SENATE BILL NO. 95–COMMITTEE ON COMMERCE AND LABOR

(ON BEHALF OF LEGISLATIVE COMMITTEE ON WORKERS' COMPENSATION)

FEBRUARY 3, 1999

Referred to Committee on Commerce and Labor

SUMMARY—Makes various changes to provisions relating to provision of benefits for industrial insurance. (BDR 53-386)

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 ~~[omitted material]~~ is material to be omitted.

AN ACT relating to industrial insurance; requiring a person who endorses a check that is issued by an insurer for payment of certain benefits for industrial insurance to certify that he is entitled to those benefits; revising the provisions governing the payment of compensation if an injury or condition that is not related to employment is involved; limiting the circumstances under which an insurer may determine that a disability is a permanent total disability; requiring rating evaluations for permanent partial disability to be based upon certain objective findings; removing the limitation on the payment of a death benefit for the transportation of the remains of a deceased employee beyond the continental limits of the United States; 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. Chapter 616C of NRS is hereby amended by adding thereto a new section to read as follows:

1. Each check issued by an insurer pursuant to the provisions of chapters 616A to 616D, inclusive, or chapter 617 of NRS for temporary total disability, temporary partial disability or permanent total disability must include a restrictive endorsement that is substantially similar to the following statement:

By endorsing this check for temporary total disability, temporary partial disability or permanent total disability, I certify under penalty of perjury that I have been continuously disabled and either

> ***unable to work or working in a manner authorized pursuant to chapters 616A to 616D, inclusive, or chapter 617 of NRS for the type of benefits this check provides for the 14 days immediately preceding the date of this check. I understand that any false statement to obtain benefits is a crime which is punishable as a misdemeanor or as a category D felony and requires restitution pursuant to NRS 616D.300.***

2. Each check issued by an insurer pursuant to the provisions of chapters 616A to 616D, inclusive, or chapter 617 of NRS for rehabilitation maintenance benefits must include a restrictive endorsement that is substantially similar to the following statement:

> ***By endorsing this check for rehabilitation maintenance benefits, I certify under penalty of perjury that I have been participating in a program of vocational rehabilitation and have not been working at a job without the approval of my employer's insurer for the 14 days immediately preceding the date of this check. I understand that any false statement to obtain benefits is a crime which is punishable as a misdemeanor or as a category D felony and requires restitution pursuant to NRS 616D.300.***

3. For the purposes of chapters 616A to 616D, inclusive, or chapter 617 of NRS, the issuance, endorsement or negotiation of a check described in subsection 1 or 2 creates a rebuttable presumption that the person named on the check received, endorsed or negotiated the check.

Sec. 2. NRS 616C.175 is hereby amended to read as follows:

616C.175 1. An employee is not entitled to compensation pursuant to the provisions of chapters 616A to 616D, inclusive, of NRS if:

(a) He has a preexisting condition from a cause or origin that did not arise out of or in the course of his current or past employment; and

(b) He subsequently sustains an injury by accident arising out of and in the course of his employment **[**~~which aggravates, precipitates or accelerates his~~**]** ***that affects the same parts or functions of the body as the*** preexisting condition,

unless information from a physician or chiropractor establishes to the satisfaction of the insurer that the subsequent injury **[**~~is the primary cause~~**]** ***contributed more to the development*** of the resulting condition **[**~~.~~**]** ***than the preexisting condition.***

2. An employee is not entitled to compensation pursuant to the provisions of chapters 616A to 616D, inclusive, of NRS if:

(a) He sustains an injury by accident arising out of and in the course of his employment; and

(b) He subsequently aggravates, precipitates or accelerates the injury in a manner that does not arise out of and in the course of his employment, unless the injury described in paragraph (a) ~~[is the primary cause]~~ ***contributed more to the development*** of the resulting condition ~~[.]~~ ***than the effect described in paragraph (b).***

Sec. 3. NRS 616C.435 is hereby amended to read as follows:

616C.435 1. In cases of the following specified injuries, in the absence of proof to the contrary, the disability caused thereby shall be deemed total and permanent:

(a) The total and permanent loss of sight of both eyes.

(b) The loss by separation of both legs at or above the knee.

(c) The loss by separation of both arms at or above the elbow.

(d) An injury to the spine resulting in permanent and complete paralysis of both legs or both arms, or one leg and one arm.

(e) An injury to the skull resulting in incurable imbecility or insanity.

(f) The loss by separation of one arm at or above the elbow, and one leg by separation at or above the knee.

2. The enumeration in subsection 1 is not exclusive ***.*** ~~[, and in all other]~~ ***In all*** cases ***not specified in subsection 1, an insurer shall determine whether the disability of an injured employee is a*** permanent total disability ~~[must be determined by the insurer]~~ in accordance with the facts presented ~~[.]~~ ***and the provisions of this subsection. An insurer shall not determine that a disability of an injured employee is a permanent total disability unless information submitted by a physician or chiropractor establishes to the satisfaction of the insurer that the industrial injury or occupational disease contributed more to the impairment of his earning capacity or ability to retain or obtain employment than all other conditions or characteristics of the injured employee.***

Sec. 4. NRS 616C.490 is hereby amended to read as follows:

616C.490 1. Except as otherwise provided in NRS 616C.175, every employee, in the employ of an employer within the provisions of chapters 616A to 616D, inclusive, of NRS, who is injured by an accident arising out of and in the course of employment is entitled to receive the compensation provided for permanent partial disability. As used in this section, "disability" and "impairment of the whole man" are equivalent terms.

2. Within 30 days after receiving from a physician or chiropractor a report indicating that the injured employee may have suffered a permanent disability and is stable and ratable, the insurer shall schedule an appointment with a rating physician or chiropractor to determine the extent of the employee's disability. The insurer shall select a physician or chiropractor from a group of rating physicians and chiropractors designated by the administrator, to determine the percentage of disability in accordance with the American Medical Association's Guides to the

Evaluation of Permanent Impairment as adopted and supplemented by the division pursuant to NRS 616C.110. Rating physicians and chiropractors must be selected in rotation from the list of qualified physicians and chiropractors designated by the administrator, according to their area of specialization and the order in which their names appear on the list.

3. At the request of the insurer, the injured employee shall, before an evaluation by a rating physician or chiropractor is performed, notify the insurer of:

(a) Any previous evaluations performed to determine the extent of any of the employee's disabilities; and

(b) Any previous injury, disease or condition sustained by the employee which is relevant to the evaluation performed pursuant to this section.

The notice must be on a form approved by the administrator and provided to the injured employee by the insurer at the time of the insurer's request.

4. Unless the regulations adopted pursuant to NRS 616C.110 provide otherwise, a rating evaluation must include an evaluation of the loss of motion, sensation and strength of an injured employee if the injury is of a type that might have caused such a loss. ***A rating evaluation conducted pursuant to this section:***

(a) Must be based upon objective medical findings; and

(b) Must not be based upon subjective pain.

No factors other than the degree of physical impairment of the whole man may be considered in calculating the entitlement to compensation for a permanent partial disability.

5. The rating physician or chiropractor shall provide the insurer with his evaluation of the injured employee. After receiving the evaluation, the insurer shall, within 14 days, provide the employee with a copy of the evaluation and notify the employee:

(a) Of the compensation to which he is entitled pursuant to this section; or

(b) That he is not entitled to benefits for permanent partial disability.

6. Each 1 percent of impairment of the whole man must be compensated by a monthly payment:

(a) Of 0.5 percent of the claimant's average monthly wage for injuries sustained before July 1, 1981;

(b) Of 0.6 percent of the claimant's average monthly wage for injuries sustained on or after July 1, 1981, and before June 18, 1993; and

(c) Of 0.54 percent of the claimant's average monthly wage for injuries sustained on or after June 18, 1993.

Compensation must commence on the date of the injury or the day following the termination of temporary disability compensation, if any, whichever is later, and must continue on a monthly basis for 5 years or until the claimant is 70 years of age, whichever is later.

7. Compensation benefits may be paid annually to claimants who will be receiving less than $100 a month.

8. Where there is a previous disability, as the loss of one eye, one hand, one foot, or any other previous permanent disability, the percentage of disability for a subsequent injury must be determined by computing the percentage of the entire disability and deducting therefrom the percentage of the previous disability as it existed at the time of the subsequent injury.

9. The division may adopt schedules for rating permanent disabilities resulting from injuries sustained before July 1, 1973, and reasonable regulations to carry out the provisions of this section.

10. The increase in compensation and benefits effected by the amendment of this section is not retroactive for accidents which occurred before July 1, 1973.

11. This section does not entitle any person to double payments for the death of an employee and a continuation of payments for a permanent partial disability, or to a greater sum in the aggregate than if the injury had been fatal.

Sec. 5. NRS 616C.505 is hereby amended to read as follows:

616C.505 If an injury by accident arising out of and in the course of employment causes the death of an employee in the employ of an employer, within the provisions of chapters 616A to 616D, inclusive, of NRS, the compensation is known as a death benefit, and is payable as follows:

1. In addition to any other compensation payable pursuant to chapters 616A to 616D, inclusive, of NRS, burial expenses are payable in an amount not to exceed $5,000. When the remains of the deceased employee and the person accompanying the remains are to be transported to a mortuary or mortuaries, the charge of transportation must be borne by the insurer **.** **[**~~if the transportation is not beyond the continental limits of the United States.~~**]**

2. To the surviving spouse of the deceased employee, 66 2/3 percent of the average monthly wage is payable until his death or remarriage, with 2 years' compensation payable in one lump sum upon remarriage.

3. In the event of the subsequent death of the surviving spouse:

(a) Each surviving child of the deceased employee must share equally the compensation theretofore paid to the surviving spouse but not in excess thereof, and it is payable until the youngest child reaches the age of 18 years.

(b) Except as otherwise provided in subsection 11, if the children have a guardian, the compensation they are entitled to receive may be paid to the guardian.

4. Upon the remarriage of a surviving spouse with children:

(a) The surviving spouse must be paid 2 years' compensation in one lump sum and further benefits must cease; and

(b) Each child must be paid 15 percent of the average monthly wage, up to a maximum family benefit of 66 2/3 percent of the average monthly wage.

5. If there are any surviving children of the deceased employee under the age of 18 years, but no surviving spouse, then each such child is entitled to his proportionate share of 66 2/3 percent of the average monthly wage for his support.

6. Except as otherwise provided in subsection 7, if there is no surviving spouse or child under the age of 18 years, there must be paid:

(a) To a parent, if wholly dependent for support upon the deceased employee at the time of the injury causing his death, 33 1/3 percent of the average monthly wage.

(b) To both parents, if wholly dependent for support upon the deceased employee at the time of the injury causing his death, 66 2/3 percent of the average monthly wage.

(c) To each brother or sister until he or she reaches the age of 18 years, if wholly dependent for support upon the deceased employee at the time of the injury causing his death, his proportionate share of 66 2/3 percent of the average monthly wage.

7. The aggregate compensation payable pursuant to subsection 6 must not exceed 66 2/3 percent of the average monthly wage.

8. In all other cases involving a question of total or partial dependency:

(a) The extent of the dependency must be determined in accordance with the facts existing at the time of the injury.

(b) If the deceased employee leaves dependents only partially dependent upon his earnings for support at the time of the injury causing his death, the monthly compensation to be paid must be equal to the same proportion of the monthly payments for the benefit of persons totally dependent as the amount contributed by the deceased employee to the partial dependents bears to the average monthly wage of the deceased employee at the time of the injury resulting in his death.

(c) The duration of compensation to partial dependents must be fixed in accordance with the facts shown, but may not exceed compensation for 100 months.

9. Compensation payable to a surviving spouse is for the use and benefit of the surviving spouse and the dependent children, and the insurer may, from time to time, apportion such compensation between them in such a way as it deems best for the interest of all dependents.

10. In the event of the death of any dependent specified in this section before the expiration of the time during which compensation is payable to him, funeral expenses are payable in an amount not to exceed $5,000.

11. If a dependent is entitled to receive a death benefit pursuant to this section and is less than 18 years of age or incompetent, the legal representative of the dependent shall petition for a guardian to be appointed for that dependent pursuant to NRS 159.044. An insurer shall not pay any compensation in excess of $3,000, other than burial expenses, to the dependent until a guardian is appointed and legally qualified. Upon receipt of a certified letter of guardianship, the insurer shall make all payments required by this section to the guardian of the dependent until the dependent is emancipated, the guardianship terminates or the dependent reaches the age of 18 **[~~,~~]** ***years,*** whichever occurs first, unless paragraph (a) of subsection 12 is applicable. The fees and costs related to the guardianship must be paid from the estate of the dependent. A guardianship established pursuant to this subsection must be administered in accordance with chapter 159 of NRS, except that after the first annual review required pursuant to NRS 159.176, a court may elect not to review the guardianship annually. The court shall review the guardianship at least once every 3 years. As used in this subsection, “incompetent” has the meaning ascribed to it in NRS 159.019.

12. Except as otherwise provided in paragraphs (a) and (b), the entitlement of any child to receive his proportionate share of compensation pursuant to this section ceases when he dies, marries or reaches the age of 18 years. A child is entitled to continue to receive compensation pursuant to this section if he is:

(a) Over 18 years of age and incapable of supporting himself, until such time as he becomes capable of supporting himself; or

(b) Over 18 years of age and enrolled as a full-time student in an accredited vocational or educational institution, until he reaches the age of 22 years.

13. As used in this section, “surviving spouse” means a surviving husband or wife who was married to the employee at the time of the employee’s death.

Sec. 6. NRS 616D.300 is hereby amended to read as follows:

616D.300 Unless a different penalty is provided pursuant to NRS 616D.370 to 616D.410, inclusive, a person who knowingly makes a false statement or representation, including, but not limited to, a false statement or representation relating to his identity or the identity of another person, or who knowingly conceals a material fact to obtain or attempt to obtain any benefit, including a controlled substance, or payment under the provisions of this chapter or chapter 616A, 616B ***,*** **[~~or~~]** 616C ***or 617*** of NRS, either for himself or for any other person, shall be punished as follows:

1. If the amount of the benefit or payment obtained or attempted to be obtained was less than $250, for a misdemeanor.

2. If the amount of the benefit or payment obtained or attempted to be obtained was $250 or more, for a category D felony as provided in NRS 193.130.

In addition to any other penalty, the court shall order the person to pay restitution.

Sec. 7. NRS 617.366 is hereby amended to read as follows:

617.366 1. An employee is not entitled to compensation pursuant to the provisions of this chapter if:

(a) He has a preexisting condition from a cause or origin that did not arise out of and in the course of his current or past employment; and

(b) He subsequently contracts an occupational disease **[**~~which aggravates, precipitates or accelerates his~~**]** ***that affects the same parts or functions of the body as the*** preexisting condition,

unless information from a physician or chiropractor establishes to the satisfaction of the insurer that the occupational disease **[**~~is the primary cause~~**]** ***contributed more to the development*** of the resulting condition **[**~~.~~**]** ***than the preexisting condition.***

2. An employee is not entitled to compensation pursuant to the provisions of this chapter if:

(a) He contracts an occupational disease; and

(b) He subsequently aggravates, precipitates or accelerates the occupational disease in a manner that does not arise out of and in the course of his employment,

unless the occupational disease **[**~~is the primary cause~~**]** ***described in paragraph (a) contributed more to the development*** of the resulting condition **[**~~.~~**]** ***than the effect described in paragraph (b).***

Sec. 8. This act becomes effective on July 1, 1999.

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