

SENATE BILL NO. 55—COMMITTEE ON COMMERCE AND LABOR

PREFILED JANUARY 28, 1999

(ON BEHALF OF LEGISLATIVE COMMITTEE ON WORKERS' COMPENSATION)

Referred to Committee on Commerce and Labor

SUMMARY—Makes various changes regarding industrial insurance. (BDR 53-387)

FISCAL NOTE: Effect on Local Government: No.
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; requiring hearing officers and appeals officers to author and explain fully the decisions they render; requiring the senior appeals officer to conduct written evaluations of the appeals officers employed by the hearings division of the department of administration; creating the commission to recommend appeals officers; requiring the governor to consider the recommendations of the commission to recommend appeals officers when appointing an appeals officer or special appeals officer; requiring the chief of the hearings division to prescribe by regulation the training, continuing education and standards for performance of appeals officers and compile certain information regarding the performance of appeals officers; requiring an appeals officer or a special appeals officer to be an attorney and have a certain amount of legal experience before his appointment; 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 616C of NRS is hereby amended by adding thereto
- 2 the provisions set forth as sections 2 to 5, inclusive, of this act.
- 3 **Sec. 2.** *Insofar as practicable, a hearing officer or an appeals officer*
- 4 *shall, with respect to each appeal or contested claim for compensation,*
- 5 *author and explain fully the decision he renders, including, without*
- 6 *limitation, an explanation of the reasons for the decision.*

Sec. 3. The senior appeals officer shall:

1. At least twice each year, conduct an evaluation of the performance of each of the other appeals officers employed by the hearings division of the department of administration. In conducting an evaluation pursuant to this section, the senior appeals officer shall determine whether the appeals officer being evaluated has:

(a) Met the standards for performance prescribed by the chief of the hearings division pursuant to NRS 616C.295; and

(b) Rendered decisions in contested claims for compensation in a timely manner as required pursuant to subsection 5 of NRS 616C.360.

2. Within 15 days after completing an evaluation pursuant to subsection 1, prepare a written report of the evaluation and transmit a copy to the chief of the hearings division of the department of administration for compilation pursuant to NRS 616C.295.

3. In accordance with the requirements for training and continuing education, standards and procedures prescribed by the chief of the hearings division of the department of administration pursuant to NRS 616C.295, provide training to each of the other appeals officers employed by the hearings division.

Sec. 4. 1. The commission to recommend appeals officers, consisting of five members, is hereby created. The membership of the commission consists of:

(a) One member appointed by the governor to represent the interests of:

(1) Self-insured employers;

(2) Associations of self-insured public or private employers; and

(3) Private carriers.

(b) One member appointed by the governor to represent the interests of the system.

(c) Two members appointed by the governor to represent the interests of employees, one of whom must represent the interests of employees who are members of organized labor.

(d) One member appointed by the board of governors of the State Bar of Nevada or its successor organization.

2. After the initial appointments, members of the commission serve terms of 4 years, except when appointed to fill unexpired terms.

3. The commission shall elect a chairman from among its members.

4. A vacancy occurring in the membership of the commission must be filled in the same manner as the original appointment.

5. The commission shall meet at the call of the chairman or at the request of a majority of the members of the commission.

1 **6. Whenever practicable, the commission shall hold its meetings**
2 **through the use of electronic communication, unless doing so would**
3 **violate the provisions of chapter 241 of NRS.**

4 **7. The members of the commission serve without compensation,**
5 **except that while engaged in the business of the commission, each**
6 **member is entitled to receive the per diem allowance and travel expenses**
7 **provided for state officers and employees generally.**

8 **Sec. 5. 1. If the governor determines that:**

9 **(a) The term of an appeals officer is about to expire; or**

10 **(b) The appointment of one or more additional appeals officers or**
11 **special appeals officers is necessary or desirable to conduct hearings in**
12 **contested claims for compensation pursuant to NRS 616C.360,**
13 **the governor shall notify the commission to recommend appeals officers**
14 **at least 45 days before the date on which the term of the appeals officer**
15 **will expire or on which the additional appeals officer or special appeals**
16 **officer will be appointed. If the governor intends to reappoint an appeals**
17 **officer whose term is about to expire, the governor shall notify the**
18 **commission to recommend appeals officers of that fact.**

19 **2. Except as otherwise provided in this subsection, within 30 days**
20 **after the receipt of the notice described in subsection 1, the commission**
21 **to recommend appeals officers shall provide to the governor a list of**
22 **three nominees for appointment to the position of appeals officer or**
23 **special appeals officer, as appropriate. If the governor has provided**
24 **notice of intent to reappoint an appeals officer pursuant to subsection 1,**
25 **the commission to recommend appeals officers shall:**

26 **(a) Conduct an evaluation of the performance of the appeals officer**
27 **during the immediately preceding term, including, without limitation, an**
28 **evaluation of the performance of the appeals officer with respect to the**
29 **standards adopted pursuant to NRS 616C.295; and**

30 **(b) Provide to the governor a recommendation regarding whether the**
31 **appeals officer should be reappointed.**

32 **3. In appointing an appeals officer or special appeals officer**
33 **pursuant to NRS 616C.340, the governor shall consider, but is not bound**
34 **by, a list of nominees provided or a recommendation made by the**
35 **commission to recommend appeals officers pursuant to this section.**

36 **Sec. 6. NRS 616C.295 is hereby amended to read as follows:**

37 616C.295 The chief of the hearings division of the department of
38 administration shall:

39 1. Prescribe by regulation ~~the~~ :

40 **(a) The** qualifications and training required before a person may,
41 pursuant to chapters 616A to 616D, inclusive, or chapter 617 of NRS, serve
42 as a hearing officer. Training for a hearing officer must include techniques
43 of mediation.

1 *(b) The training and continuing education required of each person*
2 *employed by the hearings division as an appeals officer.*

3 *(c) Standards for the performance of appeals officers in handling*
4 *appeals and contested claims for compensation, including, without*
5 *limitation, standards that require an appeals officer to render a decision*
6 *in each appeal and contested claim in a manner that is consistent with:*

7 *(1) Legal authority; and*

8 *(2) Other decisions, if any, rendered by that appeals officer with*
9 *respect to appeals and contested claims in which the facts and issues*
10 *were substantially similar.*

11 *(d) Procedures to improve the performance of an appeals officer*
12 *whom the senior appeals officer determines by evaluation pursuant to*
13 *section 3 of this act to be performing in a substandard manner.*

14 2. Provide for the expediting of the hearing of cases that involve the
15 termination or denial of compensation.

16 3. *At least once each year, compile the following information with*
17 *respect to each appeals officer employed by the hearings division of the*
18 *department of administration:*

19 *(a) The number of hearings on the merits in contested claims for*
20 *compensation that the appeals officer has conducted in each month*
21 *during his term of office;*

22 *(b) The number of final decisions of the appeals officer for which*
23 *judicial review is sought pursuant to NRS 616C.370, including notations*
24 *that identify specifically for each such decision:*

25 *(1) The court in which judicial review is sought; and*

26 *(2) The action taken by the court in which judicial review is sought,*
27 *including, without limitation, whether the matter is still pending or*
28 *whether the court affirmed, modified or reversed the decision of the*
29 *appeals officer; and*

30 *(c) The evaluations pertaining to the appeals officer that have been*
31 *conducted by the senior appeals officer pursuant to section 3 of this act.*

32 **Sec. 7.** NRS 616C.325 is hereby amended to read as follows:

33 616C.325 1. It is unlawful for any person to represent an employee
34 before a ~~hearings~~ hearing officer, or in any negotiations, settlements,
35 hearings or other meetings with an insurer concerning the employee's claim
36 or possible claim, unless he is:

37 (a) Employed full time by the employee's labor organization;

38 (b) Admitted to practice law in this state;

39 (c) Employed full time by and under the supervision of an attorney
40 admitted to practice law in this state; or

41 (d) Appearing without compensation on behalf of the employee.

42 It is unlawful for any person who is not admitted to practice law in this state
43 to represent the employee before an appeals officer.

2. It is unlawful for any person to represent an employer at hearings of contested cases unless that person is:

- (a) Employed full time by the employer or a trade association to which the employer belongs that is not formed solely for the purpose of providing representation at hearings of contested cases;
- (b) An employer's representative licensed pursuant to subsection 3 who is not licensed as a third-party administrator;
- (c) Admitted to practice law in this state; or
- (d) A licensed third-party administrator.

3. The director of the department of administration shall adopt regulations which include the:

- (a) Requirements for licensure of employers' representatives, including:
 - (1) The registration of each representative; and
 - (2) The filing of a copy of each written agreement for the compensation of a representative;
- (b) Procedure for such licensure; and
- (c) Causes for revocation of such a license, including any applicable action listed in NRS 616D.120 or a violation of this section.

4. Any person who is employed by or contracts with an employer to represent the employer at hearings regarding contested claims is an agent of the employer. If the employer's representative violates any provision of this chapter or chapter 616A, 616B or 616D of NRS, the employer is liable for any penalty assessed because of that violation.

5. An employer shall not make the compensation of any person representing him contingent in any manner upon the outcome of any contested claim.

6. The director of the department of administration shall collect in advance and deposit with the state treasurer for credit to the state general fund the following fees for licensure as an employer's representative:

- (a) Application and license.....\$78
- (b) Triennial renewal of each license78

Sec. 8. NRS 616C.340 is hereby amended to read as follows:

616C.340 1. The governor shall , *in accordance with section 5 of this act*, appoint one or more appeals officers to conduct hearings in contested claims for compensation pursuant to NRS 616C.360. Each appeals officer ~~shall hold~~ *holds* office for 2 years ~~from~~ *after* the date of his appointment and until his successor is appointed and has qualified. Each appeals officer is entitled to receive an annual salary in an amount provided by law and is in the unclassified service of the state.

2. Each appeals officer must be an attorney who has been licensed to practice law before all the courts of this state for at least 2 years ~~and~~ *who has at least 2 years of experience practicing law in actions related to claims for compensation or similar experience.* Except as otherwise

1 provided in NRS 7.065, an appeals officer shall not engage in the private
2 practice of law.

3 3. *An appeals officer shall comply with the provisions of the Nevada*
4 *Code of Judicial Conduct.*

5 4. If an appeals officer determines that he has a personal interest or a
6 conflict of interest, directly or indirectly, in any case which is before him,
7 he shall disqualify himself from hearing the case.

8 ~~{4}~~ 5. The governor may, *in accordance with section 5 of this act,*
9 appoint one or more special appeals officers to conduct hearings in
10 contested claims for compensation pursuant to NRS 616C.360. The
11 governor shall not appoint an attorney who represents persons in actions
12 related to claims for compensation to serve as a special appeals officer.

13 ~~{5}~~ 6. A special appeals officer appointed pursuant to subsection ~~{4}~~ 5
14 *must possess the same qualifications as a regular appeals officer and* is
15 vested with the same powers as a regular appeals officer. A special appeals
16 officer may hear any case in which a regular appeals officer has a conflict,
17 or any case assigned to him by the senior appeals officer to assist with a
18 backlog of cases. A special appeals officer is entitled to be paid at an
19 hourly rate, as determined by the department of administration.

20 ~~{6}~~ 7. The decision of an appeals officer is the final and binding
21 administrative determination of a claim for compensation under chapters
22 616A to 616D, inclusive, or chapter 617 of NRS, and the whole record
23 consists of all evidence taken at the hearing before the appeals officer and
24 any findings of fact and conclusions of law based thereon.

25 **Sec. 9.** NRS 616C.360 is hereby amended to read as follows:

26 616C.360 1. A stenographic or electronic record must be kept of the
27 hearing before the appeals officer and the rules of evidence applicable to
28 contested cases under chapter 233B of NRS apply to the hearing.

29 2. The appeals officer must hear any matter raised before him on its
30 merits, including new evidence bearing on the matter.

31 3. If necessary to resolve a medical question concerning an injured
32 employee's condition, the appeals officer may refer the employee to a
33 physician or chiropractor chosen by the appeals officer. If the medical
34 question concerns the rating of a permanent disability, the appeals officer
35 may refer the employee to a rating physician or chiropractor. The rating
36 physician or chiropractor must be selected in rotation from the list of
37 qualified physicians or chiropractors maintained by the administrator
38 pursuant to subsection 2 of NRS 616C.490, unless the insurer and the
39 injured employee otherwise agree to a rating physician or chiropractor. The
40 insurer shall pay the costs of any examination requested by the appeals
41 officer.

42 4. Any party to the appeal or the appeals officer may order a transcript
43 of the record of the hearing at any time before the seventh day after the

1 hearing. The transcript must be filed within 30 days after the date of the
2 order unless the appeals officer otherwise orders.

3 5. The appeals officer shall render his decision:

4 (a) If a transcript is ordered within 7 days after the hearing, within 30
5 days after the transcript is filed; or

6 (b) If a transcript has not been ordered, within 30 days after the date of
7 the hearing.

8 6. The appeals officer may affirm, modify or reverse any decision
9 made by the hearing officer and issue any necessary and proper order to
10 give effect to his decision.

11 **7. *The appeals officer shall give notice of his decision to each party***
12 ***by mail or by personal delivery.***

13 **Sec. 10.** Chapter 232 of NRS is hereby amended by adding thereto a
14 new section to read as follows:

15 ***The director, in his capacity as the chief of the hearings division, shall***
16 ***adopt regulations governing the conduct of the hearing and appeals***
17 ***officers. The regulations must include:***

18 ***1. A procedure for a person who believes that a hearing or appeals***
19 ***officer has violated the standards for conduct to make a complaint to the***
20 ***director or his designee.***

21 ***2. Rules of practice pursuant to which the director or his designee***
22 ***will hear complaints made pursuant to subsection 1.***

23 ***3. The penalties that may be imposed against a hearing or appeals***
24 ***officer if the director or his designee determines, pursuant to the rules of***
25 ***practice adopted pursuant to subsection 2, that a hearing or appeals***
26 ***officer has violated a standard for conduct.***

27 **Sec. 11.** NRS 232.212 is hereby amended to read as follows:

28 232.212 As used in NRS 232.212 to 232.2195, inclusive, ***and section***
29 ***10 of this act,*** unless the context requires otherwise:

30 1. "Department" means the department of administration.

31 2. "Director" means the director of the department.

32 **Sec. 12.** NRS 232.215 is hereby amended to read as follows:

33 232.215 The director:

34 1. Shall appoint a chief of the:

35 (a) Risk management division;

36 (b) Buildings and grounds division;

37 (c) Purchasing division;

38 (d) State printing division;

39 (e) Administrative services division; and

40 (f) Motor pool division if separately established.

41 2. Shall appoint a chief of the budget division, or may serve in this
42 position if he has the qualifications required by NRS 353.175.

1 3. Shall serve as chief of the hearings division and ~~{shall}~~ appoint the
2 hearing officers and compensation officers. The director may designate one
3 of the appeals officers in the division ~~{to}~~ *as the senior appeals officer.*
4 *The senior appeals officer shall* supervise the administrative, technical and
5 procedural activities of the division. *The senior appeals officer shall*
6 *perform such additional duties as the director, serving as chief of the*
7 *hearings division, may require.*

8 4. Shall serve as chairman of the state public works board.

9 5. Is responsible for the administration, through the divisions of the
10 department, of the provisions of chapters 331, 333, 336 and 344 of NRS,
11 NRS 353.150 to 353.246, inclusive, and all other provisions of law relating
12 to the functions of the divisions of the department.

13 6. Is responsible for the administration of the laws of this state relating
14 to the negotiation and procurement of medical services and other benefits
15 for state agencies.

16 7. Has such other powers and duties as are provided by law.

17 **Sec. 13.** NRS 232.680 is hereby amended to read as follows:

18 232.680 1. The cost of carrying out the provisions of NRS 232.550
19 to 232.700, inclusive, and of supporting the division, a full-time employee
20 of the legislative counsel bureau, the fraud control unit for industrial
21 insurance established pursuant to NRS 228.420 and the legislative
22 committee on workers' compensation created pursuant to NRS 218.5375,
23 must be paid from assessments payable by each:

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

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

28 For the purposes of this subsection, the "premiums to be received" by a
29 self-insured employer or an association of self-insured public or private
30 employers shall be deemed to be the same fraction of the premiums to be
31 received by the state industrial insurance system that his expected annual
32 expenditure for claims is of the expected annual expenditure of the system
33 for claims. The division shall adopt regulations which establish formulas of
34 assessment which result in an equitable distribution of costs among the
35 insurers and employers who provide accident benefits for injured
36 employees. The formulas may utilize actual expenditures for claims.

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

38 3. Assessments made against insurers by the division after the adoption
39 of regulations must be used to defray all costs and expenses of
40 administering the program of workers' compensation, including the
41 payment of:

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

1 (b) All salaries and other expenses of administering NRS 616A.435 to
2 616A.460, inclusive, the offices of the hearings division of the department
3 of administration and the programs of self-insurance and review of
4 premium rates by the commissioner of insurance.

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

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

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

12 (f) All salaries and expenses of the members of the legislative committee
13 on workers' compensation and any other expenses incurred by the
14 committee in carrying out its duties pursuant to NRS 218.5375 to
15 218.5378, inclusive.

16 *(g) All the per diem allowances and travel expenses authorized for the*
17 *members of the commission to recommend appeals officers pursuant to*
18 *subsection 7 of section 4 of this act.*

19 **Sec. 14.** As soon as is practicable after July 1, 1999:

20 1. The governor shall appoint to the commission to recommend
21 appeals officers, created pursuant to section 4 of this act:

22 (a) One person pursuant to paragraph (a) of subsection 1 of section 4 of
23 this act to a term that expires on June 30, 2003.

24 (b) One person pursuant to paragraph (b) of subsection 1 of section 4 of
25 this act to a term that expires on June 30, 2001.

26 (c) One person pursuant to paragraph (c) of subsection 1 of section 4 of
27 this act to a term that expires on June 30, 2003.

28 (d) One person pursuant to paragraph (c) of subsection 1 of section 4 of
29 this act to a term that expires on June 30, 2001.

30 2. The board of governors of the State Bar of Nevada shall appoint to
31 the commission to recommend appeals officers, created pursuant to section
32 4 of this act, one person pursuant to paragraph (d) of subsection 1 of
33 section 4 of this act to a term that expires on June 30, 2003.

34 **Sec. 15.** 1. This section and sections 1 to 12, inclusive, and 14 of
35 this act become effective on July 1, 1999.

36 2. Section 13 of this act becomes effective at 12:01 a.m. on July 1,
37 1999.