

SENATE BILL NO. 64—COMMITTEE ON COMMERCE AND LABOR

PREFILED JANUARY 29, 1999

(ON BEHALF OF LEGISLATIVE COMMITTEE ON WORKERS' COMPENSATION)

Referred to Committee on Commerce and Labor

SUMMARY—Authorizes notice of civil action to recover damages for industrial injury to be given by attorney or representative of injured employee or his dependents. (BDR 53-1077)

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

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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; 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:

- 1 **Section 1.** NRS 616C.215 is hereby amended to read as follows:
2 616C.215 1. If an injured employee or, in the event of his death, his
3 dependents, bring an action in tort against his employer to recover payment
4 for an injury which is compensable ~~under~~ *pursuant to the provisions of*
5 chapters 616A to 616D, inclusive, or chapter 617 of NRS and,
6 notwithstanding the provisions of NRS 616A.020, receive payment from
7 the employer for that injury:
8 (a) The amount of compensation the injured employee or his dependents
9 are entitled to receive pursuant to the provisions of chapters 616A to 616D,
10 inclusive, or chapter 617 of NRS, including any future compensation, must
11 be reduced by the amount paid by the employer.
12 (b) The insurer, or in the case of claims involving the uninsured
13 employer's claim fund or a subsequent injury fund the administrator, has a
14 lien upon the total amount paid by the employer if the injured employee or

1 his dependents receive compensation pursuant to the provisions of chapters
2 616A to 616D, inclusive, or chapter 617 of NRS.

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

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

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

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

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

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

39 (b) If an injured employee, or in the case of death his dependents,
40 receive compensation pursuant to the provisions of chapters 616A to 616D,
41 inclusive, or chapter 617 of NRS, the insurer, or in the case of claims
42 involving the uninsured employers' claim fund or a subsequent injury fund
43 the administrator, is subrogated to the rights of the injured employee or his

1 dependents to recover proceeds under the employer's policy of uninsured
2 or underinsured vehicle coverage. The insurer and the administrator are not
3 subrogated to the rights of an injured employee or his dependents under a
4 policy of uninsured or underinsured vehicle coverage purchased by the
5 employee.

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

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

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

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

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

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

37 (b) The third-party insurer,
38 shall notify the insurer, or in the case of claims involving the uninsured
39 employers' claim fund or a subsequent injury fund the administrator, of the
40 recovery and pay to the insurer or the administrator, respectively, the
41 amount due ~~under~~ *pursuant to* this section together with an itemized
42 statement showing the distribution of the total recovery. The attorney or
43 representative of the injured employee or his dependents and the third-party

1 insurer are jointly and severally liable for any amount to which an insurer is
2 entitled pursuant to this section if the attorney, representative or third-party
3 insurer has knowledge of the lien provided for in this section.

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

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

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

22 If you decide that the plaintiff is entitled to judgment against the
23 defendant, you shall find his damages in accordance with the court's
24 instructions on damages and return your verdict in the plaintiff's favor
25 in the amount so found without deducting the amount of any
26 compensation benefits paid to or for the plaintiff. The law provides a
27 means by which any compensation benefits will be repaid from your
28 award.

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

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

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