
23 which aggravates, precipitates or accelerates his preexisting condition,
24 *shall be deemed to be an injury by accident that is compensable pursuant*
25 *to the provisions of chapters 616A to 616D, inclusive, of NRS,* unless
26 ~~[information from a physician or chiropractor establishes to the satisfaction~~
27 ~~of]~~ the insurer *can prove by clear and convincing evidence* that the
28 ~~[occupational disease]~~ *preexisting condition* is the primary cause of the
29 resulting condition.

30 2. ~~[An employee is not entitled to compensation pursuant to the~~
31 ~~provisions of this chapter if:~~

32 ~~—(a) He contracts]~~ *The resulting condition of an employee who:*

33 (a) *Contracts* an occupational disease; and

34 (b) ~~[He subsequently]~~ *Subsequently* aggravates, precipitates or
35 accelerates the occupational disease in a manner that does not arise out of
36 and in the course of his employment,
37 *shall be deemed to be an injury by accident that is compensable pursuant*
38 *to the provisions of chapters 616A to 616D, inclusive, of NRS,* unless the
39 ~~[occupational disease]~~ *insurer can prove by clear and convincing*
40 *evidence that the effect described in paragraph (b)* is the primary cause of
41 the resulting condition.

1 **Sec. 18.** NRS 617.510 is hereby amended to read as follows:
2 617.510 Except as otherwise provided in NRS 617.017, *and section 11*
3 *of this act*, no penalty or remedy provided in this chapter is exclusive of
4 any other penalty or remedy, but is cumulative and in addition to every
5 other penalty or remedy and may be exercised without exhausting and
6 without regard to any other penalty or remedy provided by this chapter or
7 any other statute.

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