

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 ~~for 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; requiring that a test of an injured employee for the presence of alcohol or a controlled substance be performed by a laboratory that is licensed by the health division of the department of human resources; 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:

- 1 **Section 1.** Chapter 616C of NRS is hereby amended by adding thereto
- 2 a new section to read as follows:
- 3 ***1. Each check issued by an insurer pursuant to the provisions of***
- 4 ***chapters 616A to 616D, inclusive, or chapter 617 of NRS for temporary***
- 5 ***total disability, temporary partial disability, permanent total disability,***
- 6 ***permanent partial disability or rehabilitation maintenance benefits must***
- 7 ***include a restrictive endorsement that is substantially similar to the***
- 8 ***following statement:***

1 *By endorsing this check for temporary total disability, temporary*
2 *partial disability, permanent total disability, permanent partial disability*
3 *or rehabilitation maintenance benefits, I certify under penalty of*
4 *imposition of a fine or imprisonment, or both, that I am entitled to the*
5 *benefits for workers' compensation represented by this check, that the*
6 *circumstances which entitled me to benefits for workers' compensation*
7 *have not changed since my claim was accepted or since I received the last*
8 *payment and that no false statements or representations have been made*
9 *to obtain these benefits.*

10
11 *2. For the purposes of chapters 616A to 616D, inclusive, or chapter*
12 *617 of NRS, the issuance, endorsement or negotiation of a check*
13 *described in subsection 1 creates a rebuttable presumption that the*
14 *person named on the check received, endorsed or negotiated the check.*

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

16 616C.175 1. An employee is not entitled to compensation pursuant to
17 the provisions of chapters 616A to 616D, inclusive, of NRS if:

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

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

24 unless information from a physician or chiropractor establishes to the
25 satisfaction of the insurer that the subsequent injury ~~{is the primary cause}~~
26 *contributed more to the development* of the resulting condition ~~{-}~~ *than the*
27 *preexisting condition.*

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

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

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

37 **Sec. 3.** NRS 616C.230 is hereby amended to read as follows:

38 616C.230 1. Compensation is not payable pursuant to the provisions
39 of chapters 616A to 616D, inclusive, of NRS for an injury:

40 (a) Caused by the employee's willful intention to injure himself.

41 (b) Caused by the employee's willful intention to injure another.

1 (c) Proximately caused by the employee's intoxication. If the employee
2 was intoxicated at the time of his injury, intoxication must be presumed to
3 be a proximate cause unless rebutted by evidence to the contrary.

4 (d) Proximately caused by the employee's use of a controlled substance.
5 If the employee had any amount of a controlled substance in his system at
6 the time of his injury for which the employee did not have a current and
7 lawful prescription issued in his name, the controlled substance must be
8 presumed to be a proximate cause unless rebutted by evidence to the
9 contrary.

10 2. For the purposes of paragraphs (c) and (d) of subsection 1:

11 (a) The affidavit or declaration of an expert or other person described in
12 NRS 50.315 is admissible to prove the existence of any alcohol or the
13 existence, quantity or identity of a controlled substance in an employee's
14 system. If the affidavit or declaration is to be so used, it must be submitted
15 in the manner prescribed in NRS 616C.355.

16 (b) When an examination requested or ordered includes testing for the
17 use of alcohol or a controlled substance , ~~the~~

18 ~~—(1) If the laboratory that conducts the testing is located in a county~~
19 ~~whose population is 100,000 or more and the testing is of urine, the~~
20 ~~laboratory] must be [certified for forensic testing of urine for drugs by the~~
21 ~~College of American Pathologists or a successor organization or by the~~
22 ~~federal Department of Health and Human Services; and~~

23 ~~—(2) Any such testing of breath for alcohol must be performed pursuant~~
24 ~~to the regulations of the federal Department of Transportation.]~~ **licensed**
25 **pursuant to the provisions of chapter 652 of NRS.**

26 3. No compensation is payable for the death, disability or treatment of
27 an employee if his death is caused by, or insofar as his disability is
28 aggravated, caused or continued by, an unreasonable refusal or neglect to
29 submit to or to follow any competent and reasonable surgical treatment or
30 medical aid.

31 4. If any employee persists in an unsanitary or injurious practice that
32 imperils or retards his recovery, or refuses to submit to such medical or
33 surgical treatment as is necessary to promote his recovery, his
34 compensation may be reduced or suspended.

35 5. An injured employee's compensation, other than accident benefits,
36 must be suspended if:

37 (a) A physician or chiropractor determines that the employee is unable
38 to undergo treatment, testing or examination for the industrial injury solely
39 because of a condition or injury that did not arise out of and in the course
40 of his employment; and

(b) It is within the ability of the employee to correct the nonindustrial condition or injury.

The compensation must be suspended until the injured employee is able to resume treatment, testing or examination for the industrial injury. The insurer may elect to pay for the treatment of the nonindustrial condition or injury.

Sec. 4. 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. 5. 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

1 accordance with the American Medical Association's Guides to the
2 Evaluation of Permanent Impairment as adopted and supplemented by the
3 division pursuant to NRS 616C.110. Rating physicians and chiropractors
4 must be selected in rotation from the list of qualified physicians and
5 chiropractors designated by the administrator, according to their area of
6 specialization and the order in which their names appear on the list.

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

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

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

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

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

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

22 (b) *Must not be based upon subjective pain.*

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

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

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

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

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

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

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

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

41 Compensation must commence on the date of the injury or the day
42 following the termination of temporary disability compensation, if any,

1 whichever is later, and must continue on a monthly basis for 5 years or until
2 the claimant is 70 years of age, whichever is later.

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

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

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

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

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

20 **Sec. 6.** NRS 616C.505 is hereby amended to read as follows:

21 616C.505 If an injury by accident arising out of and in the course of
22 employment causes the death of an employee in the employ of an employer,
23 within the provisions of chapters 616A to 616D, inclusive, of NRS, the
24 compensation is known as a death benefit, and is payable as follows:

25 1. In addition to any other compensation payable pursuant to chapters
26 616A to 616D, inclusive, of NRS, burial expenses are payable in an amount
27 not to exceed \$5,000. When the remains of the deceased employee and the
28 person accompanying the remains are to be transported to a mortuary or
29 mortuaries, the charge of transportation must be borne by the insurer. ~~If~~

30 ~~the transportation is not beyond the continental limits of the United States.]~~

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

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

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

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

- 1 4. Upon the remarriage of a surviving spouse with children:
- 2 (a) The surviving spouse must be paid 2 years' compensation in one
- 3 lump sum and further benefits must cease; and
- 4 (b) Each child must be paid 15 percent of the average monthly wage, up
- 5 to a maximum family benefit of $66\frac{2}{3}$ percent of the average monthly
- 6 wage.
- 7 5. If there are any surviving children of the deceased employee under
- 8 the age of 18 years, but no surviving spouse, then each such child is entitled
- 9 to his proportionate share of $66\frac{2}{3}$ percent of the average monthly wage
- 10 for his support.
- 11 6. Except as otherwise provided in subsection 7, if there is no surviving
- 12 spouse or child under the age of 18 years, there must be paid:
- 13 (a) To a parent, if wholly dependent for support upon the deceased
- 14 employee at the time of the injury causing his death, $33\frac{1}{3}$ percent of the
- 15 average monthly wage.
- 16 (b) To both parents, if wholly dependent for support upon the deceased
- 17 employee at the time of the injury causing his death, $66\frac{2}{3}$ percent of the
- 18 average monthly wage.
- 19 (c) To each brother or sister until he or she reaches the age of 18 years,
- 20 if wholly dependent for support upon the deceased employee at the time of
- 21 the injury causing his death, his proportionate share of $66\frac{2}{3}$ percent of the
- 22 average monthly wage.
- 23 7. The aggregate compensation payable pursuant to subsection 6 must
- 24 not exceed $66\frac{2}{3}$ percent of the average monthly wage.
- 25 8. In all other cases involving a question of total or partial dependency:
- 26 (a) The extent of the dependency must be determined in accordance with
- 27 the facts existing at the time of the injury.
- 28 (b) If the deceased employee leaves dependents only partially dependent
- 29 upon his earnings for support at the time of the injury causing his death, the
- 30 monthly compensation to be paid must be equal to the same proportion of
- 31 the monthly payments for the benefit of persons totally dependent as the
- 32 amount contributed by the deceased employee to the partial dependents
- 33 bears to the average monthly wage of the deceased employee at the time of
- 34 the injury resulting in his death.
- 35 (c) The duration of compensation to partial dependents must be fixed in
- 36 accordance with the facts shown, but may not exceed compensation for 100
- 37 months.
- 38 9. Compensation payable to a surviving spouse is for the use and
- 39 benefit of the surviving spouse and the dependent children, and the insurer
- 40 may, from time to time, apportion such compensation between them in such
- 41 a way as it deems best for the interest of all dependents.

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

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

22 12. Except as otherwise provided in paragraphs (a) and (b), the
23 entitlement of any child to receive his proportionate share of compensation
24 pursuant to this section ceases when he dies, marries or reaches the age of
25 18 years. A child is entitled to continue to receive compensation pursuant
26 to this section if he is:

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

29 (b) Over 18 years of age and enrolled as a full-time student in an
30 accredited vocational or educational institution, until he reaches the age of
31 22 years.

32 13. As used in this section, "surviving spouse" means a surviving
33 husband or wife who was married to the employee at the time of the
34 employee's death.

35 **Sec. 7.** NRS 616D.300 is hereby amended to read as follows:

36 616D.300 Unless a different penalty is provided pursuant to NRS
37 616D.370 to 616D.410, inclusive, a person who knowingly makes a false
38 statement or representation, including, but not limited to, a false statement
39 or representation relating to his identity or the identity of another person, or
40 who knowingly conceals a material fact to obtain or attempt to obtain any
41 benefit, including a controlled substance, or payment under the provisions
42 of this chapter or chapter 616A, 616B, ~~616C~~ or 617 of NRS, either for
43 himself or for any other person, shall be punished as follows:

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

3 2. If the amount of the benefit or payment obtained or attempted to be
4 obtained was \$250 or more, for a category D felony as provided in NRS
5 193.130.

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

8 **Sec. 8.** NRS 617.366 is hereby amended to read as follows:

9 617.366 1. An employee is not entitled to compensation pursuant to
10 the provisions of this chapter if:

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

13 (b) He subsequently contracts an occupational disease ~~which~~
14 ~~aggravates, precipitates or accelerates his~~ *that affects the same parts or*
15 *functions of the body as the* preexisting condition,
16 unless information from a physician or chiropractor establishes to the
17 satisfaction of the insurer that the occupational disease ~~is the primary~~
18 ~~cause~~ *contributed more to the development* of the resulting condition ~~is~~
19 *than the preexisting condition.*

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

22 (a) He contracts an occupational disease; and

23 (b) He subsequently aggravates, precipitates or accelerates the
24 occupational disease in a manner that does not arise out of and in the
25 course of his employment,
26 unless the occupational disease ~~is the primary cause~~ *described in*
27 *paragraph (a) contributed more to the development* of the resulting
28 condition ~~is~~ *than the effect described in paragraph (b).*

29 **Sec. 9.** 1. This section and sections 1 and 2 and 4 to 8, inclusive, of
30 this act become effective on July 1, 1999.

31 2. Section 3 of this act becomes effective at 12:01 a.m. on July 1, 1999.