

SENATE BILL NO. 133—COMMITTEE ON COMMERCE AND LABOR

(ON BEHALF OF LEGISLATIVE COMMITTEE ON
WORKERS' COMPENSATION)

FEBRUARY 5, 1999

Referred to Committee on Commerce and Labor

SUMMARY—Establishes provisions governing consolidated insurance programs. (BDR 53-384)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

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

AN ACT relating to industrial insurance; authorizing certain private companies, public entities and utilities to establish and administer a consolidated insurance program to obtain industrial insurance coverage for a construction project; providing certain limitations regarding the scope of a consolidated insurance program; authorizing the state industrial insurance system or certain private carriers to provide industrial insurance coverage for a consolidated insurance program; requiring that a consolidated insurance program must provide for the safety and administration of claims of employees of contractors and subcontractors who are engaged in a construction project; setting forth the provisions that must be included within a contract to provide industrial insurance coverage for a consolidated insurance program; allocating responsibility for the payment of claims for industrial insurance that are covered by a consolidated insurance program; 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.** Chapter 616A of NRS is hereby amended by adding thereto
- 2 the provisions set forth as sections 2, 3 and 4 of this act.
- 3 **Sec. 2. “Consolidated insurance program” means a program of**
- 4 **insurance that provides:**
- 5 1. ***Industrial insurance coverage;***
- 6 2. ***A comprehensive program of safety; and***

1 **3. For the administration of claims for industrial insurance,**
2 **for each employee of a contractor or subcontractor who is engaged in a**
3 **construction project when such an employee works at the site of the**
4 **construction project.**

5 **Sec. 3. "Contractor-controlled insurance program" means a**
6 **consolidated insurance program that is established and administered by**
7 **the principal contractor of the construction project.**

8 **Sec. 4. "Owner-controlled insurance program" means a**
9 **consolidated insurance program that is established and administered by**
10 **the owner of the construction project.**

11 **Sec. 5.** NRS 616A.020 is hereby amended to read as follows:

12 616A.020 1. The rights and remedies provided in chapters 616A to
13 616D, inclusive, of NRS for an employee on account of an injury by
14 accident sustained arising out of and in the course of the employment shall
15 be exclusive, except as otherwise provided in those chapters, of all other
16 rights and remedies of the employee, his personal or legal representatives,
17 dependents or next of kin, at common law or otherwise, on account of such
18 injury.

19 2. The terms, conditions and provisions of chapters 616A to 616D,
20 inclusive, of NRS for the payment of compensation and the amount thereof
21 for injuries sustained or death resulting from such injuries shall be
22 conclusive, compulsory and obligatory upon both employers and
23 employees coming within the provisions of those chapters.

24 3. The exclusive remedy provided by this section to a principal
25 contractor extends, with respect to any injury by accident sustained by an
26 employee of any contractor in the performance of the contract, to every
27 architect, land surveyor or engineer who performs services for:

- 28 (a) The contractor;
29 (b) The owner of the property; or
30 (c) Any such beneficially interested persons.

31 **4. The exclusive remedy provided by this section applies to the owner**
32 **of a construction project who provides industrial insurance coverage for**
33 **the project by establishing and administering a consolidated insurance**
34 **program pursuant to section 8 of this act to the extent that the program**
35 **covers the employees of the contractors and subcontractors who are**
36 **engaged in the construction of the project.**

37 **5.** If an employee receives any compensation or accident benefits under
38 chapters 616A to 616D, inclusive, of NRS, the acceptance of such
39 compensation or benefits shall be in lieu of any other compensation, award
40 or recovery against his employer under the laws of any other state or
41 jurisdiction and such employee is barred from commencing any action or
42 proceeding for the enforcement or collection of any benefits or award under
43 the laws of any other state or jurisdiction.

1 **Sec. 6.** NRS 616A.025 is hereby amended to read as follows:

2 616A.025 As used in chapters 616A to 616D, inclusive, of NRS,
3 unless the context otherwise requires, the words and terms defined in NRS
4 616A.030 to 616A.360, inclusive, ***and sections 2, 3 and 4 of this act***, have
5 the meanings ascribed to them in those sections.

6 **Sec. 7.** Chapter 616B of NRS is hereby amended by adding thereto the
7 provisions set forth as sections 8 to 19, inclusive, of this act.

8 **Sec. 8. 1. A private company, public entity or utility may:**

9 ***(a) Establish and administer a consolidated insurance program to***
10 ***provide industrial insurance coverage for employees of contractors and***
11 ***subcontractors who are engaged in a construction project of which the***
12 ***private company, public entity or utility is the owner or principal***
13 ***contractor; and***

14 ***(b) As a condition precedent to the award of a contract to perform***
15 ***work on the construction project, require that contractors and***
16 ***subcontractors who will be engaged in the construction of the project***
17 ***participate in the consolidated insurance program.***

18 **2. If a private company, public entity or utility:**

19 ***(a) Establishes and administers a consolidated insurance program;***
20 ***and***

21 ***(b) Pursuant to the contract for the construction of the project, owes a***
22 ***periodic payment to a contractor or subcontractor whose employees are***
23 ***covered under the consolidated insurance program,***
24 ***the private company, public entity or utility shall not withhold such a***
25 ***periodic payment on the basis that the contractor or subcontractor has***
26 ***not signed an employer's report of industrial injury or occupational***
27 ***disease as required pursuant to NRS 616C.045.***

28 **Sec. 9. A consolidated insurance program must not cover more than**
29 ***one construction project.***

30 **Sec. 10. A consolidated insurance program may cover more than**
31 ***one construction project.***

32 **Sec. 11. 1. The system or a private carrier who is authorized to**
33 ***transact industrial insurance in this state may contract with a private***
34 ***company, public entity or utility to provide industrial insurance coverage***
35 ***for a consolidated insurance program.***

36 **2. A private company, public entity or utility that enters into a**
37 ***contract with the system or a private carrier for the provision of***
38 ***industrial insurance coverage for a consolidated insurance program***
39 ***shall file a copy of the contract with the commissioner at least 60 days***
40 ***before the date on which the construction project is scheduled to begin.***

1 **3. The commissioner shall, within 60 days after receiving a copy of a**
2 **contract pursuant to subsection 2, review and approve or disapprove the**
3 **contract. If the commissioner does not disapprove the contract within 60**
4 **days after receiving it, the contract shall be deemed approved.**

5 **Sec. 12. 1. A consolidated insurance program that a private**
6 **company, public entity or utility is authorized to establish and administer**
7 **pursuant to section 8 of this act must, in the manner set forth in this**
8 **section, provide for the safety of an employee of a contractor or**
9 **subcontractor who is engaged in the construction project when such an**
10 **employee works at the site of the construction project.**

11 **2. The owner or principal contractor of the construction project shall**
12 **develop and carry out a safety program that includes, without limitation:**

13 **(a) The establishment of minimum standards of safety to be observed**
14 **during construction of the project;**

15 **(b) The holding of regular meetings to address and discuss issues**
16 **related to safety;**

17 **(c) Training of contractors and subcontractors regarding issues and**
18 **procedures related to safety;**

19 **(d) Regular inspections of the site of the construction project to**
20 **identify potential safety hazards and ensure that minimum standards of**
21 **safety are being observed;**

22 **(e) The notification of contractors and subcontractors of special**
23 **hazards that exist at the site of the construction project, including advice**
24 **on ways in which the contractors and subcontractors can avoid those**
25 **hazards; and**

26 **(f) The prompt investigation of any injuries that take place at the site**
27 **of the construction project which result in death or serious bodily injury.**

28 **3. The owner of the construction project, if the project is covered by**
29 **an owner-controlled insurance program, or the principal contractor of**
30 **the construction project, if the project is covered by a contractor-**
31 **controlled insurance program, shall appoint two persons to serve as the**
32 **primary and alternate coordinators for safety for the construction**
33 **project. A person so appointed must:**

34 **(a) Possess credentials in the field of safety that the commissioner**
35 **determines to be adequate to prepare a person to act as a coordinator for**
36 **safety for a construction project, including, without limitation,**
37 **credentials issued by the:**

38 **(1) Board of Certified Safety Professionals;**

39 **(2) World Safety Organization;**

40 **(3) Insurance Institute of America; or**

41 **(4) American Society of Safety Engineers; or**

1 **(b) Have at least 3 years of experience in overseeing matters of**
2 **occupational safety and health in the field of construction that the**
3 **commissioner determines to be adequate to prepare a person to act as a**
4 **coordinator for safety for a construction project.**

5 **4. The primary and alternate coordinators for safety for the**
6 **construction project:**

7 **(a) Must be full-time employees of the person or entity that appointed**
8 **them;**

9 **(b) Must not serve as coordinators for safety for another construction**
10 **project that is covered by a different consolidated insurance program;**

11 **(c) Shall oversee and enforce the safety program established pursuant**
12 **to subsection 2, including, without limitation, resolving problems related**
13 **to the operation of the safety program; and**

14 **(d) Shall ensure that the contractors, employers and subcontractors**
15 **who are engaged in the construction of the project coordinate their**
16 **efforts regarding issues of occupational safety and health to create and**
17 **maintain a safe and healthful workplace.**

18 **5. The alternate coordinator for safety shall report to the primary**
19 **coordinator for safety regarding activities that take place at the site of the**
20 **construction project when the primary coordinator is absent.**

21 **6. The owner of the construction project, if the project is covered by**
22 **an owner-controlled insurance program, or the principal contractor of**
23 **the construction project, if the project is covered by a contractor-**
24 **controlled insurance program, shall ensure that the primary or alternate**
25 **coordinator for safety for the construction project is physically present at**
26 **the site of the construction project whenever activity related to**
27 **construction is taking place at the site.**

28 **Sec. 13. 1. A consolidated insurance program that a private**
29 **company, public entity or utility is authorized to establish and administer**
30 **pursuant to section 8 of this act must, in the manner set forth in this**
31 **section, provide for the administration of claims for industrial insurance**
32 **for an employee of a contractor or subcontractor who is engaged in the**
33 **construction project when such an employee works at the site of the**
34 **construction project.**

35 **2. The owner of the construction project, if the project is covered by**
36 **an owner-controlled insurance program, or the principal contractor of**
37 **the construction project, if the project is covered by a contractor-**
38 **controlled insurance program, shall appoint a person to serve as the**
39 **administrator of claims for industrial insurance for the construction**
40 **project. A person so appointed must not serve as an administrator of**
41 **claims for industrial insurance for another construction project that is**
42 **covered by a different consolidated insurance program.**

1 **3. The administrator of claims for industrial insurance for the**
2 **construction project who is appointed pursuant to subsection 2 shall:**

3 **(a) Assist an employee who is covered under the consolidated**
4 **insurance program or, in the event of the employee's death, one of his**
5 **dependents, in filing a written notice of injury or death as required**
6 **pursuant to NRS 616C.015 or a written notice of an occupational disease**
7 **as required pursuant to NRS 617.342;**

8 **(b) Sign and file on behalf of a contractor or subcontractor whose**
9 **employees are covered under the consolidated insurance program an**
10 **employer's report of industrial injury or occupational disease as required**
11 **pursuant to NRS 616C.045;**

12 **(c) Ensure that an employee who is covered under the consolidated**
13 **insurance program and who has been injured or who has incurred an**
14 **occupational disease while working on the construction project is**
15 **directed to a medical facility that will provide treatment to the employee**
16 **under the program; and**

17 **(d) Handle all issues, to the extent reasonably practicable, relating to**
18 **claims for industrial insurance at the site of the construction project.**

19 **4. The owner of the construction project, if the project is covered by**
20 **an owner-controlled insurance program, or the principal contractor of**
21 **the construction project, if the project is covered by a contractor-**
22 **controlled insurance program, shall ensure that the administrator of**
23 **claims for industrial insurance for the construction project is physically**
24 **present at the site of the construction project whenever activity related to**
25 **construction is taking place at the site.**

26 **Sec. 14. 1. The contractors and subcontractors who are engaged in**
27 **the construction of a project that is covered by a consolidated insurance**
28 **program shall post a bond that is adequate to purchase:**

29 **(a) Coverage for completed operations liability; and**

30 **(b) Industrial insurance coverage for the employees of the contractors**
31 **and subcontractors who are engaged in the construction of the project**
32 **after the project is completed,**
33 **for at least 5 years after the date on which the construction project is**
34 **completed, if the project is a residential construction project, or for at**
35 **least 3 years after the date on which the construction project is**
36 **completed, if the project is not a residential construction project.**

37 **2. As used in this section, "completed operations liability" has the**
38 **meaning ascribed to it in NRS 695E.030.**

39 **Sec. 15. 1. A consolidated insurance program must not provide:**

40 **(a) Industrial insurance coverage;**

41 **(b) A comprehensive program of safety; or**

1 (c) *For the administration of claims for industrial insurance,*
2 *for an employee of a contractor or subcontractor who is engaged in the*
3 *construction of the project that is covered by the consolidated insurance*
4 *program at any time that such an employee does not work at the site of*
5 *the construction project.*

6 2. *A contractor or subcontractor who is engaged in the construction*
7 *of a project that is covered by a consolidated insurance project shall*
8 *maintain separate industrial insurance coverage for its employees who:*

9 (a) *Are not assigned to participate in the construction of the project;*
10 *or*

11 (b) *Are assigned to participate in the construction of the project but*
12 *who do not work at the site of the project.*

13 3. *The owner of a construction project, if the project is covered by an*
14 *owner-controlled insurance program, or the principal contractor of a*
15 *construction project, if the project is covered by a contractor-controlled*
16 *insurance program, shall reimburse a contractor or subcontractor who*
17 *bids successfully on the construction project for the cost of providing*
18 *separate industrial insurance coverage for an employee if:*

19 (a) *The contractor or subcontractor set the amount of his bid in a*
20 *reasonable, good faith belief that the employee would work at the site of*
21 *the construction project and would therefore be covered by the*
22 *consolidated insurance program; and*

23 (b) *Because of changed circumstances not reasonably foreseeable at*
24 *the time the bid was submitted, the employee worked in whole or in part*
25 *at a location other than the site of the construction project, requiring the*
26 *contractor or subcontractor to obtain separate industrial insurance*
27 *coverage for that employee.*

28 Sec. 16. *If an owner or principal contractor establishes and*
29 *administers a consolidated insurance program pursuant to section 8 of*
30 *this act, each employee who is covered under the consolidated insurance*
31 *program shall be deemed to be an employee of the owner or principal*
32 *contractor for the purpose of determining the loss experience of the*
33 *owner or principal contractor.*

34 Sec. 17. *With respect to a construction project for which the owner*
35 *intends to establish and administer an owner-controlled insurance*
36 *program or the principal contractor intends to establish and administer a*
37 *contractor-controlled insurance program, the owner or principal*
38 *contractor, as appropriate, shall:*

39 1. *In the notice or advertisement for bids for the construction of the*
40 *project, state:*

41 (a) *That the employees of contractors and subcontractors who are*
42 *engaged in the construction of the project will be covered under a*

1 consolidated insurance program when such employees work at the site of
2 the project; and

3 (b) Whether such a program will be an owner-controlled insurance
4 program or a contractor-controlled insurance program; and

5 2. Hold a pre-bid conference at which it provides to potential
6 contractors and subcontractors, without limitation, the following
7 information:

8 (a) A general explanation of the manner in which a consolidated
9 insurance program operates;

10 (b) An overview of the provisions of sections 8 to 19, inclusive, of this
11 act;

12 (c) A general description of the safety procedures that will be required
13 as part of the consolidated insurance program; and

14 (d) The procedures pursuant to which claims for industrial insurance
15 will be administered.

16 Sec. 18. The system or a private carrier who contracts to provide
17 industrial insurance coverage for a consolidated insurance program
18 pursuant to section 11 of this act is liable to pay each claim for industrial
19 insurance that is covered by the program, regardless of whether:

20 1. The claim is filed after the completion of the construction project;
21 or

22 2. Any party to the contract is not transacting business within this
23 state at the time the claim is filed.

24 Sec. 19. A contract for the provision of industrial insurance that is
25 authorized pursuant to section 11 of this act must include, without
26 limitation:

27 1. Provisions that require compliance with each of the requirements
28 relating to safety and the administration of claims for industrial
29 insurance at the site of the construction project that are set forth in
30 sections 12 and 13 of this act;

31 2. The names and qualifications of the persons appointed to oversee
32 issues of safety and the administration of claims for industrial insurance
33 at the site of the construction project pursuant to sections 12 and 13 of
34 this act;

35 3. The terms and conditions pursuant to which the contract provides
36 industrial insurance coverage. The terms and conditions must include,
37 without limitation:

38 (a) A definition of the site of the construction project that:

39 (1) Delineates clearly the area within which coverage is provided;
40 and

41 (2) Is reasonably contiguous to the actual physical site of the
42 construction project; and

1 ***(b) A description of the scope and details of the construction project***
2 ***and the duration of industrial insurance coverage that is provided for the***
3 ***project;***

4 ***4. A list in which the owner, principal contractor, construction***
5 ***manager, contractors and subcontractors of the construction project are***
6 ***set forth as named insureds;***

7 ***5. A provision setting forth the penalties to which the owner,***
8 ***principal contractor, construction manager, contractors and***
9 ***subcontractors of the construction project may be subject if such persons***
10 ***or entities fail to comply with the provisions relating to safety and the***
11 ***administration of claims for industrial insurance that are required***
12 ***pursuant to sections 12 and 13 of this act; and***

13 **Sec. 20.** NRS 616B.612 is hereby amended to read as follows:

14 616B.612 1. Every employer within the provisions of chapters 616A
15 to 616D, inclusive, of NRS, and those employers who accept the terms of
16 those chapters and are governed by their provisions, shall provide and
17 secure compensation according to the terms, conditions and provisions of
18 those chapters for any personal injuries by accident sustained by an
19 employee arising out of and in the course of the employment.

20 ***2. A contractor or subcontractor shall be deemed to have provided***
21 ***and secured compensation for its employees as required pursuant to***
22 ***subsection 1 to the extent that those employees are covered by a***
23 ***consolidated insurance program.***

24 ***3.*** Travel for which an employee receives wages shall, for the purposes
25 of chapters 616A to 616D, inclusive, of NRS, be deemed in the course of
26 employment.

27 ~~[3.]~~ ***4.*** In such cases the employer or any insurer of the employer is
28 relieved from other liability for recovery of damages or other compensation
29 for those personal injuries unless otherwise provided by the terms of
30 chapters 616A to 616D, inclusive, of NRS.

31 **Sec. 21.** NRS 616C.045 is hereby amended to read as follows:

32 616C.045 1. ~~[Within]~~ ***Except as otherwise provided in section 13 of***
33 ***this act, within*** 6 working days after the receipt of a claim for
34 compensation from a physician or chiropractor, an employer shall complete
35 and file with his insurer or third-party administrator an employer's report of
36 industrial injury or occupational disease.

37 ***2.*** The report must:

38 (a) Be on a form prescribed by the administrator;

39 (b) Be signed by the employer or his designee;

40 (c) Contain specific answers to all questions required by the regulations
41 of the administrator; and

1 (d) Be accompanied by a statement of the wages of the employee if the
2 claim for compensation received from the treating physician or chiropractor
3 indicates that the injured employee is expected to be off work for 5 days or
4 more.

5 3. An employer who files the report required by subsection 1 by
6 electronic transmission shall, upon request, mail to the insurer or third-
7 party administrator the form that contains the original signature of the
8 employer or his designee. The form must be mailed within 7 days after
9 receiving such a request.

10 4. The administrator shall impose an administrative fine of not more
11 than \$1,000 on an employer for each violation of this section.

12 **Sec. 22.** NRS 686A.200 is hereby amended to read as follows:

13 686A.200 1. ~~{No}~~ ***Except as otherwise provided in section 8 of this***
14 ***act, no*** person shall require, directly or indirectly, or through any trustee,
15 director, officer, agent or employee or affiliate, as a condition, agreement
16 or understanding to selling or furnishing any other person any loan, or
17 extension thereof, credit, sale, goods, property, contract, lease or service,
18 that such other person shall place, continue (other than as to life insurance)
19 or renew any policy of insurance of any kind through any particular agent,
20 broker or insurer. No agent, broker or insurer shall knowingly participate in
21 any such prohibited plan or transaction. No person shall fix a price charged
22 for such thing or service, or discount from or rebate upon price, on the
23 condition, agreement or understanding that any insurance is to be obtained
24 through a particular agent, broker or insurer.

25 2. Subsection 1 does not prevent:

26 (a) The exercise by any such person upon a reasonable basis of any right
27 to approve or disapprove of the insurer and representative to underwrite the
28 insurance. Such basis shall relate only to the adequacy and terms of the
29 coverage with respect to the interest of the vendor, lender, lessor or
30 provider of service to be insured thereunder, the financial standards to be
31 met by the insurer, and the ability of the insurer or representative to service
32 the policy.

33 (b) The exercise by the vendor, lender, lessor or provider of service of
34 the right to furnish or renew the insurance, and to charge the account of the
35 other person with the costs thereof, if such other person fails to deliver such
36 insurance to the lender, vendor, lessor or provider of service, where
37 otherwise called for and in order, at least 15 days prior to expiration of the
38 existing policy.

39 **Sec. 23.** NRS 686A.220 is hereby amended to read as follows:

40 686A.220 1. ~~{No}~~ ***Except as otherwise provided in section 8 of this***
41 ***act, no*** officer or employee of this state, or of any public agency, public
42 authority or public corporation (except a public corporation or public
43 authority created pursuant to agreement or compact with another state), and

1 no person acting or purporting to act on behalf of such officer or employee,
2 or public agency or public authority or public corporation, shall, with
3 respect to any public building or construction contract which is about to be
4 or which has been competitively bid, require the bidder to make application
5 or furnish financial data to, or to obtain or procure any of the surety bonds
6 or contracts of insurance specified in connection with such contracts or by
7 any law from, a particular insurer or agent or broker.

8 2. ~~[No]~~ ***Except as otherwise provided in section 8 of this act, no*** such
9 officer or employee or any person acting or purporting to act on behalf of
10 such officer or employee shall negotiate, make application for, obtain or
11 procure any of such surety bonds or contracts of insurance (except
12 contracts of insurance for builder's risk or owner's protective liability)
13 which can be obtained or procured by the bidder, contractor or
14 subcontractor.

15 3. This section does not, however, prevent the exercise by such officer
16 or employee on behalf of the state or such public agency, public authority
17 or public corporation of its right to approve the form, sufficiency or manner
18 of execution of the surety bonds or contracts of insurance furnished by the
19 insurer selected by the bidder to underwrite such bonds or contracts of
20 insurance.

21 4. Any provisions in any invitation for bids or in any of the contract
22 documents in conflict with this section are declared to be contrary to the
23 public policy of this state.

24 5. A violation of this section is subject to the penalties provided by
25 NRS 679A.180 (general penalty).

26 **Sec. 24.** 1. This section and sections 1 to 9, inclusive, and 11 to 23,
27 inclusive, of this act become effective on October 1, 1999.

28 2. Section 10 of this act becomes effective on October 1, 2001.

29 3. Section 9 of this act expires by limitation on September 30, 2001.