
SENATE BILL NO. 132—COMMITTEE ON COMMERCE AND LABOR

(ON BEHALF OF LEGISLATIVE COMMITTEE ON WORKERS' COMPENSATION)

FEBRUARY 5, 1999

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions governing benefits for industrial insurance for certain police officers and firemen. (BDR 53-925)

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 ~~for omitted material~~ is material to be omitted.

AN ACT relating to industrial insurance; providing in skeleton form for the availability of benefits for industrial insurance to certain police officers for exposure to a contagious disease; limiting the availability of benefits for industrial insurance for certain retired police officers and firemen; 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.035 is hereby amended to read as follows:
2 616A.035 1. “Accident benefits” means medical, surgical, hospital or
3 other treatments, nursing, medicine, medical and surgical supplies, crutches
4 and apparatuses, including prosthetic devices.
5 2. The term includes ~~medical~~ :
6 **(a) Medical** benefits as defined by NRS 617.130 ~~[and any preventive]~~ ;
7 **(b) Preventive** treatment administered as a precaution to an employee
8 who is exposed to a contagious disease while providing medical services,
9 including emergency medical care, in the course and scope of his
10 employment ~~[;]~~ ; **and**
11 **(c) Preventive treatment administered as a precaution to an employee**
12 **of the department of prisons or an employee of the mental hygiene and**
13 **mental retardation division of the department of human resources who:**

1 ***(1) Qualifies as a police officer pursuant to subsection 7 or 9 of***
2 ***NRS 617.135, as appropriate; and***

3 ***(2) Was exposed to a contagious disease when battered by an***
4 ***offender or when responding to a physical altercation between offenders***
5 ***at an institution or facility of the department of prisons or at a facility for***
6 ***mentally disordered offenders, as appropriate, in the course and scope of***
7 ***his employment,***

8 ***if the battery or employee's response to the altercation is documented by***
9 ***the creation and maintenance of a report concerning the battery or***
10 ***altercation by the department of prisons or the mental hygiene and***
11 ***mental retardation division of the department of human resources, as***
12 ***appropriate.***

13 3. The term does not include:

14 (a) Exercise equipment, a hot tub or a spa for an employee's home;

15 (b) Membership in an athletic or health club;

16 (c) Except as otherwise provided in NRS 616C.245, a motor vehicle; or

17 (d) The costs of operating a motor vehicle provided pursuant to NRS
18 616C.245, fees related to the operation or licensing of the motor vehicle or
19 insurance for the motor vehicle.

20 4. As used in this section, the term:

21 (a) ***"Battery" includes, without limitation, the intentional propelling***
22 ***or placing, or the causing to be propelled or placed, of any human***
23 ***excrement or bodily fluid upon the person of an employee.***

24 (b) ***"Preventive treatment" includes, without limitation, tests to***
25 ***determine if an employee has contracted the contagious disease to which***
26 ***he was exposed.***

27 **Sec. 2.** NRS 616A.065 is hereby amended to read as follows:

28 616A.065 1. Except as otherwise provided in subsection 3, "average
29 monthly wage" means the lesser of:

30 (a) The monthly wage actually received or deemed to have been
31 received by the employee on the date of the accident or injury to the
32 employee, ***or, in the case of a fireman or police officer who is entitled to***
33 ***compensation pursuant to NRS 617.455 or 617.457 and who is no longer***
34 ***employed as such a fireman or police officer, the date of the termination***
35 ***of his employment,*** excluding remuneration from employment:

36 (1) Not subject to the Nevada Industrial Insurance Act or the Nevada
37 Occupational Diseases Act; and

38 (2) For which coverage is elective, but has not been elected; or

39 (b) One hundred fifty percent of the state average weekly wage as most
40 recently computed by the employment security division of the department
41 of employment, training and rehabilitation during the fiscal year preceding
42 the date of the injury or accident, multiplied by 4.33.

1 2. For the purposes of subsection 1:

2 (a) The date of the accident or injury to the employee must be
3 determined pursuant to NRS 616C.425.

4 (b) *The wage received by a fireman or police officer who is entitled to*
5 *compensation pursuant to NRS 617.455 or 617.457 and who is no longer*
6 *employed as such a fireman or police officer is the average wage received*
7 *by the fireman or police officer over the last 12 weeks of his employment.*

8 (c) "Wage":

9 (1) Does not include any amount paid by an employer for health
10 insurance that covers an employee or his dependents, or both.

11 (2) Is increased by the amount of tips reported by an employee to his
12 employer pursuant to 26 U.S.C. § 6053(a), except:

13 (I) Tips in a form other than cash; and

14 (II) Tips in cash which total less than \$20 per month.

15 3. For the purpose of increasing compensation for permanent total
16 disability pursuant to NRS 616C.465 or increasing death benefits pursuant
17 to NRS 616C.520, "average monthly wage" has the meaning shown in the
18 following schedule:

19

20 Average Monthly Wage

21 Effective Date

for Prior Fiscal Year

22

23 July 1, 1973..... \$688.60

24 July 1, 1974..... 727.48

25 July 1, 1975..... 1,142.21

26 July 1, 1976..... 1,211.00

27 July 1, 1977..... 1,287.44

28 July 1, 1978..... 1,377.08

29 July 1, 1979..... 1,488.46

30 July 1, 1980..... 1,591.86

31

32 **Sec. 3.** NRS 616A.265 is hereby amended to read as follows:

33 616A.265 1. "Injury" or "personal injury" means a sudden and
34 tangible happening of a traumatic nature, producing an immediate or
35 prompt result which is established by medical evidence, including injuries
36 to prosthetic devices. Any injury sustained by an employee while engaging
37 in an athletic or social event sponsored by his employer shall be deemed
38 not to have arisen out of or in the course of employment unless the
39 employee received remuneration for participation in the event.

40 2. For the purposes of chapters 616A to 616D, inclusive, of NRS:

1 (a) Coronary thrombosis, coronary occlusion, or any other ailment or
2 disorder of the heart, and any death or disability ensuing therefrom, shall be
3 deemed not to be an injury by accident sustained by an employee arising
4 out of and in the course of his employment.

5 (b) The exposure of an employee to a contagious disease while
6 providing medical services, including emergency medical care, in the
7 course and scope of his employment shall be deemed to be an injury by
8 accident sustained by the employee arising out of and in the course of his
9 employment.

10 (c) *The exposure to a contagious disease of an employee of the*
11 *department of prisons or an employee of the mental hygiene and mental*
12 *retardation division of the department of human resources who:*

13 (1) *Qualifies as a police officer pursuant to subsection 7 or 9 of*
14 *NRS 617.135, as appropriate; and*

15 (2) *Was exposed to the contagious disease when battered by an*
16 *offender or when responding to a physical altercation between offenders*
17 *at an institution or facility of the department of prisons or at a facility for*
18 *mentally disordered offenders, as appropriate, in the course and scope of*
19 *his employment,*

20 *shall be deemed to be an injury by accident sustained by the employee*
21 *arising out of and in the course of his employment if the battery or*
22 *employee's response to the altercation is documented by the creation and*
23 *maintenance of a report concerning the battery or altercation by the*
24 *department of prisons or the mental hygiene and mental retardation*
25 *division of the department of human resources, as appropriate. As used*
26 *in this paragraph, the term "battery" includes, without limitation, the*
27 *intentional propelling or placing, or the causing to be propelled or*
28 *placed, of any human excrement or bodily fluid upon the person of an*
29 *employee.*

30 **Sec. 4.** Chapter 616C of NRS is hereby amended by adding thereto a
31 new section to read as follows:

32 **1.** *If an employee of the department of prisons or an employee of the*
33 *mental hygiene and mental retardation division of the department of*
34 *human resources, who qualifies as a police officer pursuant to*
35 *subsection 7 or 9 of NRS 617.135, as appropriate, is battered by an*
36 *offender or responds to a physical altercation between offenders at an*
37 *institution or facility of the department of prisons or at a facility for*
38 *mentally disordered offenders, in the course and scope of his*
39 *employment, the department of prisons or the mental hygiene and mental*
40 *retardation division of the department of human resources, as*

1 *appropriate, shall create and maintain a report concerning the battery or*
2 *altercation that includes, without limitation, the name of each employee*
3 *who was a victim of the battery or responded to the altercation and the*
4 *name of each offender involved in the battery or altercation.*

5 **2. A person who:**

6 *(a) Was employed as a police officer, as that term is defined in*
7 *subsection 7 or 9 of NRS 617.135; and*

8 *(b) After his employment is terminated, voluntarily or involuntarily, is*
9 *diagnosed with a contagious disease to which he was exposed in the*
10 *course and scope of his employment with the department of prisons or*
11 *the mental hygiene and mental retardation division of the department of*
12 *human resources,*

13 *may not receive compensation for that contagious disease pursuant to*
14 *chapters 616A to 616D, inclusive, or chapter 617 of NRS, unless the*
15 *diagnosis occurs within a period that begins with the last date the person*
16 *actually worked as such a police officer and extends for a period*
17 *calculated by multiplying 4 months by the number of full years of his*
18 *employment.*

19 **3. As used in this section, the term “battery” includes, without**
20 *limitation, the intentional propelling or placing, or the causing to be*
21 *propelled or placed, of any human excrement or bodily fluid upon the*
22 *person of an employee.*

23 **Sec. 5.** NRS 616C.160 is hereby amended to read as follows:

24 616C.160 If, after a claim for compensation is filed pursuant to NRS
25 616C.020:

26 1. The injured employee seeks treatment from a physician or
27 chiropractor for a newly developed injury or disease; and

28 2. The employee’s medical records for the injury reported do not
29 include a reference to the injury or disease for which treatment is being
30 sought, or there is no documentation indicating that there was possible
31 exposure to an injury described in paragraph (b) **or (c)** of subsection 2 of
32 NRS 616A.265,

33 the injury or disease for which treatment is being sought must not be
34 considered part of the employee’s original claim for compensation unless
35 the physician or chiropractor establishes by medical evidence a causal
36 relationship between the injury or disease for which treatment is being
37 sought and the original accident.

38 **Sec. 6.** Chapter 617 of NRS is hereby amended by adding thereto a
39 new section to read as follows:

40 **1. To determine the insurer who is responsible for the compensation**
41 **that is payable to a person who:**

42 *(a) Is eligible for compensation for a disease of the lungs or the heart*
43 *pursuant to the provisions of NRS 617.455 or 617.457; and*

1 ***(b) At the time of diagnosis of the disease of the lungs or the heart, is***
2 ***no longer working as such a fireman or police officer,***
3 ***the rule stated in subsection 2 must be applied.***

4 ***2. The required compensation must be provided by:***

5 ***(a) If the disease is a new disease of the lungs or the heart or an***
6 ***aggravation of a previously diagnosed disease of the lungs or heart, the***
7 ***insurer of the employer of the fireman or police officer at the most recent***
8 ***time of exposure to conditions that bear a causal relation to the:***

9 ***(1) New disease; or***

10 ***(2) Aggravation of the previously diagnosed disease; or***

11 ***(b) If the disease of the lungs or the heart is a recurrence of a***
12 ***previously diagnosed disease of the lungs or the heart, the insurer of the***
13 ***employer of the fireman or police officer at the most recent time of***
14 ***exposure to conditions that bear a causal relation to the previously***
15 ***diagnosed disease of the lungs or heart.***

16 ***Sec. 7. NRS 617.455 is hereby amended to read as follows:***

17 617.455 1. Notwithstanding any other provision of this chapter ~~§~~
18 ***and except as otherwise provided in subsections 8 and 9,*** diseases of the
19 lungs, resulting in either temporary or permanent disability or death, are
20 occupational diseases and compensable as such under the provisions of this
21 chapter if caused by exposure to heat, smoke, fumes, tear gas or any other
22 noxious gases, arising out of and in the course of the employment of a
23 person who, for 2 years or more, has been:

24 ***(a) Employed in this state in a full-time salaried occupation of fire***
25 ***fighting for the benefit or safety of the public;***

26 ***(b) Acting as a volunteer fireman in this state and is entitled to the***
27 ***benefits of chapters 616A to 616D, inclusive, of NRS pursuant to the***
28 ***provisions of NRS 616A.145; or***

29 ***(c) Employed in a full-time salaried occupation as a police officer in this***
30 ***state.***

31 ***2. Except as provided in subsection 3, each employee who is to be***
32 ***covered for diseases of the lungs pursuant to the provisions of this section***
33 ***shall submit to a physical examination, including a thorough test of the***
34 ***functioning of his lungs and the making of an X-ray film of his lungs, upon***
35 ***employment, upon commencement of the coverage, once every even-***
36 ***numbered year until he is 40 years of age or older and thereafter on an***
37 ***annual basis . ~~during his employment.~~ Failure to submit to the physical***
38 ***examinations required by this subsection excludes the employee from the***
39 ***benefits of this section if submitting to the examinations is within the***
40 ***ability of the employee.***

41 ***3. A thorough test of the functioning of the lungs is not required for a***
42 ***volunteer fireman.***

1 4. All physical examinations required pursuant to subsection 2 must be
2 paid for by the employer.

3 5. ~~5. A disease of the lungs is conclusively presumed to have arisen out~~
4 ~~of and in the course of the employment of a person who has been employed~~
5 ~~in a full-time continuous, uninterrupted and salaried occupation as a police~~
6 ~~officer or fireman for 5 years or more before the date of disablement.~~

7 ~~6.]~~ Failure to correct predisposing conditions which lead to lung
8 disease when so ordered in writing by the examining physician after the
9 annual examination excludes the employee from the benefits of this section
10 if the correction is within the ability of the employee.

11 ~~[7.—A]~~

12 6. *Except as otherwise provided in subsections 8 and 9, a person who*
13 *is determined to be:*

14 (a) Partially disabled from an occupational disease pursuant to the
15 provisions of this section; and

16 (b) Incapable of performing, with or without remuneration, work as a
17 fireman or police officer,
18 may elect to receive the benefits provided under NRS 616C.440 for a
19 permanent total disability.

20 7. *A disease of the lungs is conclusively presumed to have arisen out*
21 *of and in the course of the employment of a person who has been*
22 *employed in a full-time continuous, uninterrupted and salaried*
23 *occupation as a police officer or fireman for 5 years or more before the*
24 *date of disablement. This presumption applies to a disease of the lungs*
25 *diagnosed when the person is no longer employed in the qualifying*
26 *capacity if the diagnosis occurs within a period which begins with the last*
27 *date the employee actually worked in the qualifying capacity and extends*
28 *for a period calculated by multiplying 4 months by the number of full*
29 *years of his employment.*

30 8. *A person who, when diagnosed with a disease of the lungs:*

31 (a) *Has satisfied the criteria for eligibility for compensation set forth*
32 *in this section;*

33 (b) *Is not employed in the qualifying capacity; and*

34 (c) *Is receiving retirement benefits,*
35 *is entitled to receive medical benefits for the disease of the lungs but is*
36 *not entitled to receive compensation for temporary or permanent*
37 *disability.*

38 9. *A person who begins receiving retirement benefits while receiving*
39 *compensation for temporary or permanent disability pursuant to this*
40 *section:*

41 (a) *Is not entitled to continue receiving compensation for the*
42 *disability; and*

1 **(b) Shall immediately notify the insurer who is providing the**
2 **compensation that he has elected to receive retirement benefits.**

3 **Sec. 8.** NRS 617.457 is hereby amended to read as follows:

4 617.457 1. Notwithstanding any other provision of this chapter ~~{}~~
5 **and except as otherwise provided in subsections 8 and 9,** diseases of the
6 heart of a person who, for 5 years or more, has been employed in a full-
7 time continuous, uninterrupted and salaried occupation as a fireman or
8 police officer in this state before the date of disablement are conclusively
9 presumed to have arisen out of and in the course of the employment. **This**
10 **presumption applies to a disease of the heart diagnosed after the**
11 **termination of the person's employment if the diagnosis occurs within a**
12 **period which begins with the last date the employee actually worked in**
13 **the qualifying capacity and extends for a period calculated by**
14 **multiplying 4 months by the number of full years of his employment.**

15 2. Notwithstanding any other provision of this chapter, diseases of the
16 heart, resulting in either temporary or permanent disability or death, are
17 occupational diseases and compensable as such under the provisions of this
18 chapter if caused by extreme overexertion in times of stress or danger and a
19 causal relationship can be shown by competent evidence that the disability
20 or death arose out of and was caused by the performance of duties as a
21 volunteer fireman by a person entitled to the benefits of chapters 616A to
22 616D, inclusive, of NRS pursuant to the provisions of NRS 616A.145 and
23 who, for 5 years or more, has served continuously as a volunteer fireman in
24 this state and who has not reached the age of 55 years before the onset of
25 the disease.

26 3. Except as otherwise provided in subsection 4, each employee who is
27 to be covered for diseases of the heart pursuant to the provisions of this
28 section shall submit to a physical examination, including an examination of
29 the heart, upon employment, upon commencement of coverage and
30 thereafter on an annual basis . ~~{during his employment.}~~ **Failure to submit**
31 **to the physical examinations required by this subsection excludes the**
32 **employee from the benefits of this section if submitting to the**
33 **examinations is within the ability of the employee.**

34 4. A physical examination is not required for a volunteer fireman more
35 than once every 3 years after an initial examination.

36 5. All physical examinations required pursuant to subsection 3 must be
37 paid for by the employer.

38 6. Failure to correct predisposing conditions which lead to heart
39 disease when so ordered in writing by the examining physician subsequent
40 to the annual examination excludes the employee from the benefits of this
41 section if the correction is within the ability of the employee.

1 7. ~~[A]~~ ***Except as otherwise provided in subsections 8 and 9, a person***
2 ***who is determined to be:***

3 (a) Partially disabled from an occupational disease pursuant to the
4 provisions of this section; and

5 (b) Incapable of performing, with or without remuneration, work as a
6 fireman or police officer,
7 may elect to receive the benefits provided under NRS 616C.440 for a
8 permanent total disability.

9 8. ***A person who, when diagnosed with a disease of the heart:***

10 (a) ***Has satisfied the criteria for eligibility for compensation set forth***
11 ***in this section;***

12 (b) ***Is not employed in the qualifying capacity; and***

13 (c) ***Is receiving retirement benefits,***
14 ***is entitled to receive medical benefits for the disease of the heart but is***
15 ***not entitled to receive compensation for temporary or permanent***
16 ***disability.***

17 9. ***A person who begins receiving retirement benefits while receiving***
18 ***compensation for temporary or permanent disability pursuant to this***
19 ***section:***

20 (a) ***Is not entitled to continue receiving compensation for the***
21 ***disability; and***

22 (b) ***Shall immediately notify the insurer who is providing the***
23 ***compensation that he has elected to receive retirement benefits.***

24 10. Claims filed under this section may be reopened at any time during
25 the life of the claimant for further examination and treatment of the
26 claimant upon certification by a physician of a change of circumstances
27 related to the occupational disease which would warrant an increase or
28 rearrangement of compensation.

29 **Sec. 9.** The provisions of this act do not apply to an employee who,
30 before July 1, 1999, is receiving compensation pursuant to the provisions of
31 chapters 616A to 616D, inclusive, or chapter 617 of NRS.

32 **Sec. 10.** This act becomes effective on July 1, 1999.