

SENATE BILL NO. 94—COMMITTEE ON COMMERCE AND LABOR

(ON BEHALF OF LEGISLATIVE COMMITTEE ON WORKERS' COMPENSATION)

FEBRUARY 3, 1999

Referred to Committee on Commerce and Labor

SUMMARY—Provides formula for distribution among injured employee or dependents, attorney and certain other persons of damages recovered by injured employee in tort action against third party. (BDR 53-1076)

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 ~~omitted material~~ is material to be omitted.

AN ACT relating to industrial insurance; providing a formula for the distribution among an injured employee or his dependents, his attorney and certain other persons of damages recovered under certain circumstances from a party other than the employer when that party is legally liable for the industrial injury of the employee; 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, of NRS, including any future compensation, must be reduced by
11 the amount paid by the employer.
12 (b) The insurer, or in the case of claims involving the uninsured employer's claim
13 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, 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, of
10 NRS and which was caused under circumstances creating a legal liability in
11 some person, other than the employer or a person in the same employ, to
12 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, of
17 NRS, including any future compensation, must be reduced by the amount of
18 the damages recovered, notwithstanding any act or omission of the
19 employer or a person in the same employ which was a direct or proximate
20 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, of NRS, the insurer, or in case of claims involving the uninsured
24 employers' claim fund or a subsequent injury fund the administrator, has a
25 right of action against the person so liable to pay damages and is
26 subrogated to the rights of the injured employee or of his dependents to
27 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 of NRS and which was caused under circumstances entitling him, or in the
31 case of death his dependents, to receive proceeds under his employer's
32 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, of
37 NRS, including any future compensation, must be reduced by the amount of
38 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, of NRS, the insurer, or in the case of claims involving the uninsured
42 employers' claim fund or a subsequent injury fund the
43 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. ***Unless the parties have agreed otherwise, if an injured employee,***
29 ***or in the case of his death his dependents, have initiated a proceeding or***
30 ***action pursuant to subsection 2 or 3 and the insurer, or in the case of***
31 ***claims involving the uninsured employer's claim fund or a subsequent***
32 ***injury fund the administrator, has not intervened in such proceeding or***
33 ***action, out of the damages recovered or the proceeds received:***

34 ***(a) The injured employee is entitled to at least one-third, regardless of***
35 ***the amount of the lien of:***

36 ***(1) The insurer; or***

37 ***(2) In the case of claims involving the uninsured employer's claim***
38 ***fund or a subsequent injury fund, the administrator.***

39 ***(b) The remainder after allocating the amount set forth in paragraph***
40 ***(a) or the amount of the lien of the insurer or the administrator, whichever is less,***
41 ***must be paid to the insurer or the administrator, as***
42 ***applicable.***

1 ***(c) If the lien of the insurer or administrator is for an amount that***
2 ***equals less than two-thirds of the damages recovered or the proceeds***
3 ***received, the injured employee is also entitled to the difference between***
4 ***that amount and the amount of the lien.***

5 ***(d) Costs and attorney's fees must not be apportioned in a manner***
6 ***inconsistent with the provisions of this subsection.***

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

11 ~~{8.}~~ **9.** Within 15 days after the date of recovery by way of actual
12 receipt of the proceeds of the judgment, settlement or otherwise:

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

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

25 ~~{9.}~~ **10.** An insurer shall not sell its lien to a third-party insurer unless
26 the injured employee or his dependents, or the attorney or representative of
27 the injured employee or his dependents, refuses to provide to the insurer
28 information concerning the action against the third party.

29 ~~{10.}~~ **11.** In any trial of an action by the injured employee, or in the
30 case of his death by his dependents, against a person other than the
31 employer or a person in the same employ, the jury must receive proof of the
32 amount of all payments made or to be made by the insurer or the
33 administrator. The court shall instruct the jury substantially as follows:

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

1 If you decide that the plaintiff is entitled to judgment against the
2 defendant, you shall find his damages in accordance with the court's
3 instructions on damages and return your verdict in the plaintiff's
4 favor in the amount so found without deducting the amount of any
5 compensation benefits paid to or for the plaintiff. The law provides
6 a means by which any compensation benefits will be repaid from
7 your award.
8

9 ~~[11.]~~ 12. For the purposes of calculating ~~[an employer's premium,]~~ **the**
10 **premium of an employer who is insured by the system**, the employer's
11 account with the system must be credited with an amount equal to that
12 recovered by the system from a third party pursuant to this section, less the
13 system's share of the expenses of litigation incurred in obtaining the
14 recovery, except that the total credit must not exceed the amount of
15 compensation actually paid or reserved by the system on the injured
16 employee's claim.

17 ~~[12.]~~ 13. As used in this section ~~[, "third-party insurer"]~~ :

18 (a) **"Damages recovered" means the amount of money actually**
19 **received from the person other than the employer or person in the same**
20 **employ against whom a proceeding or action is initiated pursuant to**
21 **subsection 2, less the costs and any attorney's fees incurred in obtaining**
22 **such money.**

23 (b) **"Proceeds received" means the amount of money actually received**
24 **from the employer's policy of uninsured or underinsured vehicle**
25 **coverage, less the costs and any attorney's fees incurred in obtaining**
26 **such money.**

27 (c) **"Third-party insurer"** means an insurer that issued to a third party
28 who is liable for damages pursuant to subsection 2, a policy of liability
29 insurance the proceeds of which are recoverable pursuant to this section.
30 The term includes an insurer that issued to an employer a policy of
31 uninsured or underinsured vehicle coverage.