

SENATE BILL NO. 213—COMMITTEE ON COMMERCE AND LABOR

FEBRUARY 20, 2001

Referred to Committee on Commerce and Labor

SUMMARY—Provides privilege of confidentiality for certain information obtained during insurance compliance audits. (BDR 57-943)

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 insurers; creating a privilege of confidentiality for certain information obtained during an insurance compliance audit; providing that the privilege does not limit the authority of the commissioner of insurance or the administrator of the division of industrial relations of the department of business and industry to acquire the information; providing a procedure for the waiver of the privilege; establishing a judicial procedure to determine whether information obtained during an insurance compliance audit is subject to the privilege; 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 679B of NRS is hereby amended by adding thereto
2 the provisions set forth as sections 2 to 13, inclusive, of this act.

3 **Sec. 2.** *As used in sections 2 to 13, inclusive, of this act, unless the*
4 *context otherwise requires, the words and terms defined in sections 3 to*
5 *6, inclusive, of this act have the meanings ascribed to them in those*
6 *sections.*

7 **Sec. 3.** *“Administrator” means the administrator of the division of*
8 *industrial relations of the department of business and industry.*

9 **Sec. 4.** *“Insurance compliance audit” means a voluntary, internal*
10 *evaluation, review, assessment, audit or investigation conducted by an*
11 *insurer or at the request of an insurer to identify or prevent the*
12 *noncompliance by the insurer with applicable federal and state laws,*
13 *regulations, orders and other professional standards relating to the*
14 *transacting of insurance, and to promote compliance by the insurer with*
15 *those laws, regulations, orders and other standards.*

16 **Sec. 5.** *“Insurance compliance audit document” means any*
17 *document that is prepared as a result of or in connection with an*
18 *insurance compliance audit. The term includes, without limitation:*



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- 1 *1. Field notes and records of observation, findings, opinions,*
2 *suggestions, conclusions, drafts, memoranda, drawings, photographs,*
3 *exhibits, information that is generated by a computer or electronically*
4 *recorded, telephone records, maps, charts, graphs and surveys which are*
5 *collected or developed during the course of an insurance compliance*
6 *audit.*
- 7 *2. Reports on the insurance compliance audit that were prepared by*
8 *an auditor, regardless of whether the auditor is an employee of the*
9 *insurer or an independent contractor, which include, without limitation,*
10 *the scope of the audit, the information obtained during the audit, any*
11 *conclusions and recommendations of the auditor based on the audit, and*
12 *any appendices and exhibits attached to the audit or the report on the*
13 *audit.*
- 14 *3. Memoranda and other documents in which any portion of a report*
15 *on an insurance compliance audit is analyzed or any potential correction*
16 *needed as a result of the insurance compliance audit is discussed.*
- 17 *4. Implementation plans that set forth proposed actions intended to*
18 *correct past noncompliance, improve current compliance or prevent*
19 *future noncompliance with federal and state laws, regulations, orders*
20 *and other professional standards relating to the transacting of insurance.*
- 21 *5. Analytic data that is generated in the course of conducting the*
22 *insurance compliance audit.*
- 23 **Sec. 6.** *"Insurer" includes, in addition to those persons described in*
24 *NRS 679A.100, any person described in NRS 616A.270.*
- 25 **Sec. 7.** *1. Except as otherwise provided in sections 2 to 13,*
26 *inclusive, of this act, an insurance compliance audit document, and the*
27 *information contained therein, shall be deemed to be a privileged*
28 *communication and is not admissible as evidence in any action or*
29 *proceeding.*
- 30 *2. Except as otherwise required in sections 2 to 13, inclusive, of this*
31 *act, any person who performs, directs the performance of or is hired to*
32 *perform an insurance compliance audit, and any officer, employee or*
33 *agent of an insurer who is involved with an insurance compliance audit,*
34 *may not be examined in any civil, criminal or administrative proceeding*
35 *concerning the insurance compliance audit or any insurance compliance*
36 *audit document relating to the insurance compliance audit.*
- 37 **Sec. 8.** *1. The provisions of section 7 of this act do not limit the*
38 *authority of the commissioner and the division of insurance, or the*
39 *administrator and the division of industrial relations of the department of*
40 *business and industry, to acquire an insurance compliance audit*
41 *document. The commissioner or administrator may require an insurer to*
42 *provide an insurance compliance audit document for any examination or*
43 *investigation of the insurer being conducted by the commissioner and*
44 *division of insurance or the administrator and division of industrial*
45 *relations, as appropriate. An insurer subject to such an examination or*
46 *investigation shall provide to the commissioner or administrator, as*
47 *appropriate, any insurance compliance audit document requested by the*
48 *commissioner or administrator.*



1 2. *An insurance compliance audit document acquired by or*
2 *submitted to the commissioner or the division of insurance, or the*
3 *administrator or the division of industrial relations, pursuant to this*
4 *section remains the property of the insurer who is the subject of the*
5 *document and, except as otherwise provided in sections 2 to 13, inclusive,*
6 *of this act, the insurance compliance audit document, and the*
7 *information contained therein, is not subject to disclosure or production*
8 *while the document is in the possession of the commissioner or the*
9 *division of insurance, or the administrator or the division of industrial*
10 *relations.*

11 3. *The commissioner or administrator shall not impose any civil*
12 *penalty or take any other action against an insurer based on information*
13 *obtained from or revealed by an insurance compliance audit document*
14 *concerning the insurer if the insurer has taken reasonable corrective*
15 *action to eliminate the problems identified in the insurance compliance*
16 *audit document.*

17 **Sec. 9.** *1. An insurer who is the subject of an insurance*
18 *compliance audit document may expressly waive in writing the privilege*
19 *of confidentiality relating to the insurance compliance document and the*
20 *information contained therein.*

21 2. *Except as otherwise provided in section 10 of this act, absent the*
22 *express written waiver of the privilege of confidentiality by the insurer,*
23 *the disclosure of an insurance compliance audit document, or any*
24 *information contained therein, pursuant to sections 2 to 13, inclusive, of*
25 *this act does not constitute a waiver of the privilege of confidentiality,*
26 *regardless of whether the disclosure was voluntary or involuntary.*

27 **Sec. 10.** *1. A prosecuting attorney or a party to a civil action*
28 *involving an insurer may serve a written request on the insurer by*
29 *certified mail for the disclosure of an insurance compliance audit*
30 *document concerning the insurer or for any information contained in*
31 *such a document. Not later than 30 days after being served with such a*
32 *written request, the insurer may file a petition in a court of competent*
33 *jurisdiction requesting an in camera hearing to determine which parts, if*
34 *any, of the insurance compliance audit document are subject to the*
35 *privilege of confidentiality established pursuant to section 7 of this act.*

36 2. *A petition for an in camera hearing filed pursuant to this section*
37 *must include:*

38 (a) *The date on which the insurance compliance audit document was*
39 *made;*

40 (b) *The identity of the person who conducted the insurance*
41 *compliance audit;*

42 (c) *The general nature of the activities covered by the insurance*
43 *compliance audit document; and*

44 (d) *An identification of the portions of the insurance compliance audit*
45 *document for which the privilege of confidentiality is being asserted.*

46 3. *Not later than 45 days after an insurer files a petition for an in*
47 *camera hearing pursuant to this section, the court shall schedule an in*
48 *camera hearing to determine whether the insurance compliance audit*
49 *document, or any information contained therein, is subject to the*



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1 *privilege of confidentiality. If the court determines, in accordance with*
2 *section 11 of this act, that the document or information for which the*
3 *privilege of confidentiality is being asserted should be disclosed, the court*
4 *may compel the disclosure of only that portion of the information that is*
5 *relevant to the underlying proceeding. The disclosure of information*
6 *compelled by the court pursuant to this subsection shall not be deemed to*
7 *be a waiver of the privilege of confidentiality for the insurance*
8 *compliance audit document, and the insurance compliance audit*
9 *document shall not be considered to be a public document for any other*
10 *civil, criminal or administrative proceeding. An insurer compelled to*
11 *disclose information contained in an insurance compliance audit*
12 *document pursuant to this section may apply to a court of competent*
13 *jurisdiction for an order protecting the insurance compliance document,*
14 *and any information contained therein, from further disclosure.*

15 4. *An insurer who files a petition with a court of competent*
16 *jurisdiction pursuant to this section asserting that an insurance*
17 *compliance audit document, or the information contained therein, is*
18 *subject to the privilege of confidentiality established pursuant to section 7*
19 *of this act has the burden of proving that assertion. If an insurer*
20 *establishes that an insurance compliance audit document, or any*
21 *information contained therein, is subject to the privilege of*
22 *confidentiality, the party seeking disclosure of the information has the*
23 *burden of establishing the criteria set forth in section 11 of this act for*
24 *the disclosure of an insurance compliance audit document or any*
25 *information contained therein.*

26 5. *If an insurer who has received a request for the disclosure of an*
27 *insurance compliance audit document, or for any information contained*
28 *therein, does not timely file a petition for an in camera hearing:*

29 (a) *The insurer shall provide the requested document or information*
30 *to the requesting party; and*

31 (b) *The waiver of the privilege of confidentiality applies only to the*
32 *requested document or information.*

33 **Sec. 11. 1.** *If an insurance compliance audit document, or any*
34 *information contained therein, is requested for a civil proceeding, the*
35 *court may require the disclosure of the document or information only if,*
36 *after an in camera review of the document, the court determines that:*

37 (a) *The document or information is not subject to the privilege of*
38 *confidentiality established pursuant to section 7 of this act; or*

39 (b) *The privilege of confidentiality for the document or information is*
40 *being asserted fraudulently, including, without limitation, an assertion of*
41 *the privilege to conceal a violation of any federal, state or local statute,*
42 *regulation or ordinance.*

43 2. *If the insurance compliance audit document, or any information*
44 *contained therein, is requested for a criminal proceeding or*
45 *investigation, the court may require the disclosure of the document or*
46 *information only if, after an in camera review of the document, the court*
47 *determines that:*



1 (a) The purpose for which the privilege is being asserted is fraudulent,
2 including, without limitation, an assertion of the privilege to conceal a
3 violation of any federal, state or local statute, regulation or ordinance;

4 (b) The document or information is not subject to the privilege; or

5 (c) The document contains evidence that is relevant to the commission
6 of a criminal offense, and:

7 (1) The prosecuting attorney has a compelling need for the
8 evidence; and

9 (2) The evidence is not otherwise available.

10 3. Nothing in this section limits the authority of the commissioner or
11 administrator to acquire or examine an insurance compliance audit
12 document, or any information contained therein, pursuant to section 8 of
13 this act.

14 **Sec. 12.** The privilege of confidentiality set forth in section 7 of this
15 act does not apply to:

16 1. Documents, communications, data, reports or other information
17 expressly required to be collected, developed, maintained or reported to
18 the commissioner, the division of insurance or any other regulatory
19 agency pursuant to state or federal law;

20 2. Information obtained by the commissioner or his designee, the
21 administrator, the division of insurance, the division of industrial
22 relations or any other regulatory agency through observation or
23 monitoring of the insurer; or

24 3. Information obtained from a source that is independent from the
25 insurance compliance audit.

26 **Sec. 13.** Nothing in sections 2 to 13, inclusive, of this act limits,
27 waives or abrogates, and the release of an insurance compliance audit
28 document, or any information contained therein, pursuant to sections 2
29 to 13, inclusive, of this act does not limit, waive or abrogate any statutory
30 or common law privilege or other limitation concerning the admissibility
31 of evidence relating to that document or the information contained
32 therein, including, without limitation, the attorney work-product doctrine
33 and the attorney-client privilege.

34 **Sec. 14.** NRS 616B.012 is hereby amended to read as follows:

35 616B.012 1. Except as otherwise provided in this section, ~~and in~~
36 NRS 616B.015, 616B.021 and 616C.205, *and sections 2 to 13, inclusive,*
37 *of this act*, information obtained from any insurer, employer or employee
38 is confidential and may not be disclosed or ~~be~~ open to public inspection
39 in any manner which would reveal the person's identity.

40 2. ~~Any~~ *Except as otherwise provided in sections 2 to 13, inclusive,*
41 *of this act, any* claimant or his legal representative is entitled to
42 information from the records of the insurer, to the extent necessary for the
43 proper presentation of a claim in any proceeding under chapters 616A to
44 ~~616D, inclusive, or chapter~~ 617, *inclusive*, of NRS.

45 3. The division and administrator are entitled to information from the
46 records of the insurer which is necessary for the performance of their
47 duties. ~~The~~ *Except as otherwise provided in sections 2 to 13, inclusive,*
48 *of this act, the* administrator may, by regulation, prescribe the manner in
49 which otherwise confidential information may be made available to:



1 (a) Any agency of this or any other state charged with the
2 administration or enforcement of laws relating to industrial insurance,
3 unemployment compensation, public assistance , or labor law and
4 industrial relations;

5 (b) Any state or local agency for the enforcement of child support;

6 (c) The Internal Revenue Service of the Department of the Treasury;

7 (d) The department of taxation; and

8 (e) The state contractors' board in the performance of its duties to
9 enforce the provisions of chapter 624 of NRS.

10 ~~Information~~ *Except as otherwise provided in sections 2 to 13, inclusive,*
11 *of this act, information* obtained in connection with the administration of a
12 program of industrial insurance may be made available to persons or
13 agencies for purposes appropriate to the operation of a program of
14 industrial insurance.

15 4. Upon written request made by a public officer of a local
16 government, an insurer shall furnish from its records the name, address and
17 place of employment of any person listed in its records. The request must
18 set forth the social security number of the person about whom the request
19 is made and contain a statement signed by proper authority of the local
20 government certifying that the request is made to allow the proper
21 authority to enforce a law to recover a debt or obligation owed to the local
22 government. The information obtained by the local government is
23 confidential and may not be used or disclosed for any purpose other than
24 the collection of a debt or obligation owed to that local government. The
25 insurer may charge a reasonable fee for the cost of providing the requested
26 information.

27 5. To further a current criminal investigation, the chief executive
28 officer of any law enforcement agency of this state may submit to the
29 administrator a written request for the name, address and place of
30 employment of any person listed in the records of an insurer. The request
31 must set forth the social security number of the person about whom the
32 request is made and contain a statement signed by the chief executive
33 officer certifying that the request is made to further a criminal investigation
34 currently being conducted by the agency. Upon receipt of a request, the
35 administrator shall instruct the insurer to furnish the information requested.
36 Upon receipt of such an instruction, the insurer shall furnish the
37 information requested. The insurer may charge a reasonable fee to cover
38 any related administrative expenses.

39 6. Upon request by the department of taxation, the administrator shall
40 provide:

41 (a) Lists containing the names and addresses of employers; and

42 (b) Other information concerning employers collected and maintained
43 by the administrator or the division to carry out the purposes of chapters
44 616A to ~~616D, inclusive, or chapter~~ 617 , *inclusive*, of NRS,
45 to the department for its use in verifying returns for the business tax. The
46 administrator may charge a reasonable fee to cover any related
47 administrative expenses.

48 7. Any person who, in violation of this section, discloses information
49 obtained from files of claimants or policyholders or obtains a list of



1 claimants or policyholders under chapters 616A to ~~616D, inclusive, or~~
2 ~~chapter~~ 617, *inclusive*, of NRS and uses or permits the use of the list for
3 any political purposes, is guilty of a gross misdemeanor.

4 8. All letters, reports or communications of any kind, oral or written,
5 from the insurer, or any of its agents, representatives or employees, are
6 privileged and must not be the subject matter or basis for any lawsuit if the
7 letter, report or communication is written, sent, delivered or prepared
8 pursuant to the requirements of chapters 616A to ~~616D, inclusive, or~~
9 ~~chapter~~ 617, *inclusive*, of NRS.

10 **Sec. 15.** NRS 616B.015 is hereby amended to read as follows:

11 616B.015 1. Except as otherwise provided in subsection 2 ~~1~~ *and*
12 *sections 2 to 13, inclusive, of this act*, the records and files of the division
13 concerning self-insured employers and associations of self-insured public
14 or private employers are confidential and may be revealed in whole or in
15 part only in the course of the administration of the provisions of chapters
16 616A to ~~616D, inclusive, or chapter~~ 617, *inclusive*, of NRS relating to
17 those employers or upon the lawful order of a court of competent
18 jurisdiction.

19 2. The records and files specified in subsection 1 are not confidential
20 in the following cases:

21 (a) Testimony by an officer or agent of the division and the production
22 of records and files on behalf of the division in any action or proceeding
23 conducted pursuant to the provisions of chapters 616A to ~~616D, inclusive,~~
24 ~~or chapter~~ 617, *inclusive*, of NRS if that testimony or the records and
25 files, or the facts shown thereby, are involved in the action or proceeding.

26 (b) Delivery to a self-insured employer or an association of self-insured
27 public or private employers of a copy of any document filed by the
28 employer with the division pursuant to the provisions of chapters 616A to
29 ~~616D, inclusive, or chapter~~ 617, *inclusive*, of NRS.

30 (c) Publication of statistics if classified so as to prevent:

31 (1) Identification of a particular employer or document; or

32 (2) Disclosure of the financial or business condition of a particular
33 employer or insurer.

34 (d) Disclosure in confidence, without further distribution or disclosure
35 to any other person, to:

36 (1) The governor or his agent in the exercise of the governor's
37 general supervisory powers;

38 (2) Any person authorized to audit the accounts of the division in
39 pursuance of an audit;

40 (3) The attorney general or other legal representative of the state in
41 connection with an action or proceeding conducted pursuant to the
42 provisions of chapters 616A to ~~616D, inclusive, or chapter~~ 617, *inclusive*,
43 of NRS;

44 (4) Any agency of this or any other state charged with the
45 administration or enforcement of the laws relating to workers'
46 compensation or unemployment compensation; or

47 (5) Any federal, state or local law enforcement agency.

48 (e) Disclosure in confidence by a person who receives information
49 pursuant to paragraph (d) to a person in furtherance of the administration or



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1 enforcement of the laws relating to workers' compensation or
2 unemployment compensation.

3 3. As used in this section:

4 (a) "Division" means the division of insurance of the department of
5 business and industry.

6 (b) "Records and files" means:

7 (1) All credit reports, references, investigative records, financial
8 information and data pertaining to the net worth of a self-insured employer
9 or association of self-insured public or private employers; and

10 (2) All information and data required by the division to be furnished
11 to it pursuant to chapters 616A to ~~616D, inclusive, or chapter~~ 617 ,
12 *inclusive*, of NRS or which may be otherwise obtained relative to the
13 finances, earnings, revenue, trade secrets or the financial condition of any
14 self-insured employer or association of self-insured public or private
15 employers.

16 **Sec. 16.** The amendatory provisions of this act apply only to civil,
17 criminal and administrative proceedings that are commenced on or after
18 October 1, 2001.

