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ASSEMBLY BILL NO. 46—COMMITTEE ON COMMERCE AND LABOR

PREFILED JANUARY 26, 2001

(ON BEHALF OF LEGISLATIVE COMMITTEE ON  
WORKERS' COMPENSATION (NRS 218.5375))

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Referred to Committee on Commerce and Labor

SUMMARY—Makes various changes concerning workers' compensation that affect eligibility, and amount and payment of benefits. (BDR 53-773)

FISCAL NOTE: Effect on Local Government: No.  
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

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AN ACT relating to industrial insurance; revising the provision governing tests that are to be administered to certain police officers and firemen to determine if they have contagious diseases that qualify for workers' compensation; requiring the administrator of the division of industrial relations of the department of business and industry to designate a vendor of certain data to assist the administrator in the establishment and revision of a schedule of reasonable fees for accident benefits; revising the provisions governing the circumstances under which a closed claim may be reopened; revising the provisions governing the effect on workers' compensation if an employee's injury is caused at least in part by the absence of a required safeguard or protection; providing a penalty; 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.052 is hereby amended to read as follows:  
2     616C.052 1. If a police officer or a salaried or volunteer fireman is  
3 exposed to a contagious disease:  
4     (a) Upon battery by an offender; or  
5     (b) While performing the duties of a police officer or fireman,  
6 the employer of the police officer or fireman shall create and maintain a  
7 report concerning the exposure that includes, without limitation, the name  
8 of each police officer or fireman, as applicable, who was exposed to the  
9 contagious disease and the name of each person, if any, to whom the police  
10 officer or fireman was exposed.

2. If the employment of a police officer or a salaried or volunteer fireman is terminated, voluntarily or involuntarily, the employer of the police officer or fireman shall, at the time of termination and at 6 and 12 months after the date of termination, provide to the police officer or fireman ~~[a blood]~~ *an appropriate test of the blood or skin* to screen for contagious diseases. ~~[, including, without limitation, hepatitis A, hepatitis B, hepatitis C, tuberculosis and human immunodeficiency virus.]~~ *The test must be administered by a physician, a member of his staff, or an employee of a medical laboratory in accordance with generally accepted medical practices.* If a ~~[blood]~~ test administered pursuant to this subsection and provided to the employer reveals that a former police officer or a former salaried or volunteer fireman has a contagious disease or the antibodies associated with a contagious disease, the police officer or fireman is eligible, during his lifetime, to receive compensation for such a disease and any additional diseases or conditions that are associated with or result from the contagious disease pursuant to chapters 616A to 617, inclusive, of NRS. The former employer of a police officer or a salaried or volunteer fireman shall pay all the costs associated with providing ~~[blood]~~ tests required pursuant to this subsection.

3. As used in this section, the term ~~["battery"]~~ :

(a) *"Battery"* includes, without limitation, the intentional propelling or placing, or the causing to be propelled or placed, of any human excrement or bodily fluid upon the person of an employee.

(b) *"Contagious diseases" includes, without limitation, hepatitis A, hepatitis B, hepatitis C, tuberculosis and human immunodeficiency virus.*

**Sec. 2.** NRS 616C.260 is hereby amended to read as follows:

616C.260 1. All fees and charges for accident benefits must not:

(a) Exceed the ~~[fees and charges]~~ *amounts* usually *billed and* paid in the state for similar treatment.

(b) Be unfairly discriminatory as between persons legally qualified to provide the particular service for which the fees or charges are asked.

2. The administrator shall, giving consideration to the fees and charges being *billed and* paid in the state, establish a schedule of reasonable fees and charges allowable for accident benefits provided to injured employees whose insurers have not contracted with an organization for managed care or with providers of health care services pursuant to NRS 616B.527. The administrator shall review and revise the schedule on or before ~~[October]~~ *February* 1 of each year. ~~[The administrator may increase or decrease.]~~ *In the revision, the administrator shall adjust the schedule [, but shall not increase the schedule by any factor greater than] by the corresponding annual [increase] change in the Consumer Price Index, Medical Care Component. [, unless the advisory council of the division approves such an increase.]*

3. The administrator ~~[may request]~~ *shall designate a vendor who compiles data on a national basis concerning fees and charges that are billed and paid for treatment or services similar to the treatment and services that qualify as accident benefits in this state to provide him with such information as he deems necessary to carry out the provisions of subsection 2. The designation must be made pursuant to reasonable*

1 *competitive bidding procedures established by the administrator. In*  
2 *addition, the administrator may request* a health insurer, health  
3 maintenance organization or provider of accident benefits, an agent or  
4 employee of such a person, or an agency of the state ~~(h)~~ to provide the  
5 administrator with ~~[such]~~ information concerning fees and charges *that are*  
6 *billed and paid in this state* for similar services as he deems necessary to  
7 carry out the provisions of subsection 2. The administrator shall require a  
8 ~~[person or entity providing]~~ *health insurer, health maintenance*  
9 *organization or provider of accident benefits, an agent or employee of*  
10 *such a person, or an agency of the state that provides* records or reports of  
11 fees ~~[charged]~~ *and charges billed and paid pursuant to this section* to  
12 provide interpretation and identification concerning the information  
13 delivered. The administrator may impose an administrative fine of \$500 *on*  
14 *a health insurer, health maintenance organization or provider of*  
15 *accident benefits, or an agent or employee of such a person* for each  
16 refusal to provide the information requested pursuant to this subsection.

17 4. The division may adopt reasonable regulations necessary to carry  
18 out the provisions of this section. The regulations must include provisions  
19 concerning:

20 (a) Standards for the development of the schedule of fees and charges  
21 ~~(b)~~ *that are billed and paid;*

22 (b) The periodic revision of the schedule; and

23 (c) The monitoring of compliance by providers of benefits with the  
24 adopted schedule of fees and charges.

25 5. The division shall adopt regulations requiring the ~~[utilization]~~ *use* of  
26 a system of billing codes as recommended by the American Medical  
27 Association.

28 **Sec. 3.** NRS 616C.390 is hereby amended to read as follows:

29 616C.390 *Except as otherwise provided in subsection 8 of NRS*  
30 *617.457:*

31 1. If an application to reopen a claim to increase or rearrange  
32 compensation is made in writing more than 1 year after the date on which  
33 the claim was closed, the insurer shall reopen the claim if:

34 (a) *The claimant was incapacitated from earning full wages for at*  
35 *least 5 consecutive days or 5 cumulative days within a 20-day period;*

36 (b) *The claimant received benefits for a permanent partial disability;*

37 (c) A change of circumstances *now* warrants an increase or  
38 rearrangement of compensation during the life of the claimant;

39 ~~(b)~~ (d) The primary cause of the change of circumstances is the injury  
40 *or disease* for which the claim was originally made; and

41 ~~(c)~~ (e) The application is accompanied by the certificate of a physician  
42 or a chiropractor showing a change of circumstances which would warrant  
43 an increase or rearrangement of compensation.

44 2. After a claim has been closed, the insurer, upon receiving an  
45 application and for good cause shown, may authorize the reopening of the  
46 claim for medical investigation only. The application must be accompanied  
47 by a written request for treatment from the physician or chiropractor  
48 treating the claimant, certifying that the treatment is indicated by a change

1 in circumstances and is related to the industrial injury sustained *or*  
2 *occupational disease contracted* by the claimant.

3 3. If a claimant applies for a claim to be reopened pursuant to  
4 subsection 1 or 2 and a final determination denying the reopening is issued,  
5 the claimant ~~[shall]~~ *may* not reapply to reopen the claim until at least 1 year  
6 after the date on which the final determination is issued.

7 4. Except as otherwise provided in subsection 5, if an application to  
8 reopen a claim is made in writing within 1 year after the date on which the  
9 claim was closed, the insurer shall reopen the claim ~~[only]~~ if:

10 (a) *The claimant either received benefits for a permanent partial*  
11 *disability or did not receive benefits for a permanent partial disability but*  
12 *was incapacitated from earning full wages for at least 5 consecutive days*  
13 *or 5 cumulative days within a 20-day period;*

14 (b) The application is supported by medical evidence demonstrating an  
15 objective change in the medical condition of the claimant; and

16 ~~[(b)]~~ (c) There is clear and convincing evidence that the primary cause  
17 of the change of circumstances is the injury *or disease* for which the claim  
18 was originally made.

19 5. ~~[An application to reopen a claim must be made in writing within 1~~  
20 ~~year after the date on which the claim was closed if:~~

21 ~~— (a) The claimant was not off work.] If the claimant:~~

22 (a) *Was not incapacitated from earning full wages for at least 5*  
23 *consecutive days or 5 cumulative days within a 20-day period* as a result  
24 of the injury ~~[(c)]~~ *or disease*; and

25 (b) ~~[(The claimant did)]~~ *Did* not receive benefits for a permanent partial  
26 disability ~~[(c)]~~

27 ~~If an application to reopen a claim to increase or rearrange compensation is~~  
28 ~~made pursuant to this subsection, the insurer shall reopen the claim if], the~~  
29 ~~application to reopen the claim must be made in writing within 1 year~~  
30 ~~after the date on which the claim was closed and the claimant must~~  
31 ~~demonstrate that the requirements set forth in paragraphs [(a), (b) and] (c)~~  
32 ~~, (d) and (e) of subsection 1 are met. If the application is made in a timely~~  
33 ~~manner and the claimant meets the requirements of paragraphs (c), (d)~~  
34 ~~and (e) of subsection 1, the insurer shall reopen the claim.~~

35 6. If an employee's claim is reopened pursuant to this section, he is not  
36 entitled to vocational rehabilitation services or benefits for a temporary  
37 total disability if, before his claim was reopened, he:

38 (a) Retired; or

39 (b) Otherwise voluntarily removed himself from the work force,  
40 for reasons unrelated to the injury *or disease* for which the claim was  
41 originally made.

42 7. One year after the date on which the claim was closed, an insurer  
43 may dispose of the file of a claim authorized to be reopened pursuant to  
44 subsection 5, unless an application to reopen the claim has been filed  
45 pursuant to that subsection.

46 8. An increase or rearrangement of compensation is not effective  
47 before an application for reopening a claim is made unless good cause is  
48 shown. The insurer shall, upon good cause shown, allow the cost of

1 emergency treatment the necessity for which has been certified by a  
2 physician or a chiropractor.

3 9. A claim that closes pursuant to subsection 2 of NRS 616C.235 and  
4 is not appealed or is unsuccessfully appealed pursuant to the provisions of  
5 NRS 616C.305 and 616C.315 to 616C.385, inclusive, may not be reopened  
6 pursuant to this section.

7 10. The provisions of this section apply to any claim for which an  
8 application to reopen the claim or to increase or rearrange compensation is  
9 made pursuant to this section, regardless of the date of the injury or  
10 accident *or the date of disablement* to the claimant. If a claim is reopened  
11 pursuant to this section, the amount of any compensation or benefits  
12 provided must be determined in accordance with the provisions of NRS  
13 616C.425 ~~[ ]~~ *or 617.445, as appropriate.*

14 **Sec. 4.** NRS 616D.270 is hereby amended to read as follows:

15 616D.270 Any employer who fails:

16 1. To post the notice required by NRS 616A.490 , ~~[and]~~ 616B.650 *and*  
17 *616D.280* in a place that is readily accessible and visible to employees is  
18 guilty of a misdemeanor.

19 2. To maintain the notice or notices required by NRS 616A.490 , ~~[and]~~  
20 616B.650 *and 616D.280* is guilty of a misdemeanor.

21 **Sec. 5.** NRS 616D.280 is hereby amended to read as follows:

22 616D.280 1. If any ~~[workman]~~ *employee* is injured because of the  
23 absence of any safeguard or protection required to be provided or  
24 maintained ~~[by, or]~~ pursuant to ~~[ ]~~ any statute, ordinance ~~[, or any~~  
25 ~~divisional regulation under any statute, the]~~ *or regulation, and the absence*  
26 *is caused by the failure of the employer to provide and make the*  
27 *safeguard or protection available for use, or the absence is caused by the*  
28 *removal of the safeguard or protection by the employee in compliance*  
29 *with a deliberate order or direction by the employer, superintendent or*  
30 *foreman to do so:*

31 (a) *The* employer is liable to the division for a penalty of not less than  
32 \$300 nor more than \$2,000, to be collected in a civil action at law by the  
33 division.

34 (b) *The compensation of the injured employee as provided for by NRS*  
35 *616C.405, 616C.425, 616C.435, 616C.440, 616C.445 and 616C.475 to*  
36 *616C.505, inclusive, must be increased by 25 percent.*

37 2. ~~[The provisions of subsection 1 do not apply if the absence of the~~  
38 ~~safeguard or protection is due to the removal thereof by the injured~~  
39 ~~workman himself, or with his knowledge by any fellow workman, unless~~  
40 ~~the removal is by order or direction of the employer or superintendent or~~  
41 ~~foreman of the employer.~~

42 ~~—3.—~~ *If any employee is injured because of the absence of any*  
43 *safeguard or protection required to be provided or maintained pursuant*  
44 *to any statute, ordinance or regulation, and the absence is caused by the*  
45 *employee, on the date of injury:*

46 (a) *Failing to use the safeguard or protection that was provided by his*  
47 *employer;*

48 (b) *Using the provided safeguard or protection for a period but*  
49 *subsequently and voluntarily removing it himself; or*

1 (c) Using the *provided* safeguard or protection ~~is removed by the~~  
2 ~~workman himself, or~~ *for a period but subsequently and voluntarily*  
3 *allowing the safeguard or protection to be removed*, with his consent, ~~is~~  
4 ~~removed~~ by any of his fellow ~~[workmen, unless done by order or direction~~  
5 ~~of the employer or superintendent or foreman of the employer,]~~  
6 *employees,*

7 the compensation of the injured ~~[workman,]~~ *employee*, as provided for by  
8 NRS 616C.405, 616C.425, 616C.435, 616C.440, 616C.445 and 616C.475  
9 to 616C.505, inclusive, must be reduced *by* 25 percent.

10 *3. The employer shall ensure that a notice containing the contents of*  
11 *subsection 2 is printed in English and Spanish and posted in an area that*  
12 *is conspicuous, readily accessible and visible to employees at the*  
13 *employer's place of business.*

14 **Sec. 6.** Notwithstanding the amendatory provisions of section 2 of this  
15 act, the administrator of the division of industrial relations of the  
16 department of business and industry is not required to designate a vendor  
17 that compiles data on a national basis concerning fees and charges that are  
18 billed and paid for certain treatment and services pursuant to section 2 of  
19 this act in sufficient time to ensure that the schedule of reasonable fees and  
20 charges allowable for accident benefits that must be revised on or before  
21 February 1, 2002, includes the data obtained from that vendor, but shall use  
22 his best efforts to do so.

23 **Sec. 7.** 1. Section 2 of this act becomes effective:

24 (a) Upon passage and approval for the purpose of requiring the  
25 administrator to designate a vendor who compiles data on a national basis  
26 concerning fees and charges that are billed and paid for treatment or  
27 services similar to the treatment and services that qualify as accident  
28 benefits in this state to provide the administrator with such information as  
29 he deems necessary to carry out the provisions of subsection 2 of section 2  
30 of this act.

31 (b) On July 1, 2001, for all other purposes.

32 2. Section 6 of this act becomes effective upon passage and approval.

33 3. This section and sections 1, 3, 4 and 5 of this act become effective  
34 on July 1, 2001.

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