SENATE BILL NO. 42–COMMITTEE ON COMMERCE AND LABOR

PREFILED JANUARY 27, 1999

(ON BEHALF OF LEGISLATIVE COMMITTEE ON WORKERS' COMPENSATION)

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions governing payment of workers' compensation for subsequent injuries from subsequent injury funds. (BDR 53-389)

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

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AN ACT relating to industrial insurance; revising the provisions regarding those subsequent injuries for which the account of an employer who is insured by the state industrial insurance system will be charged; limiting the subsequent injuries for which workers' compensation is payable from the subsequent injury fund for self-insured employers and the subsequent injury fund for associations of self-insured public or private employers; repealing the provisions creating and governing a subsequent injury fund for private carriers of industrial insurance; and providing other matters properly relating thereto.

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

Section 1. NRS 616B.540 is hereby amended to read as follows:

616B.540 1. If an employee of an employer who is insured by the system has a permanent physical impairment from any cause or origin and ***, before July 1, 1999,*** incurs a subsequent disability by injury arising out of and in the course of his employment which entitles him to compensation for a disability that is substantially greater by reason of the combined effects of the preexisting impairment and the subsequent injury than that which would have resulted from the subsequent injury alone, the compensation due must not be charged to the employer's account if:

(a) The employee knowingly made a false representation as to his physical condition at the time he was hired by the employer;

(b) The employer relied upon the false representation and this reliance formed a substantial basis of the employment; and

(c) A causal connection existed between the false representation and the subsequent disability.

2. If the subsequent injury of the employee ***that occurred before July 1, 1999,*** results in his death and it is determined that the death would not have occurred except for the preexisting permanent physical impairment, the compensation due must not be charged to the employer's account.

3. To qualify for the removal of a charge from his account pursuant to this section, the employer must establish by written records that he had knowledge of the permanent physical impairment at the time the employee was hired or that the employee was retained in employment after the employer acquired that knowledge.

4. The employer shall notify the manager of any possible claim pursuant to this section as soon as practicable, but not later than ~~[100]~~ ***50*** weeks after the subsequent injury or death. ***A claim pursuant to this section must be submitted to the chief before July 1, 2000.***

5. The manager shall take such actions as are necessary to carry out the requirements of this section.

6. An appeal of any decision made concerning a charge or removal of a charge pursuant to this section must be submitted directly to an appeals officer. The appeals officer shall hear the appeal within 45 days after the appeal is submitted to him.

7. As used in this section ~~[, “permanent]~~ ***:***

(a) “Chief” means the chief administrative officer of the industrial insurance regulation section of the division.

(b) “Permanent physical impairment” means any permanent condition, whether congenital or caused by injury or disease, of such seriousness as to constitute a hindrance or obstacle to obtaining employment or to obtaining reemployment if the employee is unemployed. For the purposes of this section, a condition is not a “permanent physical impairment” unless it would support a rating of permanent impairment of 6 percent or more of the whole man if evaluated according to the American Medical Association's Guides to the Evaluation of Permanent Impairment as adopted and supplemented pursuant to NRS 616C.110.

Sec. 2. NRS 616B.557 is hereby amended to read as follows:

616B.557 Except as otherwise provided in NRS 616B.560:

1. If an employee of a self-insured employer has a permanent physical impairment from any cause or origin and ***before July 1, 1999,*** incurs a subsequent disability by injury arising out of and in the course of his employment which entitles him to compensation for disability that is substantially greater by reason of the combined effects of the preexisting impairment and the subsequent injury than that which would have resulted from the subsequent injury alone, the compensation due must be charged to

the subsequent injury fund for self-insured employers in accordance with regulations adopted by the board.

2. If the subsequent injury of ~~[such an]~~ ***the*** employee ***that occurred before July 1, 1999,*** results in his death and it is determined that the death would not have occurred except for the preexisting permanent physical impairment, the compensation due must be charged to the subsequent injury fund for self-insured employers in accordance with regulations adopted by the board.

3. As used in this section, "permanent physical impairment" means any permanent condition, whether congenital or caused by injury or disease, of such seriousness as to constitute a hindrance or obstacle to obtaining employment or to obtaining reemployment if the employee is unemployed. For the purposes of this section, a condition is not a "permanent physical impairment" unless it would support a rating of permanent impairment of 6 percent or more of the whole man if evaluated according to the American Medical Association's Guides to the Evaluation of Permanent Impairment as adopted and supplemented by the division pursuant to NRS 616C.110.

4. To qualify under this section for reimbursement from the subsequent injury fund for self-insured employers, the self-insured employer must establish by written records that the self-insured employer had knowledge of the "permanent physical impairment" at the time the employee was hired or that the employee was retained in employment after the self-insured employer acquired such knowledge.

5. A self-insured employer shall notify the board of any possible claim against the subsequent injury fund for self-insured employers as soon as practicable, but not later than ~~[100]~~ ***50*** weeks after the injury or death. ***A claim against the subsequent injury fund for self-insured employers pursuant to this section must be submitted to the administrator before July 1, 2000.***

6. The board shall adopt regulations establishing procedures for submitting claims against the subsequent injury fund for self-insured employers. The board shall notify the self-insured employer of ~~[his]~~ ***its*** decision on ~~[such a]~~ ***the*** claim within 90 days after the claim is received.

7. An appeal of any decision made concerning a claim against the subsequent injury fund for self-insured employers must be submitted directly to the district court.

Sec. 3. NRS 616B.560 is hereby amended to read as follows:

616B.560 1. A self-insured employer who pays compensation due to an employee who has a permanent physical impairment from any cause or origin and ***who, before July 1, 1999,*** incurs a subsequent disability by injury arising out of and in the course of his employment which entitles him to compensation for disability that is substantially greater by reason of the combined effects of the preexisting impairment and the subsequent injury than that which would have resulted from the subsequent injury alone is entitled to be reimbursed from the subsequent injury fund for self-insured employers if:

(a) The employee knowingly made a false representation as to his physical condition at the time he was hired by the self-insured employer;

(b) The self-insured employer relied upon the false representation and this reliance formed a substantial basis of the employment; and

(c) A causal connection existed between the false representation and the subsequent disability.

If the subsequent injury of the employee ***that occurred before July 1, 1999,*** results in his death and it is determined that the death would not have occurred except for the preexisting permanent physical impairment, any compensation paid is entitled to be reimbursed from the subsequent injury fund for self-insured employers.

2. A self-insured employer shall notify the board of any possible claim against the subsequent injury fund for self-insured employers pursuant to this section ~~[no]~~ ***not*** later than 60 days after the date of the subsequent injury or the date the self-insured employer learns of the employee's false representation, whichever is later.

3. A claim against the subsequent injury fund for self-insured employers pursuant to this section must be submitted to the administrator before July 1, 2000.

Sec. 4. NRS 616B.578 is hereby amended to read as follows:

616B.578 Except as otherwise provided in NRS 616B.581:

1. If an employee of a member of an association of self-insured public or private employers has a permanent physical impairment from any cause or origin and ***before July 1, 1999,*** incurs a subsequent disability by injury arising out of and in the course of his employment which entitles him to compensation for disability that is substantially greater by reason of the combined effects of the preexisting impairment and the subsequent injury than that which would have resulted from the subsequent injury alone, the compensation due must be charged to the subsequent injury fund for associations of self-insured public or private employers in accordance with regulations adopted by the board.

2. If the subsequent injury of ~~[such an]~~ ***the*** employee ***that occurred before July 1, 1999,*** results in his death and it is determined that the death would not have occurred except for the preexisting permanent physical impairment, the compensation due must be charged to the subsequent injury fund for associations of self-insured public or private employers in accordance with regulations adopted by the board.

3. As used in this section, "permanent physical impairment" means any permanent condition, whether congenital or caused by injury or disease, of such seriousness as to constitute a hindrance or obstacle to obtaining

employment or to obtaining reemployment if the employee is unemployed. For the purposes of this section, a condition is not a "permanent physical impairment" unless it would support a rating of permanent impairment of 6 percent or more of the whole man if evaluated according to the American Medical Association's Guides to the Evaluation of Permanent Impairment as adopted and supplemented by the division pursuant to NRS 616C.110.

4. To qualify under this section for reimbursement from the subsequent injury fund for associations of self-insured public or private employers, the association of self-insured public or private employers must establish by written records that the employer had knowledge of the "permanent physical impairment" at the time the employee was hired or that the employee was retained in employment after the employer acquired such knowledge.

5. An association of self-insured public or private employers shall notify the board of any possible claim against the subsequent injury fund for associations of self-insured public or private employers as soon as practicable, but not later than ~~[100]~~ ***50*** weeks after the injury or death. ***A claim against the subsequent injury fund for associations of self-insured public or private employers pursuant to this section must be submitted to the board before July 1, 2000.***

6. The board shall adopt regulations establishing procedures for submitting claims against the subsequent injury fund for associations of self-insured public or private employers. The board shall notify the association of self-insured public or private employers of its decision on ~~[such a]~~ ***the*** claim within 90 days after the claim is received.

7. An appeal of any decision made concerning a claim against the subsequent injury fund for associations of self-insured public or private employers must be submitted directly to the district court.

Sec. 5. NRS 616B.581 is hereby amended to read as follows:

616B.581 1. An association of self-insured public or private employers that pays compensation due to an employee who has a permanent physical impairment from any cause or origin and ***who, before July 1, 1999,*** incurs a subsequent disability by injury arising out of and in the course of his employment which entitles him to compensation for disability that is substantially greater by reason of the combined effects of the preexisting impairment and the subsequent injury than that which would have resulted from the subsequent injury alone is entitled to be reimbursed from the subsequent injury fund for associations of self-insured public or private employers if:

(a) The employee knowingly made a false representation as to his physical condition at the time he was hired by the member of the association of self-insured public or private employers;

(b) The employer relied upon the false representation and this reliance formed a substantial basis of the employment; and

(c) A causal connection existed between the false representation and the subsequent disability.

If the subsequent injury of the employee ***that occurred before July 1, 1999,*** results in his death and it is determined that the death would not have occurred except for the preexisting permanent physical impairment, any compensation paid is entitled to be reimbursed from the subsequent injury fund for associations of self-insured public or private employers.

2. An association of self-insured public or private employers shall notify the board of any possible claim against the subsequent injury fund for associations of self-insured public or private employers pursuant to this section ~~[no]~~ ***not*** later than 60 days after the date of the subsequent injury or the date the employer learns of the employee's false representation, whichever is later.

3. A claim against the subsequent injury fund for associations of self-insured public or private employers pursuant to this section must be submitted to the board before July 1, 2000.

Sec. 6. NRS 616B.584, 616B.587 and 616B.590 are hereby repealed.

Sec. 7. 1. This section and sections 1 to 5, inclusive, of this act become effective on July 1, 1999.

2. Section 6 of this act becomes effective upon passage and approval.

TEXT OF REPEALED SECTIONS

616B.584 Subsequent injury fund for private carriers established; purpose; disbursements; investments; assessment rates, payments and penalties. [Effective July 1, 1999.]

1. There is hereby established as a special revenue fund in the state treasury the subsequent injury fund for private carriers, which may be used only to make payments in accordance with the provisions of NRS 616B.587 and 616B.590. The administrator shall administer the fund.

2. All assessments, penalties, bonds, securities and all other properties received, collected or acquired by the administrator for the subsequent injury fund for private carriers must be delivered to the custody of the state treasurer.

3. All money and securities in the fund must be held by the state treasurer as custodian thereof to be used solely for workers' compensation for employees whose employers are insured by private carriers.

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

5. The state treasurer shall invest money of the fund in the same manner and in the same securities in which he is authorized to invest state general

funds which are in his custody. Income realized from the investment of the assets of the fund must be credited to the fund.

6. The administrator shall adopt regulations for the establishment and administration of assessment rates, payments and penalties. Assessment rates must reflect the relative hazard of the employments covered by private carriers and must be based upon expected annual expenditures for claims for payments from the subsequent injury fund for private carriers. The system must not be required to pay any assessments, payments or penalties into the subsequent injury fund for private carriers, or any costs associated with the fund.

7. The commissioner shall assign an actuary to review the establishment of assessment rates. The rates must be filed with the commissioner 30 days before their effective date. Any private carrier who wishes to appeal the rate so filed must do so pursuant to NRS 679B.310.

616B.587 Payment of cost of additional compensation resulting from subsequent injury of employee of employer insured by private carrier. [Effective July 1, 1999.] Except as otherwise provided in NRS 616B.590:

1. If an employee of an employer who is insured by a private carrier has a permanent physical impairment from any cause or origin and incurs a subsequent disability by injury arising out of and in the course of his employment which entitles him to compensation for disability that is substantially greater by reason of the combined effects of the preexisting impairment and the subsequent injury than that which would have resulted from the subsequent injury alone, the compensation due must be charged to the subsequent injury fund for private carriers in accordance with regulations adopted by the administrator.

2. If the subsequent injury of such an employee results in his death and it is determined that the death would not have occurred except for the preexisting permanent physical impairment, the compensation due must be charged to the subsequent injury fund for private carriers in accordance with regulations adopted by the administrator.

3. As used in this section, “permanent physical impairment” means any permanent condition, whether congenital or caused by injury or disease, of such seriousness as to constitute a hindrance or obstacle to obtaining employment or to obtaining reemployment if the employee is unemployed. For the purposes of this section, a condition is not a “permanent physical impairment” unless it would support a rating of permanent impairment of 6 percent or more of the whole man if evaluated according to the American Medical Association’s Guides to the Evaluation of Permanent Impairment as adopted and supplemented by the division pursuant to NRS 616C.110.

4. To qualify under this section for reimbursement from the subsequent injury fund for private carriers, the private carrier must establish by written

records that the employer had knowledge of the "permanent physical impairment" at the time the employee was hired or that the employee was retained in employment after the employer acquired such knowledge.

5. A private carrier shall notify the administrator of any possible claim against the subsequent injury fund for private carriers as soon as practicable, but not later than 100 weeks after the injury or death.

6. The administrator shall adopt regulations establishing procedures for submitting claims against the subsequent injury fund for private carriers. The administrator shall notify the private carrier of his decision on such a claim within 90 days after the claim is received.

7. An appeal of any decision made concerning a claim against the subsequent injury fund for private carriers must be submitted directly to the appeals officer. The appeals officer shall hear such an appeal within 45 days after the appeal is submitted to him.

616B.590 Reimbursement of private carrier for cost of additional compensation resulting from subsequent injury. [Effective July 1, 1999.]

1. A private carrier who pays compensation due to an employee who has a permanent physical impairment from any cause or origin and incurs a subsequent disability by injury arising out of and in the course of his employment which entitles him to compensation for disability that is substantially greater by reason of the combined effects of the preexisting impairment and the subsequent injury than that which would have resulted from the subsequent injury alone is entitled to be reimbursed from the subsequent injury fund for private carriers if:

(a) The employee knowingly made a false representation as to his physical condition at the time he was hired by the employer insured by a private carrier;

(b) The employer relied upon the false representation and this reliance formed a substantial basis of the employment; and

(c) A causal connection existed between the false representation and the subsequent disability.

If the subsequent injury of the employee results in his death and it is determined that the death would not have occurred except for the preexisting permanent physical impairment, any compensation paid is entitled to be reimbursed from the subsequent injury fund for private carriers.

2. A private carrier shall notify the administrator of any possible claim against the subsequent injury fund for private carriers pursuant to this section no later than 60 days after the date of the subsequent injury or the date the employer learns of the employee's false representation, whichever is later.

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