

SENATE BILL NO. 417—SENATOR O’CONNELL

MARCH 15, 1999

Referred to Committee on Commerce and Labor

SUMMARY—Creates appeals board for industrial insurance to hear certain grievances of employers. (BDR 53-1080)

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

~

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

AN ACT relating to industrial insurance; creating the appeals board for industrial insurance to hear grievances of certain employers concerning the establishment of experience modification factors, the assignment of classifications of risk and the application of certain information filed with the commissioner of insurance; 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 a new section to read as follows:
3 ***“Appeals board” means the appeals board for industrial insurance***
4 ***that hears grievances of employers, other than self-insured employers,***
5 ***pursuant to the provisions of sections 5 to 17, inclusive, of this act.***
6 **Sec. 2.** NRS 616A.025 is hereby amended to read as follows:
7 616A.025 As used in chapters 616A to 616D, inclusive, of NRS,
8 unless the context otherwise requires, the words and terms defined in NRS
9 616A.030 to 616A.360, inclusive, ***and section 1 of this act,*** have the
10 meanings ascribed to them in those sections.
11 **Sec. 3.** NRS 616A.425 is hereby amended to read as follows:
12 616A.425 1. There is hereby established in the state treasury the fund
13 for workers’ compensation and safety as a special revenue fund. All money
14 received from assessments levied on insurers and employers by the
15 administrator pursuant to NRS 232.680 must be deposited in this fund.
16 2. All assessments, penalties, bonds, securities and all other properties
17 received, collected or acquired by the division for functions supported in

1 whole or in part from the fund must be delivered to the custody of the state
2 treasurer for deposit to the credit of the fund.

3 3. All money and securities in the fund must be used to defray all costs
4 and expenses of administering the program of workmen's compensation,
5 including the payment of:

6 (a) All salaries and other expenses in administering the division of
7 industrial relations, including the costs of the office and staff of the
8 administrator.

9 (b) All salaries and other expenses of administering NRS 616A.435 to
10 616A.460, inclusive, the offices of the hearings division of the department
11 of administration and the programs of self-insurance and review of
12 premium rates by the commissioner . ~~{of insurance.}~~

13 (c) *The salary and other expenses of a full-time employee of the*
14 *legislative counsel bureau whose principal duties are limited to*
15 *conducting research and reviewing and evaluating data related to*
16 *industrial insurance.*

17 (d) *All salaries and other expenses of the fraud control unit for*
18 *industrial insurance established pursuant to NRS 228.420.*

19 (e) Claims against uninsured employers arising from compliance with
20 NRS 616C.220 and 617.401.

21 (f) *All salaries and expenses of the members of the legislative*
22 *committee on workers' compensation and any other expenses incurred by*
23 *the committee in carrying out its duties pursuant to NRS 218.5375 to*
24 *218.5378, inclusive.*

25 (g) *All salaries and expenses of the members of the appeals board for*
26 *industrial insurance as set forth in section 9 of this act.*

27 4. The state treasurer may disburse money from the fund only upon
28 written order of the controller.

29 5. The state treasurer shall invest money of the fund in the same
30 manner and in the same securities in which he is authorized to invest state
31 general funds which are in his custody. Income realized from the
32 investment of the assets of the fund must be credited to the fund.

33 6. The commissioner shall assign an actuary to review the
34 establishment of assessment rates. The rates must be filed with the
35 commissioner 30 days before their effective date. Any insurer or employer
36 who wishes to appeal the rate so filed must do so pursuant to NRS
37 679B.310.

38 **Sec. 4.** Chapter 616B of NRS is hereby amended by adding thereto the
39 provisions set forth as sections 5 to 17, inclusive, of this act.

40 **Sec. 5. 1.** *The appeals board for industrial insurance is hereby*
41 *created. The appeals board consists of seven members who are appointed*
42 *by the governor, in consultation with the commissioner. From the*
43 *appropriate list of persons, if any, provided by the advisory organization*

1 pursuant to subsection 2, the governor, in consultation with the
2 commissioner, shall appoint:

3 (a) An employee of the division of insurance of the department of
4 business and industry;

5 (b) An agent who is:

6 (1) Licensed pursuant to chapter 683A of NRS and qualified
7 pursuant to regulations adopted by the commissioner to take an
8 application for, procure or place on behalf of others, industrial
9 insurance; and

10 (2) A member of a nationally recognized association for the
11 profession of insurance agents;

12 (c) Two representatives of the general public:

13 (1) One of which must be employed by, or the proprietor of, a
14 business which is a member of:

15 (I) A local chamber of commerce; or

16 (II) Another organization representing the general business
17 interests of a group of businesses located in this state.

18 (2) Neither of which may be an independent contractor to, or an
19 employee or representative of, an insurance company, insurance broker,
20 insurance agent or insurance solicitor, a law firm, actuary or a
21 representative of a trade association that represents or supports the
22 interests specific to the trade of any such persons.

23 (3) Both of which must be knowledgeable in the field and business
24 of industrial insurance in this state;

25 (d) A representative of the system;

26 (e) A representative of a private carrier; and

27 (f) A representative of the advisory organization who administers
28 appeals boards for grievances of employers in other states.

29 2. On or before June 1 of a year in which the governor is to appoint
30 a member to the appeals board, the advisory organization shall compile
31 lists of nominees for appointment pursuant to subsection 1 and provide
32 such lists to the governor and the commissioner. The advisory
33 organization shall compile four lists, each containing the names of at
34 least five persons who, in the opinion of the advisory organization, would
35 be appropriate members of the appeals board as:

36 (a) The agent appointed pursuant to paragraph (b) of subsection 1;

37 (b) The two representatives of the general public appointed pursuant
38 to paragraph (c) of subsection 1;

39 (c) The representative of the system appointed pursuant to paragraph
40 (d) of subsection 1; and

41 (d) The representative of a private carrier appointed pursuant to
42 paragraph (e) of subsection 1.

1 3. Within 30 days after such appointments have been made, the
2 governor shall notify the advisory organization of the names of each new
3 member.

4 4. After the initial terms, members shall serve terms of 3 years,
5 except when appointed to fill unexpired terms.

6 5. A vacancy in the membership of the appeals board must be filled
7 by the governor, in consultation with the commissioner, in accordance
8 with the provisions of subsections 1 and 2 for the remainder of the
9 unexpired term. The newly appointed member must have the same
10 qualifications as the vacating member, as specified in paragraph (a), (b),
11 (c), (d), (e) or (f) of subsection 1, as appropriate.

12 **Sec. 6.** 1. At its first meeting of each year, the appeals board shall
13 elect a chairman from among its members.

14 2. The chairman shall hold office for 1 year.

15 3. If a vacancy occurs in the chairmanship, the members of the
16 board shall elect a chairman from among its members for the remainder
17 of the unexpired term of the chairman.

18 4. Unless the members agree unanimously to a different date, the
19 first meeting of each year must be as soon as practicable after July 1.

20 **Sec. 7.** 1. The chairman of the appeals board shall:

21 (a) Schedule the time and place of the meetings and hearings of the
22 appeals board;

23 (b) Establish the agenda for each meeting and hearing of the appeals
24 board; and

25 (c) Ensure that the meetings of the appeals board are conducted in an
26 efficient manner.

27 2. The chairman of the appeals board may appoint from the
28 membership of the appeals board a secretary to whom he may delegate
29 his administrative functions.

30 **Sec. 8.** 1. The appeals board shall meet at the times and places
31 specified by a call of the chairman.

32 2. Four members of the appeals board constitute a quorum to
33 transact all business, and a majority of those present must concur on any
34 decision.

35 **Sec. 9.** Each member of the appeals board is entitled to receive for
36 his attendance at meetings of the appeals board:

37 1. Compensation of not more than \$80 per day, as fixed by the
38 appeals board, while engaged in the business of the appeals board; and

39 2. The per diem allowance and travel expenses provided for state
40 officers and employees generally.

1 **Sec. 10. 1.** *An employer, other than a self-insured employer, who*
2 *determines that circumstances specific to his case require a review of the:*

3 *(a) Establishment of the employer's modification of premium based*
4 *on experience;*

5 *(b) Classification of risk assigned for the employer's business; or*

6 *(c) Application of the supplementary rate information to the employer,*
7 *may file a written grievance with the appeals board.*

8 **2.** *The insurer of that employer and the advisory organization may*
9 *participate in a hearing on the grievance by appearing and providing*
10 *testimony or other evidence. If an insurer or the advisory organization*
11 *participates in the hearing, the insurer or the advisory organization is a*
12 *party to the hearing and may appeal, pursuant to the provisions of*
13 *section 16 of this act, the decision made by the appeals board.*

14 **3.** *As used in this section "supplementary rate information" has the*
15 *meaning ascribed to it in NRS 686B.020.*

16 **Sec. 11. 1.** *The appeals board shall hear a grievance of an*
17 *employer filed pursuant to section 10 of this act.*

18 **2.** *The appeals board shall not hear:*

19 *(a) Complaints concerning the effect of the classifications of risks or*
20 *rules that are applied by all insurers to all similarly classified businesses*
21 *within this state.*

22 *(b) Grievances concerning contested cases for compensation pursuant*
23 *to the provisions of chapters 616A to 616D, inclusive, or 617 of NRS.*

24 **Sec. 12. 1.** *Within 30 days after receipt of a written grievance from*
25 *an employer pursuant to section 10 of this act and not less than 10 days*
26 *before the hearing on such grievance, the appeals board shall provide*
27 *written notice to the employer, his insurer and the advisory organization*
28 *of the date and place of the hearing.*

29 **2.** *A decision on a grievance must be issued pursuant to section 15 of*
30 *this act within 30 days after the hearing.*

31 **Sec. 13.** *A hearing held pursuant to section 11 of this act must be*
32 *open to the public, unless the appeals board will be considering*
33 *proprietary information of the employer or the insurer. As used in this*
34 *section, the term "proprietary information" has the meaning ascribed to*
35 *it in subsection 4 of NRS 616B.014.*

36 **Sec. 14. 1.** *If a member of the appeals board determines that he*
37 *has a personal interest or a conflict of interest, directly or indirectly, with*
38 *a party to a hearing or the subject matter of the hearing, the chairman of*
39 *the appeals board shall appoint a substitute member for that hearing who*
40 *has the same qualifications, as specified in paragraph (a), (b), (c), (d), (e)*
41 *or (f) of subsection 1 of section 5 of this act as the member who has the*
42 *conflict of interest. If the chairman is the member with the conflict of*

1 *interest, another member of the appeals board shall appoint the*
2 *substitute.*

3 *2. A conflict of interest may be waived if, after full written disclosure*
4 *of the facts raising such a conflict, all parties to the appeal agree in*
5 *writing to the hearing of the appeal by the member. Such waiver must be*
6 *filed with the chairman of the appeals board before the hearing. If the*
7 *chairman is the member with the conflict of interest, the waiver must be*
8 *filed with the commissioner.*

9 *3. The member of the appeals board who represents the advisory*
10 *organization shall be deemed not to have a conflict of interest with*
11 *respect to the advisory organization if it is a party to a hearing.*

12 *Sec. 15. 1. Within 30 days after each hearing, the chairman or a*
13 *member of the appeals board designated by the chairman shall prepare*
14 *and deliver personally or by mail to each party to the hearing and to the*
15 *commissioner a written memorandum stating:*

16 *(a) The reasons for the decision of the appeals board concerning*
17 *those parties; and*

18 *(b) The rights of any party to the hearing to appeal pursuant to*
19 *section 16 of this act and a brief description of the procedure for making*
20 *such an appeal.*

21 *The votes of each member of the appeals board must not be recorded on*
22 *this memorandum.*

23 *2. Each month, copies of all decisions made by the appeals board*
24 *during the prior month must be delivered personally or by mail to the*
25 *advisory organization.*

26 *Sec. 16. 1. A party to the hearing who wishes to appeal a decision*
27 *of the appeals board must do so pursuant to the provisions of NRS*
28 *679B.310. Such a hearing must be conducted by the commissioner*
29 *pursuant to the provisions of NRS 679B.310 to 679B.370, inclusive, and*
30 *the regulations adopted pursuant thereto.*

31 *2. The commissioner shall not hold a hearing on the request of an*
32 *employer concerning the establishment of the employer's modification of*
33 *premium based on experience, the classification of risk assigned for the*
34 *employer's business, or application of the insurer's supplementary rate*
35 *information to the employer unless the employer has:*

36 *(a) Filed a written grievance with the appeals board pursuant to*
37 *section 10 of this act; and*

38 *(b) Received a written decision from the appeals board.*

39 *Sec. 17. The commissioner may adopt regulations to carry out the*
40 *provisions of sections 5 to 17, inclusive, of this act.*

41 *Sec. 18. NRS 616C.315 is hereby amended to read as follows:*

42 *616C.315 1. Any person who is subject to the jurisdiction of the*
43 *hearing officers pursuant to chapters 616A to 616D, inclusive, or chapter*

1 617 of NRS may request a hearing before a hearing officer of any matter
2 within the hearing officer's authority. The insurer shall provide, without
3 cost, the forms necessary to request a hearing to any person who requests
4 them.

5 2. Except as otherwise provided in NRS 616C.305, *and sections 10, 11*
6 *and 16 of this act*, a person who is aggrieved by:

7 (a) A written determination of an insurer; or

8 (b) The failure of an insurer to respond within 30 days to a written
9 request mailed to the insurer by the person who is aggrieved,
10 may appeal from the determination or failure to respond by filing a request
11 for a hearing before a hearing officer. Such a request must be filed within
12 70 days after the date on which the notice of the insurer's determination
13 was mailed by the insurer or the unanswered written request was mailed to
14 the insurer, as applicable. The failure of an insurer to respond to a written
15 request for a determination within 30 days after receipt of such a request
16 shall be deemed by the hearing officer to be a denial of the request.

17 3. Failure to file a request for a hearing within the period specified in
18 subsection 2 may be excused if the person aggrieved shows by a
19 preponderance of the evidence that he did not receive the notice of the
20 determination and the forms necessary to request a hearing. The claimant or
21 employer shall notify the insurer of a change of address.

22 4. The hearing before the hearing officer must be conducted as
23 expeditiously and informally as is practicable.

24 5. The parties to a contested claim may, if the claimant is represented
25 by legal counsel, agree to forego a hearing before a hearing officer and
26 submit the contested claim directly to an appeals officer.

27 **Sec. 19.** NRS 232.680 is hereby amended to read as follows:

28 232.680 1. The cost of carrying out the provisions of NRS 232.550
29 to 232.700, inclusive, and of supporting the division, *other programs for*
30 *administering the program of workers' compensation*, a full-time
31 employee of the legislative counsel bureau, the fraud control unit for
32 industrial insurance established pursuant to NRS 228.420 ~~and~~, *claims*
33 *against uninsured employers*, the legislative committee on workers'
34 compensation created pursuant to NRS 218.5375 ~~and~~ *and the appeals board*
35 *for industrial insurance* must be paid from assessments payable by each:

36 (a) Insurer based upon expected annual premiums to be received; and

37 (b) Employer who provides accident benefits for injured employees
38 pursuant to NRS 616C.265, based upon his expected annual expenses of
39 providing those benefits.

40 For the purposes of this subsection, the "premiums to be received" by a
41 self-insured employer or an association of self-insured public or private
42 employers shall be deemed to be the same fraction of the premiums to be
43 received by the state industrial insurance system that his expected annual

1 expenditure for claims is of the expected annual expenditure of the system
2 for claims. The division shall adopt regulations which establish formulas of
3 assessment which result in an equitable distribution of costs among the
4 insurers and employers who provide accident benefits for injured
5 employees. The formulas may utilize actual expenditures for claims.

6 2. Federal grants may partially defray the costs of the division.

7 3. Assessments made against insurers by the division after the adoption
8 of regulations must be used to defray all costs and expenses of
9 administering the program of workers' compensation, including the
10 payment of:

11 (a) All salaries and other expenses in administering the division,
12 including the costs of the office and staff of the administrator.

13 (b) All salaries and other expenses of administering NRS 616A.435 to
14 616A.460, inclusive, the offices of the hearings division of the department
15 of administration and the programs of self-insurance and review of
16 premium rates by the commissioner of insurance.

17 (c) The salary and other expenses of a full-time employee of the
18 legislative counsel bureau whose principal duties are limited to conducting
19 research and reviewing and evaluating data related to industrial insurance.

20 (d) All salaries and other expenses of the fraud control unit for industrial
21 insurance established pursuant to NRS 228.420.

22 (e) Claims against uninsured employers arising from compliance with
23 NRS 616C.220 and 617.401.

24 (f) All salaries and expenses of the members of the legislative committee
25 on workers' compensation and any other expenses incurred by the
26 committee in carrying out its duties pursuant to NRS 218.5375 to
27 218.5378, inclusive.

28 *(g) All salaries and expenses of the members of the appeals board for*
29 *industrial insurance as set forth in section 9 of this act.*

30 **Sec. 20.** NRS 679B.370 is hereby amended to read as follows:

31 679B.370 1. Except as to matters arising under chapter 686B of NRS
32 ~~{(rates and rating organizations),}~~ *other than those grievances of*
33 *employers that must be appealed to the appeals board for industrial*
34 *insurance*, an appeal from the commissioner must be taken only from an
35 order on hearing, or as to a matter on which the commissioner has refused
36 or failed to hold a hearing after application therefor under NRS 679B.310,
37 or as to a matter concerning which the commissioner has refused or failed
38 to make his order on hearing as required by NRS 679B.360.

39 2. Any person who was a party to a hearing or whose pecuniary
40 interests are directly and immediately affected by any such refusal or
41 failure, and who is aggrieved by the order, refusal or failure, may petition
42 for judicial review in the manner provided by chapter 233B of NRS.

- 1 **Sec. 21.** NRS 686B.1785 is hereby amended to read as follows:
2 686B.1785 Any person aggrieved by any decision, action or omission
3 of the advisory organization or an insurer regarding rates or other
4 information filed with the commissioner may request in writing that the
5 organization or insurer reconsider the decision, action or omission. ~~##~~
6 *Except as otherwise provided in sections 10, 11 and 16 of this act, if* the
7 request for reconsideration is rejected or is not acted upon within 30 days
8 by the organization or insurer, the person requesting reconsideration may,
9 within 30 days thereafter, appeal from the decision, action or omission to
10 the commissioner by filing a written complaint and request for a hearing
11 specifying the grounds relied upon.
- 12 **Sec. 22.** As soon as practicable after the effective date of this act, the
13 governor, in consultation with the commissioner of insurance shall appoint:
14 1. One of the members described in paragraph (c) of subsection 1 of
15 section 5 of this act to a term that expires on June 30, 2000.
16 2. One of the members described in paragraph (c) of subsection 1 of
17 section 5 of this act to a term that expires on June 30, 2001.
18 3. The members described in paragraphs (a), (b), (d), (e) and (f) of
19 subsection 1 of section 5 of this act to a term that expires on June 30, 2002.
- 20 **Sec. 23.** 1. This section and sections 1 to 18, inclusive, and 20 of
21 this act become effective upon passage and approval.
22 2. Sections 19 and 21 become effective at 12:01 a.m. on July 1, 1999.