

ASSEMBLY BILL NO. 254—ASSEMBLYMAN CLABORN

MARCH 21, 2005

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.

AN ACT relating to industrial insurance; 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:

- 1 Existing law authorizes the Administrator of the Division of Industrial
2 Relations of the Department of Business and Industry to impose administrative
3 fines or benefit penalties against an insurer, managed care organization, health care
4 provider, third-party administrator or employer for violating certain provisions of
5 existing law. (NRS 616D.120) A benefit penalty is an additional amount of money
6 payable to a claimant if the Administrator has determined that certain violations
7 have occurred. (NRS 616A.070, 616D.120)
8 This bill increases the maximum administrative fines and benefit penalties that
9 the Administrator may impose. This bill also expands the violations for which a
10 benefit penalty may be imposed.

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

- 1 **Section 1.** NRS 616A.070 is hereby amended to read as
2 follows:
3 616A.070 “Benefit penalty” means an additional amount of
4 money that is payable to a claimant if the Administrator has
5 determined that ~~that~~ :



* A B 2 5 4 R 2 *

1 **1. A violation of any of the provisions of paragraphs (a) to (e),**
2 inclusive, of subsection 1 of NRS 616D.120 has occurred **H; or**

3 **2. A violation of the provisions of paragraph (h) of subsection**
4 **1 of NRS 616D.120 has occurred and the violation was committed**
5 **maliciously.**

6 **Sec. 2.** NRS 616D.120 is hereby amended to read as follows:

7 616D.120 1. Except as otherwise provided in this section, if
8 the Administrator determines that an insurer, organization for
9 managed care, health care provider, third-party administrator or
10 employer has:

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

13 (b) Without justification, persuaded a claimant to:

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

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

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

22 (c) Refused to pay or unreasonably delayed payment to a
23 claimant of compensation or other relief found to be due him by a
24 hearing officer, appeals officer, court of competent jurisdiction,
25 written settlement agreement, written stipulation or the Division
26 when carrying out its duties pursuant to chapters 616A to 616D,
27 inclusive, or chapter 617 of NRS, if the refusal or delay occurs:

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

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

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

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

37 (e) Made it necessary for a claimant to initiate proceedings
38 pursuant to chapters 616A to 616D, inclusive, or chapter 617 of
39 NRS for compensation or other relief found to be due him by a
40 hearing officer, appeals officer, court of competent jurisdiction,
41 written settlement agreement, written stipulation or the Division
42 when carrying out its duties pursuant to chapters 616A to 616D,
43 inclusive, or chapter 617 of NRS;



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

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

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

➔ the Administrator shall impose an administrative fine of ~~[\$1,000]~~ **\$1,500** for each initial violation, or a fine of ~~[\$10,000]~~ **\$15,000** for a second or subsequent violation.

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

(a) Issue a notice of correction for:

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

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

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

(b) Impose an administrative fine for:

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

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

➔ The fine imposed must not be greater than ~~[\$250]~~ **\$375** for an initial violation, or more than ~~[\$1,000]~~ **\$1,500** for any second or subsequent violation.

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



- 1 3. If the Administrator determines that ~~that~~ :
- 2 (a) A violation of any of the provisions of paragraphs (a) to (e),
- 3 inclusive, of subsection 1 has occurred ~~that~~ ; or
- 4 (b) *A violation of the provisions of paragraph (h) of subsection*
- 5 *1 has occurred and the violation was committed maliciously,*
- 6 ➡ the Administrator shall order the insurer, organization for
- 7 managed care, health care provider, third-party administrator or
- 8 employer to pay to the claimant a benefit penalty in an amount that
- 9 is not less than \$5,000 and not greater than ~~[\$25,000.]~~ *\$37,500.* To
- 10 determine the amount of the benefit penalty, the Administrator shall
- 11 consider the degree of physical harm suffered by the injured
- 12 employee or his dependents as a result of the violation ~~of paragraph~~
- 13 ~~(a), (b), (c), (d) or (e) of subsection 1,~~ *giving rise to the benefit*
- 14 *penalty,* the amount of compensation found to be due the claimant
- 15 and the number of fines and benefit penalties previously imposed
- 16 against the insurer, organization for managed care, health care
- 17 provider, third-party administrator or employer pursuant to this
- 18 section. If this is the third violation within 5 years for which a
- 19 benefit penalty has been imposed against the insurer, organization
- 20 for managed care, health care provider, third-party administrator or
- 21 employer, the Administrator shall also consider the degree of
- 22 economic harm suffered by the injured employee or his dependents
- 23 as a result of the violation ~~of paragraph (a), (b), (c), (d) or (e) of~~
- 24 ~~subsection 1,~~ *giving rise to the benefit penalty.* Except as otherwise
- 25 provided in this section, the benefit penalty is for the benefit of the
- 26 claimant and must be paid directly to him within 10 days after
- 27 the date of the Administrator's determination. If the claimant is the
- 28 injured employee and he dies before the benefit penalty is paid to
- 29 him, the benefit penalty must be paid to his estate. Proof of the
- 30 payment of the benefit penalty must be submitted to the
- 31 Administrator within 10 days after the date of his determination
- 32 unless an appeal is filed pursuant to NRS 616D.140. Any
- 33 compensation to which the claimant may otherwise be entitled
- 34 pursuant to chapters 616A to 616D, inclusive, or chapter 617 of
- 35 NRS must not be reduced by the amount of any benefit penalty
- 36 received pursuant to this subsection.
- 37 4. In addition to any fine or benefit penalty imposed pursuant
- 38 to this section, the Administrator may assess against an insurer who
- 39 violates any regulation concerning the reporting of claims
- 40 expenditures or premiums received that are used to calculate an
- 41 assessment, an administrative penalty of up to twice the amount of
- 42 any underpaid assessment.
- 43 5. If:



1 (a) The Administrator determines that a person has violated any
2 of the provisions of NRS 616D.200, 616D.220, 616D.240,
3 616D.300, 616D.310 or 616D.350 to 616D.440, inclusive; and

4 (b) The Fraud Control Unit for Industrial Insurance of the Office
5 of the Attorney General established pursuant to NRS 228.420
6 notifies the Administrator that the Unit will not prosecute the person
7 for that violation,

8 ➔ the Administrator shall impose an administrative fine of not more
9 than ~~15,000~~ **15,000**.

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

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

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

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

17 7. The Commissioner may, without complying with the
18 provisions of NRS 616B.327 or 616B.431, withdraw the
19 certification of a self-insured employer, association of self-insured
20 public or private employers or third-party administrator if, after a
21 hearing, it is shown that the self-insured employer, association of
22 self-insured public or private employers or third-party administrator
23 violated any provision of subsection 1.



