

SENATE BILL NO. 417—SENATOR O’CONNELL

MARCH 15, 1999

Referred to Committee on Commerce and Labor

SUMMARY—Creates appeals panel 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 panel 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 panel” means the appeals panel for industrial insurance that***
4 ***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.** (Deleted by amendment.)
12 **Sec. 4.** Chapter 616B of NRS is hereby amended by adding thereto the
13 provisions set forth as sections 5 to 17, inclusive, of this act.
14 **Sec. 5. 1. *The appeals panel for industrial insurance is hereby***
15 ***created. The appeals panel consists of seven members who are appointed***
16 ***by the governor, in consultation with the commissioner. From the***
17 ***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) Two representatives of private carriers; and

26 (e) A representative of the advisory organization who administers
27 appeals panels for grievances of employers in other states.

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

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

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

38 (c) The two representatives of private carriers appointed pursuant to
39 paragraph (d) of subsection 1.

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

1 **4.** *After the initial terms, members shall serve terms of 2 years,*
2 *except when appointed to fill unexpired terms.*

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

9 **Sec. 6. 1.** *At its first meeting of each year, the appeals panel shall*
10 *elect a chairman from among its members.*

11 **2.** *The chairman shall hold office for 1 year.*

12 **3.** *If a vacancy occurs in the chairmanship, the members of the*
13 *panel shall elect a chairman from among its members for the remainder*
14 *of the unexpired term of the chairman.*

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

17 **Sec. 7. 1.** *The chairman of the appeals panel shall:*

18 **(a)** *Schedule the time and place of the meetings and hearings of the*
19 *appeals panel;*

20 **(b)** *Establish the agenda for each meeting and hearing of the appeals*
21 *panel; and*

22 **(c)** *Ensure that the meetings of the appeals panel are conducted in an*
23 *efficient manner.*

24 **2.** *The chairman of the appeals panel may appoint from the*
25 *membership of the appeals panel a secretary to whom he may delegate*
26 *his administrative functions.*

27 **Sec. 8. 1.** *The appeals panel shall meet at the times and places*
28 *specified by a call of the chairman.*

29 **2.** *Four members of the appeals panel constitute a quorum to*
30 *transact all business, and a majority of those present must concur on any*
31 *decision.*

32 **Sec. 9. 1.** *Each member of the appeals panel is entitled to receive,*
33 *for his attendance at the meetings of the appeals panel, the per diem*
34 *allowance and travel expenses provided for state officers and employees*
35 *generally.*

36 **2.** *Expenses of the members of the appeals panel must be paid from*
37 *assessments payable by each insurer pursuant to the formula filed with*
38 *and approved by the commissioner pursuant to section 20.2 of this act.*

39 **3.** *As used in this section, "insurer" has the meaning ascribed to it in*
40 *NRS 686B.1759.*

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

1 (a) Establishment of the employer's modification of premium based
2 on experience;

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

4 (c) Application of the supplementary rate information to the employer,
5 may file a written grievance with the appeals panel.

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

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

14 **Sec. 11. 1.** The appeals panel shall hear a grievance of an
15 employer filed pursuant to section 10 of this act.

16 2. The appeals panel shall not hear:

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

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

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

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

29 **Sec. 13.** A hearing held pursuant to section 11 of this act must be
30 open to the public, unless the appeals panel will be considering
31 proprietary information of the employer or the insurer. As used in this
32 section, the term "proprietary information" means any information
33 which, if disclosed to the general public, may result in a competitive
34 disadvantage to an insurer or employer, including, without limitation:

35 1. Rules, criteria and standards for underwriting policies that are
36 applied by an insurer.

37 2. Plans or other documents concerning the marketing or strategic
38 planning of an insurer or employer.

39 3. Data, studies and reports concerning the development of new
40 products or services.

41 4. Data that identify the share of the market of an insurer within
42 each class of risk.

1 **Sec. 14. 1.** *If a member of the appeals panel determines that he*
2 *has a personal interest or a conflict of interest, directly or indirectly, with*
3 *a party to a hearing or the subject matter of the hearing, the chairman of*
4 *the appeals panel shall appoint a substitute member for that hearing who*
5 *has the same qualifications, as specified in paragraph (a), (b), (c), (d) or*
6 *(e) of subsection 1 of section 5 of this act as the member who has the*
7 *conflict of interest. If the chairman is the member with the conflict of*
8 *interest, another member of the appeals panel shall appoint the*
9 *substitute.*

10 **2.** *A conflict of interest may be waived if, after full written disclosure*
11 *of the facts raising such a conflict, all parties to the appeal agree in*
12 *writing to the hearing of the appeal by the member. Such waiver must be*
13 *filed with the chairman of the appeals panel before the hearing. If the*
14 *chairman is the member with the conflict of interest, the waiver must be*
15 *filed with the commissioner.*

16 **3.** *The member of the appeals panel who represents the advisory*
17 *organization shall be deemed not to have a conflict of interest with*
18 *respect to the advisory organization if it is a party to a hearing.*

19 **Sec. 15. 1.** *Within 30 days after each hearing, the chairman or a*
20 *member of the appeals panel designated by the chairman shall prepare*
21 *and deliver personally or by mail to each party to the hearing and to the*
22 *commissioner a written memorandum stating:*

23 **(a)** *The reasons for the decision of the appeals panel concerning those*
24 *parties; and*

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

28 *The votes of each member of the appeals panel must not be recorded on*
29 *this memorandum.*

30 **2.** *Each month, copies of all decisions made by the appeals panel*
31 *during the prior month must be delivered personally or by mail to the*
32 *advisory organization.*

33 **Sec. 16. 1.** *A party to the hearing who wishes to appeal a decision*
34 *of the appeals panel must do so pursuant to the provisions of NRS*
35 *679B.310. Such a hearing must be conducted by the commissioner*
36 *pursuant to the provisions of NRS 679B.310 to 679B.370, inclusive, and*
37 *the regulations adopted pursuant thereto.*

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

1 ***(a) Filed a written grievance with the appeals panel pursuant to***
2 ***section 10 of this act; and***

3 ***(b) Received a written decision from the appeals panel.***

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

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

7 616C.315 1. Any person who is subject to the jurisdiction of the
8 hearing officers pursuant to chapters 616A to 616D, inclusive, or chapter
9 617 of NRS may request a hearing before a hearing officer of any matter
10 within the hearing officer's authority. The insurer shall provide, without
11 cost, the forms necessary to request a hearing to any person who requests
12 them.

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

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

16 (b) The failure of an insurer to respond within 30 days to a written
17 request mailed to the insurer by the person who is aggrieved,
18 may appeal from the determination or failure to respond by filing a request
19 for a hearing before a hearing officer. Such a request must be filed within
20 70 days after the date on which the notice of the insurer's determination
21 was mailed by the insurer or the unanswered written request was mailed to
22 the insurer, as applicable. The failure of an insurer to respond to a written
23 request for a determination within 30 days after receipt of such a request
24 shall be deemed by the hearing officer to be a denial of the request.

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

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

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

35 **Sec. 19.** (Deleted by amendment.)

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

37 679B.370 1. Except as to matters arising under chapter 686B of NRS
38 ~~***{(rates and rating organizations),}***~~ ***other than those grievances of***
39 ***employers that must be appealed to the appeals panel for industrial***
40 ***insurance***, an appeal from the commissioner must be taken only from an
41 order on hearing, or as to a matter on which the commissioner has refused
42 or failed to hold a hearing after application therefor under NRS 679B.310,

1 or as to a matter concerning which the commissioner has refused or failed
2 to make his order on hearing as required by NRS 679B.360.

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

7 **Sec. 20.2.** Chapter 686B of NRS is hereby amended by adding thereto
8 a new section to read as follows:

9 **1. The advisory organization shall, at least 60 days before imposing**
10 **an assessment pursuant to this section, file with the commissioner a**
11 **formula for an assessment on all insurers, which results in an equitable**
12 **distribution among all insurers, of:**

13 **(a) The costs of paying the expenses of the members of the appeals**
14 **panel for industrial insurance pursuant to the provisions of section 9 of**
15 **this act; and**

16 **(b) Any costs incurred by the advisory organization to administer the**
17 **appeals panel for industrial insurance pursuant to the provisions of**
18 **sections 5 to 17, inclusive, of this act.**

19 **2. The formula for the assessment filed pursuant to subsection 1**
20 **shall be deemed approved unless it is disapproved by the commissioner**
21 **within 60 days after it is filed.**

22 **Sec. 20.4.** NRS 686B.1751 is hereby amended to read as follows:

23 686B.1751 As used in NRS 686B.1751 to 686B.1799, inclusive, **and**
24 **section 20.2 of this act**, unless the context otherwise requires, the words
25 and terms defined in NRS 686B.1752 to 686B.1762, inclusive, have the
26 meanings ascribed to them in those sections.

27 **Sec. 21.** NRS 686B.1785 is hereby amended to read as follows:

28 686B.1785 Any person aggrieved by any decision, action or omission
29 of the advisory organization or an insurer regarding rates or other
30 information filed with the commissioner may request in writing that the
31 organization or insurer reconsider the decision, action or omission. ~~##~~
32 **Except as otherwise provided in sections 10, 11 and 16 of this act, if** the
33 request for reconsideration is rejected or is not acted upon within 30 days
34 by the organization or insurer, the person requesting reconsideration may,
35 within 30 days thereafter, appeal from the decision, action or omission to
36 the commissioner by filing a written complaint and request for a hearing
37 specifying the grounds relied upon.

38 **Sec. 22.** As soon as practicable after the effective date of this act, the
39 governor, in consultation with the commissioner of insurance shall appoint:

40 1. One of the members described in paragraph (c) of subsection 1 of
41 section 5 of this act and one of the members described in paragraph (d) of
42 subsection 1 of section 5 of this act to terms that expire on June 30, 2000.

1 2. One of the members described in paragraph (c) of subsection 1 of
2 section 5 of this act and one of the members described in paragraph (d) of
3 subsection 1 of section 5 of this act and the members described in
4 paragraphs (a), (b) and (e) of subsection 1 of section 5 of this act to terms
5 that expire on June 30, 2001.
6 **Sec. 23.** 1. This section and sections 1 to 18, inclusive, 20 and 22 of
7 this act become effective upon passage and approval and expire by
8 limitation on July 1, 2001.
9 2. Sections 20.2, 20.4 and 21 of this act become effective at 12:01 a.m.
10 on July 1, 1999, and expire by limitation on July 1, 2001.

~