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ASSEMBLY BILL NO. 254—ASSEMBLYMAN CLABORN

MARCH 21, 2005

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Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions governing industrial insurance.  
(BDR 53-1080)

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; prohibiting an employer from appealing or contesting a determination made relating to a claim for compensation under certain circumstances; increasing the maximum amount of certain fines and benefit penalties; expanding the list of prohibited acts for which a benefit penalty may be imposed; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Existing law allows an employer, either on his own or together with other employers, to make arrangements to provide industrial insurance accident benefits for injured employees. (NRS 616C.265)

This bill provides that any employer who is represented by a private industrial insurer or an association of self-insured public or private employers in an appeal, and who is not providing accident benefits to injured employees pursuant to NRS 616C.265, cannot file an appeal or contest a claim or determination made by the private insurer or association or by a hearing officer, appeals officer or court.

Existing law authorizes the Administrator of the Division of Industrial Relations of the Department of Business and Industry to impose administrative fines or benefit penalties against an insurer, managed care organization, health care provider, third-party administrator or employer for violating certain provisions of existing law. (NRS 616D.120) A benefit penalty is an additional amount of money payable to a claimant if the Administrator has determined that certain violations have occurred. (NRS 616A.070, 616D.120)

This bill increases the maximum administrative fines and benefit penalties that the Administrator may impose. This bill also expands the violations for which a benefit penalty may be imposed.



THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN  
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

**Section 1.** NRS 616A.070 is hereby amended to read as follows:

616A.070 “Benefit penalty” means an additional amount of money that is payable to a claimant if the Administrator has determined that a violation of any of the provisions of ~~paragraphs (a) to (e), inclusive, of~~ subsection 1 of NRS 616D.120 has occurred.

**Sec. 2.** Chapter 616C of NRS is hereby amended by adding thereto a new section to read as follows:

*Notwithstanding any provision of NRS 616C.305 and 616C.315 to 616C.385, inclusive, to the contrary, an employer who:*

*1. Is insured by a private carrier or who is a member of an association of self-insured public or private employers; and*

*2. Does not provide accident benefits for injured employees pursuant to NRS 616C.265,*

*↪ may not appeal or contest a determination relating to a claim for compensation that is made by the insurer or by a hearing officer, an appeals officer or a court of competent jurisdiction.*

**Sec. 3.** NRS 616C.137 is hereby amended to read as follows:

616C.137 1. If an insurer, organization for managed care or employer who provides accident benefits for injured employees pursuant to NRS 616C.265 denies payment for some or all of the services itemized on a statement submitted by a provider of health care on the sole basis that those services were not related to the employee’s industrial injury or occupational disease, the insurer, organization for managed care or employer shall, at the same time that it sends notification to the provider of health care of the denial, send a copy of the statement to the injured employee and notify the injured employee that it has denied payment. The notification sent to the injured employee must:

(a) State the relevant amount requested as payment in the statement ~~and~~ *and must state* that the reason for denying payment is that the services were not related to the industrial injury or occupational disease and that, pursuant to subsection 2, the injured employee will be responsible for payment of the relevant amount if he does not, in a timely manner, appeal the denial pursuant to NRS 616C.305 and 616C.315 to 616C.385, inclusive, *and section 2 of this act, or if he* appeals but is not successful.

(b) Include an explanation of the injured employee’s right to request a hearing to appeal the denial pursuant to NRS 616C.305



1 and 616C.315 to 616C.385, inclusive, *and section 2 of this act* and  
2 a suitable form for requesting a hearing to appeal the denial.

3 2. An injured employee who does not, in a timely manner,  
4 appeal the denial of payment for the services rendered or who  
5 appeals the denial but is not successful is responsible for payment of  
6 the relevant charges on the itemized statement.

7 3. To succeed on appeal, the injured employee must show that  
8 the:

9 (a) Services provided were related to the employee's industrial  
10 injury or occupational disease; or

11 (b) Insurer, organization for managed care or employer who  
12 provides accident benefits for injured employees pursuant to NRS  
13 616C.265 gave prior authorization for the services rendered and did  
14 not withdraw that prior authorization before the services of the  
15 provider of health care were rendered.

16 **Sec. 4.** NRS 616C.235 is hereby amended to read as follows:

17 616C.235 1. Except as otherwise provided in subsections 2, 3  
18 and 4:

19 (a) When the insurer determines that a claim should be closed  
20 before all benefits to which the claimant may be entitled have been  
21 paid, the insurer shall send a written notice of its intention to close  
22 the claim to the claimant by first-class mail addressed to the last  
23 known address of the claimant. The notice must include a statement  
24 that if the claimant does not agree with the determination, he has a  
25 right to request a resolution of the dispute pursuant to NRS  
26 616C.305 and 616C.315 to 616C.385, inclusive **[H]**, *and section 2*  
27 *of this act*. A suitable form for requesting a resolution of the dispute  
28 must be enclosed with the notice. The closure of a claim pursuant to  
29 this subsection is not effective unless notice is given as required by  
30 this subsection.

31 (b) If the insurer does not receive a request for the resolution of  
32 the dispute, it may close the claim.

33 (c) Notwithstanding the provisions of NRS 233B.125, if a  
34 hearing is conducted to resolve the dispute, the decision of the  
35 hearing officer may be served by first-class mail.

36 2. If, during the first 12 months after a claim is opened, the  
37 medical benefits required to be paid for a claim are less than \$300,  
38 the insurer may close the claim at any time after he sends, by  
39 first-class mail addressed to the last known address of the claimant,  
40 written notice that:

41 (a) The claim is being closed pursuant to this subsection;

42 (b) The injured employee may appeal the closure of the claim  
43 pursuant to the provisions of NRS 616C. 305 and 616C.315 to  
44 616C.385, inclusive **[H]**, *and section 2 of this act*; and



(c) If the injured employee does not appeal the closure of the claim or appeals the closure of the claim but is not successful, the claim cannot be reopened.

3. In addition to the notice described in subsection 2, an insurer shall send to each claimant who receives less than \$300 in medical benefits within 6 months after the claim is opened a written notice that explains the circumstances under which a claim may be closed pursuant to subsection 2. The written notice provided pursuant to this subsection does not create any right to appeal the contents of that notice. The written notice must be:

(a) Sent by first-class mail addressed to the last known address of the claimant; and

(b) A document that is separate from any other document or form that is used by the insurer.

4. The closure of a claim pursuant to subsection 2 is not effective unless notice is given as required by subsections 2 and 3.

**Sec. 5.** NRS 616C.320 is hereby amended to read as follows:

616C.320 If an employee of a self-insured employer, an employer who is a member of an association of self-insured public or private employers or an employer insured by a private carrier is dissatisfied with a decision of his employer, the association or the private carrier, he may seek to resolve the dispute pursuant to NRS 616C.305 and 616C.315 to 616C.385, inclusive ~~§~~, and *section 2 of this act*.

**Sec. 6.** NRS 616D.120 is hereby amended to read as follows:

616D.120 1. Except as otherwise provided in this section, if the Administrator determines that an insurer, organization for managed care, health care provider, third-party administrator or employer has:

(a) Induced a claimant to fail to report an accidental injury or occupational disease;

(b) Without justification, persuaded a claimant to:

(1) Settle for an amount which is less than reasonable;

(2) Settle for an amount which is less than reasonable while a hearing or an appeal is pending; or

(3) Accept less than the compensation found to be due him by a hearing officer, appeals officer, court of competent jurisdiction, written settlement agreement, written stipulation or the Division when carrying out its duties pursuant to chapters 616A to 617, inclusive, of NRS;

(c) Refused to pay or unreasonably delayed payment to a claimant of compensation or other relief found to be due him by a hearing officer, appeals officer, court of competent jurisdiction, written settlement agreement, written stipulation or the Division



1 when carrying out its duties pursuant to chapters 616A to 616D,  
2 inclusive, or chapter 617 of NRS, if the refusal or delay occurs:

3 (1) Later than 10 days after the date of the settlement  
4 agreement or stipulation;

5 (2) Later than 30 days after the date of the decision of a  
6 court, hearing officer, appeals officer or the Division, unless a stay  
7 has been granted; or

8 (3) Later than 10 days after a stay of the decision of a court,  
9 hearing officer, appeals officer or the Division has been lifted;

10 (d) Refused to process a claim for compensation pursuant to  
11 chapters 616A to 616D, inclusive, or chapter 617 of NRS;

12 (e) Made it necessary for a claimant to initiate proceedings  
13 pursuant to chapters 616A to 616D, inclusive, or chapter 617 of  
14 NRS for compensation or other relief found to be due him by a  
15 hearing officer, appeals officer, court of competent jurisdiction,  
16 written settlement agreement, written stipulation or the Division  
17 when carrying out its duties pursuant to chapters 616A to 616D,  
18 inclusive, or chapter 617 of NRS;

19 (f) Failed to comply with the Division's regulations covering the  
20 payment of an assessment relating to the funding of costs of  
21 administration of chapters 616A to 617, inclusive, of NRS;

22 (g) Failed to provide or unreasonably delayed payment to an  
23 injured employee or reimbursement to an insurer pursuant to NRS  
24 616C.165; or

25 (h) Intentionally failed to comply with any provision of, or  
26 regulation adopted pursuant to, this chapter or chapter 616A, 616B,  
27 616C or 617 of NRS,

28 ➔ the Administrator shall impose an administrative fine of ~~[\$1,000]~~  
29 ~~\$2,000~~ for each initial violation, or a fine of ~~[\$10,000]~~ ~~\$20,000~~ for a  
30 second or subsequent violation.

31 2. Except as otherwise provided in chapters 616A to 616D,  
32 inclusive, or chapter 617 of NRS, if the Administrator determines  
33 that an insurer, organization for managed care, health care provider,  
34 third-party administrator or employer has failed to comply with any  
35 provision of this chapter or chapter 616A, 616B, 616C or 617 of  
36 NRS, or any regulation adopted pursuant thereto, the Administrator  
37 may take any of the following actions:

38 (a) Issue a notice of correction for:

39 (1) A minor violation, as defined by regulations adopted by  
40 the Division; or

41 (2) A violation involving the payment of compensation in an  
42 amount which is greater than that required by any provision of this  
43 chapter or chapter 616A, 616B, 616C or 617 of NRS, or any  
44 regulation adopted pursuant thereto.



1   ↪ The notice of correction must set forth with particularity the  
2 violation committed and the manner in which the violation may be  
3 corrected. The provisions of this section do not authorize the  
4 Administrator to modify or negate in any manner a determination or  
5 any portion of a determination made by a hearing officer, appeals  
6 officer or court of competent jurisdiction or a provision contained in  
7 a written settlement agreement or written stipulation.

8   (b) Impose an administrative fine for:

9       (1) A second or subsequent violation for which a notice of  
10 correction has been issued pursuant to paragraph (a); or

11       (2) Any other violation of this chapter or chapter 616A,  
12 616B, 616C or 617 of NRS, or any regulation adopted pursuant  
13 thereto, for which a notice of correction may not be issued pursuant  
14 to paragraph (a).

15   ↪ The fine imposed must not be greater than ~~[\$250]~~ \$500 for an  
16 initial violation, or more than ~~[\$1,000]~~ \$2,000 for any second or  
17 subsequent violation.

18   (c) Order a plan of corrective action to be submitted to the  
19 Administrator within 30 days after the date of the order.

20   3. If the Administrator determines that a violation of ~~any of~~  
21 ~~the provisions of paragraphs (a) to (e), inclusive, of~~ subsection 1  
22 has occurred, the Administrator shall order the insurer, organization  
23 for managed care, health care provider, third-party administrator or  
24 employer to pay to the claimant a benefit penalty in an amount that  
25 is not less than \$5,000 and not greater than ~~[\$25,000.]~~ \$50,000. To  
26 determine the amount of the benefit penalty, the Administrator shall  
27 consider the degree of physical harm suffered by the injured  
28 employee or his dependents as a result of the violation of ~~paragraph~~  
29 ~~(a), (b), (c), (d) or (e) of~~ subsection 1, the amount of compensation  
30 found to be due the claimant and the number of fines and benefit  
31 penalties previously imposed against the insurer, organization for  
32 managed care, health care provider, third-party administrator or  
33 employer pursuant to this section. If this is the third violation within  
34 5 years for which a benefit penalty has been imposed against the  
35 insurer, organization for managed care, health care provider,  
36 third-party administrator or employer, the Administrator shall also  
37 consider the degree of economic harm suffered by the injured  
38 employee or his dependents as a result of the violation of ~~paragraph~~  
39 ~~(a), (b), (c), (d) or (e) of~~ subsection 1. Except as otherwise provided  
40 in this section, the benefit penalty is for the benefit of the claimant  
41 and must be paid directly to him within 10 days after the date of the  
42 Administrator's determination. If the claimant is the injured  
43 employee and he dies before the benefit penalty is paid to him, the  
44 benefit penalty must be paid to his estate. Proof of the payment of  
45 the benefit penalty must be submitted to the Administrator within 10



1 days after the date of his determination unless an appeal is filed  
2 pursuant to NRS 616D.140. Any compensation to which the  
3 claimant may otherwise be entitled pursuant to chapters 616A to  
4 616D, inclusive, or chapter 617 of NRS must not be reduced by the  
5 amount of any benefit penalty received pursuant to this subsection.

6 4. In addition to any fine or benefit penalty imposed pursuant  
7 to this section, the Administrator may assess against an insurer who  
8 violates any regulation concerning the reporting of claims  
9 expenditures or premiums received that are used to calculate an  
10 assessment, an administrative penalty of up to twice the amount of  
11 any underpaid assessment.

12 5. If:

13 (a) The Administrator determines that a person has violated any  
14 of the provisions of NRS 616D.200, 616D.220, 616D.240,  
15 616D.300, 616D.310 or 616D.350 to 616D.440, inclusive; and

16 (b) The Fraud Control Unit for Industrial Insurance of the Office  
17 of the Attorney General established pursuant to NRS 228.420  
18 notifies the Administrator that the Unit will not prosecute the person  
19 for that violation,

20 ➤ the Administrator shall impose an administrative fine of not more  
21 than ~~[\$10,000.]~~ \$20,000.

22 6. Two or more fines of \$1,000 or more imposed in 1 year for  
23 acts enumerated in subsection 1 must be considered by the  
24 Commissioner as evidence for the withdrawal of:

25 (a) A certificate to act as a self-insured employer.

26 (b) A certificate to act as an association of self-insured public or  
27 private employers.

28 (c) A certificate of registration as a third-party administrator.

29 7. The Commissioner may, without complying with the  
30 provisions of NRS 616B.327 or 616B.431, withdraw the  
31 certification of a self-insured employer, association of self-insured  
32 public or private employers or third-party administrator if, after a  
33 hearing, it is shown that the self-insured employer, association of  
34 self-insured public or private employers or third-party administrator  
35 violated any provision of subsection 1.



