

Senate Bill No. 64—Committee on Commerce and Labor

CHAPTER.....

AN ACT relating to industrial insurance; authorizing notice of a civil action to recover damages for an industrial injury to be given by the attorney or representative of the injured employee or his dependents; 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 616C.215 is hereby amended to read as follows:

616C.215 1. If an injured employee or, in the event of his death, his dependents, bring an action in tort against his employer to recover payment for an injury which is compensable ~~under~~ *pursuant to the provisions of* chapters 616A to 616D, inclusive, or chapter 617 of NRS and, notwithstanding the provisions of NRS 616A.020, receive payment from the employer for that injury:

(a) The amount of compensation the injured employee or his dependents are entitled to receive pursuant to the provisions of chapters 616A to 616D, inclusive, or chapter 617 of NRS, including any future compensation, must be reduced by the amount paid by the employer.

(b) The insurer, or in the case of claims involving the uninsured employer's claim fund or a subsequent injury fund the administrator, has a lien upon the total amount paid by the employer if the injured employee or his dependents receive compensation pursuant to the provisions of chapters 616A to 616D, inclusive, or chapter 617 of NRS.

This subsection is applicable whether the money paid to the employee or his dependents by the employer is classified as a gift, a settlement or otherwise. The provisions of this subsection do not grant to an injured employee any right of action in tort to recover damages from his employer for his injury.

2. When an employee receives an injury for which compensation is payable pursuant to the provisions of chapters 616A to 616D, inclusive, or chapter 617 of NRS and which was caused under circumstances creating a legal liability in some person, other than the employer or a person in the same employ, to pay damages in respect thereof:

(a) The injured employee, or in case of death his dependents, may take proceedings against that person to recover damages, but the amount of the compensation the injured employee or his dependents are entitled to receive pursuant to the provisions of chapters 616A to 616D, inclusive, or chapter 617 of NRS, including any future compensation, must be reduced by the amount of the damages recovered, notwithstanding any act or omission of the employer or a person in the same employ which was a direct or proximate cause of the employee's injury.

(b) If the injured employee, or in case of death his dependents, receive compensation pursuant to the provisions of chapters 616A to 616D, inclusive, or chapter 617 of NRS, the insurer, or in case of claims involving the uninsured employers' claim fund or a subsequent injury fund the administrator, has a right of action against the person so liable to pay damages and is subrogated to the rights of the injured employee or of his dependents to recover therefor.

3. When an injured employee incurs an injury for which compensation is payable pursuant to the provisions of chapters 616A to 616D, inclusive, or chapter 617 of NRS and which was caused under circumstances entitling him, or in the case of death his dependents, to receive proceeds under his employer's policy of uninsured or underinsured vehicle coverage:

(a) The injured employee, or in the case of death his dependents, may take proceedings to recover those proceeds, but the amount of compensation the injured employee or his dependents are entitled to receive pursuant to the provisions of chapters 616A to 616D, inclusive, or chapter 617 of NRS, including any future compensation, must be reduced by the amount of proceeds received.

(b) If an injured employee, or in the case of death his dependents, receive compensation pursuant to the provisions of chapters 616A to 616D, inclusive, or chapter 617 of NRS, the insurer, or in the case of claims involving the uninsured employers' claim fund or a subsequent injury fund the administrator, is subrogated to the rights of the injured employee or his dependents to recover proceeds under the employer's policy of uninsured or underinsured vehicle coverage. The insurer and the administrator are not subrogated to the rights of an injured employee or his dependents under a policy of uninsured or underinsured vehicle coverage purchased by the employee.

4. In any action or proceedings taken by the insurer or the administrator pursuant to this section, evidence of the amount of compensation, accident benefits and other expenditures which the insurer, the uninsured employers' claim fund or a subsequent injury fund have paid or become obligated to pay by reason of the injury or death of the employee is admissible. If in such action or proceedings the insurer or the administrator recovers more than those amounts, the excess must be paid to the injured employee or his dependents.

5. In any case where the insurer or the administrator is subrogated to the rights of the injured employee or of his dependents as provided in subsection 2 or 3, the insurer or the administrator has a lien upon the total proceeds of any recovery from some person other than the employer, whether the proceeds of such recovery are by way of judgment, settlement or otherwise. The injured employee, or in the case of his death his dependents, are not entitled to double recovery for the same injury, notwithstanding any act or omission of the employer or a person in the same employ which was a direct or proximate cause of the employee's injury.

6. The lien provided for ~~under~~ *pursuant to* subsection 1 or 5 includes the total compensation expenditure incurred by the insurer, the uninsured employers' claim fund or a subsequent injury fund for the injured employee and his dependents.

7. An injured employee, or in the case of death his dependents, *or the attorney or representative of the injured employee or his dependents*, shall notify the insurer, or in the case of claims involving the uninsured employers' claim fund or a subsequent injury fund the administrator, in writing before initiating a proceeding or action pursuant to this section.

8. Within 15 days after the date of recovery by way of actual receipt of the proceeds of the judgment, settlement or otherwise:

(a) The injured employee or his dependents, or the attorney or representative of the injured employee or his dependents; and

(b) The third-party insurer, shall notify the insurer, or in the case of claims involving the uninsured employers' claim fund or a subsequent injury fund the administrator, of the recovery and pay to the insurer or the administrator, respectively, the amount due ~~under~~ *pursuant to* this section together with an itemized statement showing the distribution of the total recovery. The attorney or representative of the injured employee or his dependents and the third-party insurer are jointly and severally liable for any amount to which an insurer is entitled pursuant to this section if the attorney, representative or third-party insurer has knowledge of the lien provided for in this section.

9. An insurer shall not sell its lien to a third-party insurer unless the injured employee or his dependents, or the attorney or representative of the injured employee or his dependents, refuses to provide to the insurer information concerning the action against the third party.

10. In any trial of an action by the injured employee, or in the case of his death by his dependents, against a person other than the employer or a person in the same employ, the jury must receive proof of the amount of all payments made or to be made by the insurer or the administrator. The court shall instruct the jury substantially as follows:

Payment of workmen's compensation benefits by the insurer, or in the case of claims involving the uninsured employers' claim fund or a subsequent injury fund the administrator, is based upon the fact that a compensable industrial accident occurred, and does not depend upon blame or fault. If the plaintiff does not obtain a judgment in his favor in this case, he is not required to repay his employer, the insurer or the administrator any amount paid to him or paid on his behalf by his employer, the insurer or the administrator.

If you decide that the plaintiff is entitled to judgment against the defendant, you shall find his damages in accordance with the court's instructions on damages and return your verdict in the plaintiff's favor in the amount so found without deducting the amount of any

compensation benefits paid to or for the plaintiff. The law provides a means by which any compensation benefits will be repaid from your award.

11. To calculate an employer's premium, the employer's account with the system must be credited with an amount equal to that recovered by the system from a third party pursuant to this section, less the system's share of the expenses of litigation incurred in obtaining the recovery, except that the total credit must not exceed the amount of compensation actually paid or reserved by the system on the injured employee's claim.

12. As used in this section, "third-party insurer" means an insurer that issued to a third party who is liable for damages pursuant to subsection 2, a policy of liability insurance the proceeds of which are recoverable pursuant to this section. The term includes an insurer that issued to an employer a policy of uninsured or underinsured vehicle coverage.

Sec. 2. This act becomes effective at 12:01 a.m. on October 1, 1999.

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