

SENATE BILL NO. 126—SENATOR CARLTON

FEBRUARY 13, 2001

Referred to Committee on Commerce and Labor

SUMMARY—Prohibits certain discrimination against employee and prospective employee for filing claim for workers' compensation. (BDR 53-856)

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.

AN ACT relating to workers' compensation; prohibiting employers from discriminating against employees and prospective employees who have filed claims for workers' compensation when employers are hiring employees or determining terms and conditions of employment; allowing an employee or prospective employee to bring a civil action against an employer who engages in such discrimination; 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 616A.020 is hereby amended to read as follows:
2 616A.020 1. The rights and remedies provided in chapters 616A to
3 616D, inclusive, of NRS for an employee on account of an injury by
4 accident sustained arising out of and in the course of the employment shall
5 be exclusive, except as otherwise provided in those chapters, of all other
6 rights and remedies of the employee, his personal or legal representatives,
7 dependents or next of kin, at common law or otherwise, on account of such
8 injury.
9 2. The terms, conditions and provisions of chapters 616A to 616D,
10 inclusive, of NRS for the payment of compensation and the amount thereof
11 for injuries sustained or death resulting from such injuries shall be
12 conclusive, compulsory and obligatory upon both employers and
13 employees coming within the provisions of those chapters.
14 3. The exclusive remedy provided by this section to a principal
15 contractor extends, with respect to any injury by accident sustained by an
16 employee of any contractor in the performance of the contract, to every
17 architect, land surveyor or engineer who performs services for:
18 (a) The contractor;
19 (b) The owner of the property; or
20 (c) Any such beneficially interested persons.



1 4. The exclusive remedy provided by this section applies to the owner
2 of a construction project who provides industrial insurance coverage for the
3 project by establishing and administering a consolidated insurance program
4 pursuant to NRS 616B.710 to the extent that the program covers the
5 employees of the contractors and subcontractors who are engaged in the
6 construction of the project.

7 5. ~~HH~~ *Except as otherwise provided in section 4 of this act, if* an
8 employee receives any compensation or accident benefits under chapters
9 616A to 616D, inclusive, of NRS, the acceptance of such compensation or
10 benefits shall be in lieu of any other compensation, award or recovery
11 against his employer under the laws of any other state or jurisdiction and
12 such employee is barred from commencing any action or proceeding for
13 the enforcement or collection of any benefits or award under the laws of
14 any other state or jurisdiction.

15 **Sec. 2.** NRS 616B.033 is hereby amended to read as follows:

16 616B.033 1. Every policy of insurance issued pursuant to chapters
17 616A to 617, inclusive, of NRS must contain a provision for the
18 requirements of subsection 5 and a provision that insolvency or bankruptcy
19 of the employer or his estate, or discharge therein, or any default of the
20 employer does not relieve the insurer from liability for compensation
21 resulting from an injury otherwise covered under the policy issued by the
22 insurer.

23 2. No statement in an employer's application for a policy of industrial
24 insurance voids the policy as between the insurer and employer unless the
25 statement is false and would have materially affected the acceptance of the
26 risk if known by the insurer, but in no case does the invalidation of a policy
27 as between the insurer and employer affect the insurer's obligation to
28 provide compensation to claimants arising before the cancellation of the
29 policy. If the insurer is required pursuant to this subsection to provide
30 compensation under an invalid policy, the insurer is subrogated to the
31 claimant's rights against the employer.

32 3. If an insurer or employer intends to cancel or renew a policy of
33 insurance issued by the insurer pursuant to chapters 616A to 617, inclusive,
34 of NRS, the insurer or employer must give notice to that effect in writing to
35 the administrator and to the other party fixing the date on which it is
36 proposed that the cancellation or renewal becomes effective. The notices
37 must comply with the provisions of NRS 687B.310 to 687B.355, inclusive,
38 and must be served personally on or sent by first-class mail or electronic
39 transmission to the administrator and the other party. If the employer has
40 secured insurance with another insurer which would cause double
41 coverage, the cancellation must be made effective as of the effective date
42 of the other insurance.

43 4. As between any claimant and the insurer, no defense based on any
44 act or omission of the insured employer, if different from the insurer, may
45 be raised by the insurer.

46 5. For the purposes of chapters 616A to 617, inclusive, of NRS, as
47 between the employee and the insurer:



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1 (a) Except as otherwise provided in NRS 616C.065, notice or
2 knowledge of the injury to or by the employer is notice or knowledge to or
3 by the insurer;

4 (b) Jurisdiction over the employer is jurisdiction over the insurer; and

5 (c) ~~[[The]]~~ *Except as otherwise provided in section 4 of this act, the*
6 insurer is bound by and subject to any judgments, findings of fact,
7 conclusions of law, awards, decrees, orders or decisions rendered against
8 the employer in the same manner and to the same extent as the employer.

9 **Sec. 3.** NRS 616C.215 is hereby amended to read as follows:

10 616C.215 1. ~~[[If]]~~ *Except as otherwise provided in section 4 of this*
11 *act, if* an injured employee or, in the event of his death, his dependents,
12 bring an action in tort against his employer to recover payment for an
13 injury which is compensable pursuant to the provisions of chapters 616A to
14 616D, inclusive, or chapter 617 of NRS and, notwithstanding the
15 provisions of NRS 616A.020, receive payment from the employer for that
16 injury:

17 (a) The amount of compensation the injured employee or his dependents
18 are entitled to receive pursuant to the provisions of chapters 616A to 616D,
19 inclusive, or chapter 617 of NRS, including any future compensation, must
20 be reduced by the amount paid by the employer.

21 (b) The insurer, or in the case of claims involving the uninsured
22 employer's claim fund or a subsequent injury fund the administrator, has a
23 lien upon the total amount paid by the employer if the injured employee or
24 his dependents receive compensation pursuant to the provisions of chapters
25 616A to 616D, inclusive, or chapter 617 of NRS.

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

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

36 (a) The injured employee, or in case of death his dependents, may take
37 proceedings against that person to recover damages, but the amount of the
38 compensation the injured employee or his dependents are entitled to
39 receive pursuant to the provisions of chapters 616A to 616D, inclusive, or
40 chapter 617 of NRS, including any future compensation, must be reduced
41 by the amount of the damages recovered, notwithstanding any act or
42 omission of the employer or a person in the same employ which was a
43 direct or proximate cause of the employee's injury.

44 (b) If the injured employee, or in case of death his dependents, receive
45 compensation pursuant to the provisions of chapters 616A to 616D,
46 inclusive, or chapter 617 of NRS, the insurer, or in case of claims involving
47 the uninsured employers' claim fund or a subsequent injury fund the
48 administrator, has a right of action against the person so liable to pay



1 damages and is subrogated to the rights of the injured employee or of his
2 dependents to recover therefor.

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

8 (a) The injured employee, or in the case of death his dependents, may
9 take proceedings to recover those proceeds, but the amount of
10 compensation the injured employee or his dependents are entitled to
11 receive pursuant to the provisions of chapters 616A to 616D, inclusive, or
12 chapter 617 of NRS, including any future compensation, must be reduced
13 by the amount of proceeds received.

14 (b) If an injured employee, or in the case of death his dependents,
15 receive compensation pursuant to the provisions of chapters 616A to 616D,
16 inclusive, or chapter 617 of NRS, the insurer, or in the case of claims
17 involving the uninsured employers' claim fund or a subsequent injury fund
18 the administrator, is subrogated to the rights of the injured employee or his
19 dependents to recover proceeds under the employer's policy of uninsured
20 or underinsured vehicle coverage. The insurer and the administrator are not
21 subrogated to the rights of an injured employee or his dependents under a
22 policy of uninsured or underinsured vehicle coverage purchased by the
23 employee.

24 4. In any action or proceedings taken by the insurer or the
25 administrator pursuant to this section, evidence of the amount of
26 compensation, accident benefits and other expenditures which the insurer,
27 the uninsured employers' claim fund or a subsequent injury fund have paid
28 or become obligated to pay by reason of the injury or death of the
29 employee is admissible. If in such action or proceedings the insurer or the
30 administrator recovers more than those amounts, the excess must be paid to
31 the injured employee or his dependents.

32 5. In any case where the insurer or the administrator is subrogated to
33 the rights of the injured employee or of his dependents as provided in
34 subsection 2 or 3, the insurer or the administrator has a lien upon the total
35 proceeds of any recovery from some person other than the employer,
36 whether the proceeds of such recovery are by way of judgment, settlement
37 or otherwise. The injured employee, or in the case of his death his
38 dependents, are not entitled to double recovery for the same injury,
39 notwithstanding any act or omission of the employer or a person in the
40 same employ which was a direct or proximate cause of the employee's
41 injury.

42 6. The lien provided for pursuant to subsection 1 or 5 includes the total
43 compensation expenditure incurred by the insurer, the uninsured
44 employers' claim fund or a subsequent injury fund for the injured
45 employee and his dependents.

46 7. An injured employee, or in the case of death his dependents, or the
47 attorney or representative of the injured employee or his dependents, shall
48 notify the insurer, or in the case of claims involving the uninsured



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1 employers' claim fund or a subsequent injury fund the administrator, in
2 writing before initiating a proceeding or action pursuant to this section.

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

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

7 (b) The third-party insurer,
8 shall notify the insurer, or in the case of claims involving the uninsured
9 employers' claim fund or a subsequent injury fund the administrator, of the
10 recovery and pay to the insurer or the administrator, respectively, the
11 amount due pursuant to this section together with an itemized statement
12 showing the distribution of the total recovery. The attorney or
13 representative of the injured employee or his dependents and the third-
14 party insurer are jointly and severally liable for any amount to which an
15 insurer is entitled pursuant to this section if the attorney, representative of
16 third-party insurer has knowledge of the lien provided for in this section.

17 9. An insurer shall not sell its lien to a third-party insurer unless the
18 injured employee or his dependents, or the attorney or representative of the
19 injured employee or his dependents, refuses to provide to the insurer
20 information concerning the action against the third party.

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

26 Payment of workmen's compensation benefits by the insurer, or in the
27 case of claims involving the uninsured employers' claim fund or a
28 subsequent injury fund the administrator, is based upon the fact that a
29 compensable industrial accident occurred, and does not depend upon blame
30 or fault. If the plaintiff does not obtain a judgment in his favor in this case,
31 he is not required to repay his employer, the insurer or the administrator
32 any amount paid to him or paid on his behalf by his employer, the insurer
33 or the administrator.

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

40 11. To calculate an employer's premium, the employer's account with
41 the private carrier must be credited with an amount equal to that recovered
42 by the private carrier from a third party pursuant to this section, less the
43 private carrier's share of the expenses of litigation incurred in obtaining the
44 recovery, except that the total credit must not exceed the amount of
45 compensation actually paid or reserved by the private carrier on the injured
46 employee's claim.

47 12. As used in this section, "third-party insurer" means an insurer that
48 issued to a third party who is liable for damages pursuant to subsection 2, a
49 policy of liability insurance the proceeds of which are recoverable pursuant



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1 to this section. The term includes an insurer that issued to an employer a
2 policy of uninsured or underinsured vehicle coverage.

3 **Sec. 4.** Chapter 616D of NRS is hereby amended by adding thereto a
4 new section to read as follows:

5 **1. An employer shall not:**

6 **(a) Fail or refuse to hire a prospective employee; or**

7 **(b) Discharge or otherwise discriminate against an employee when**
8 **determining his terms and conditions of employment, including, without**
9 **limitation, his compensation, his eligibility for promotion, his eligibility**
10 **for a transfer desired by the employee, the necessity for a transfer**
11 **unwanted by the employee, or his eligibility for reemployment after a**
12 **layoff,**

13 **because he has filed a claim for compensation pursuant to the provisions**
14 **of chapters 616A to 616D, inclusive, or chapter 617 of NRS.**

15 **2. Notwithstanding the provisions of NRS 616C.295 to 616C.390,**
16 **inclusive, a prospective employee who is denied employment or an**
17 **employee who is discharged or otherwise discriminated against in**
18 **violation of subsection 1 may bring a civil action against the employer**
19 **who violates the provisions of subsection 1 to obtain:**

20 **(a) Any wages and benefits lost as a result of the violation;**

21 **(b) An order of reinstatement without loss of position, seniority and**
22 **benefits;**

23 **(c) An order directing the employer to offer employment to the**
24 **prospective employee;**

25 **(d) In addition to the amount awarded pursuant to paragraph (a),**
26 **damages in an amount not to exceed the amount of lost wages and**
27 **benefits; and**

28 **(e) Such punitive damages as the facts may warrant.**

29 **3. The court shall award reasonable costs, including court costs and**
30 **attorney's fees, to the prevailing party in an action brought pursuant to**
31 **this section.**

32 **4. The remedy provided for in this section is the exclusive remedy for**
33 **an action brought pursuant to this section.**

34 **Sec. 5.** NRS 616D.030 is hereby amended to read as follows:

35 616D.030 1. ~~Not~~ **Except as otherwise provided in section 4 of this**
36 **act as against a self-insured employer, no** cause of action may be brought
37 or maintained against an insurer or a third-party administrator who violates
38 any provision of this chapter or chapter 616A, 616B, 616C or 617 of NRS.

39 2. The administrative fines provided for in NRS 616B.318 and
40 616D.120 are the exclusive remedies for any violation of this chapter or
41 chapter 616A, 616B, 616C or 617 of NRS committed by an insurer or a
42 third-party administrator.

43 **Sec. 6.** NRS 617.017 is hereby amended to read as follows:

44 617.017 1. The rights and remedies provided in this chapter on
45 account of an occupational disease sustained by an employee, arising out of
46 and in the course of the employment, are exclusive, except as otherwise
47 provided in this chapter, of all other rights and remedies of the employee,
48 his personal or legal representative, dependents or next of kin, at common
49 law or otherwise, on account of the disease.



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1 2. The terms, conditions and provisions of this chapter for the payment
2 of compensation and the amount thereof for such diseases sustained or
3 death resulting from such diseases are conclusive, compulsory and
4 obligatory upon both employers and employees coming within the
5 provisions of this chapter.

6 3. The exclusive remedy provided by this section to a principal
7 contractor extends, with respect to any occupational disease sustained by
8 an employee of any contractor in the performance of the contract, to every
9 architect or engineer who performs services for the contractor or any such
10 beneficially interested persons.

11 4. ~~HH~~ *Except as otherwise provided in section 4 of this act, if* an
12 employee receives any compensation or medical benefits under this
13 chapter, the acceptance of the compensation or benefits is in lieu of any
14 other compensation, award or recovery against his employer under the laws
15 of any other state or jurisdiction and the employee is barred from
16 commencing any action or proceeding for the enforcement or collection of
17 any benefits or award under the laws of any other state or jurisdiction.

