Assembly Bill No. 364–Committee on Commerce and Labor

CHAPTER.....

AN ACT relating to industrial insurance; revising provisions relating to the notices required when a contractor's coverage lapses; requiring an insurer that makes payments of compensation to an injured employee for a permanent total disability to provide certain accountings to the injured employee; requiring an insurer to reopen a claim to consider the payment of compensation for a permanent partial disability under certain circumstances; authorizing an insurer or an injured employee to request a vocational rehabilitation counselor to prepare a written assessment of the injured employee under certain circumstances; prohibiting a vocational rehabilitation counselor who is employed by the entity administering an injured employee's case from providing services to the injured employee under certain circumstances; providing an injured employee with the right to be assigned an alternate vocational rehabilitation counselor who is not affiliated with the entity administering the injured employee's case; and providing other matters properly relating thereto.

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

Section 1. NRS 616B.333 is hereby amended to read as follows:

616B.333 1. If for any reason the status of an employer as a self-insured employer is terminated, the security deposited under NRS 616B.300 must remain on deposit for a period of at least 36 months in such amount as necessary to secure the outstanding and contingent liability arising from accidental injuries or occupational diseases secured by such security, or to assure the payment of claims for aggravation **,** ~~[and]~~ payment of claims under NRS 616C.390 ***and payment of claims under section 6 of this act*** based on such accidental injuries or occupational diseases.

2. At the expiration of the 36-month period, or such other period as the Commissioner ~~[of Insurance]~~ deems proper, the Commissioner ~~[of Insurance]~~ may accept **,** in lieu of any security so deposited **,** a policy of paid-up insurance in a form approved by the Commissioner **.** ~~[of Insurance.]~~

Sec. 2. NRS 616B.434 is hereby amended to read as follows:

616B.434 1. If for any reason the status of an association of self-insured public or private employers as an association of self-insured employers is terminated, the security deposited under NRS 616B.353 must remain on deposit for at least 36 months in such an

amount as is necessary to secure the outstanding and contingent liability arising from accidental injuries or occupational diseases secured by the security, or to assure the payment of claims for aggravation ***,*** ~~[and]~~ payment of claims under NRS 616C.390 ***and payment of claims under section 6 of this act*** based on such accidental injuries or occupational diseases.

2. At the expiration of the 36-month period, or such other period as the Commissioner deems proper, the Commissioner may accept ***,*** in lieu of any security so deposited ***,*** a policy of paid-up insurance in a form approved by the Commissioner.

Sec. 3. NRS 616B.630 is hereby amended to read as follows:

616B.630 1. ~~[An insurer of a contractor]~~ ***The Administrator*** shall ***, not later than 10 days after receiving notice from the advisory organization that a contractor's coverage has lapsed,*** notify the State Contractors' Board ~~[within 10 days after the contractor's coverage has lapsed.]~~ ***of that fact.***

2. The Commissioner shall notify the Administrator and the State Contractors' Board within 10 days after a contractor's certificate of qualification as a self-insured employer is cancelled or withdrawn or he is no longer a member of an association of self-insured public or private employers.

Sec. 4. Chapter 616C of NRS is hereby amended by adding thereto the provisions set forth as sections 5, 6 and 7 of this act.

Sec. 5. ***1. An insurer that makes payments of compensation to an injured employee for a permanent total disability shall provide to the injured employee an annual accounting in the form of a letter that sets forth with respect to the payments:***

(a) The total amount of the compensation for the permanent total disability that the injured employee is entitled to receive, before any deductions are made;

(b) The net amount of the current payment for the compensation;

(c) The amount of any deduction that is made against the total amount of the compensation, if any; and

(d) If a deduction is being made against the total amount of the compensation to repay any previous awards of compensation for a permanent partial disability:

(1) The amount of the deduction;

(2) The claim number for each of those awards; and

(3) The balance of each of those awards.

2. An injured employee may request in writing from the insurer an accounting described in subsection 1. The accounting must cover the period from the date on which the most recent annual accounting was provided to the injured employee pursuant to subsection 1 to the date on which the written request is made. The insurer shall provide the accounting to the injured employee

not later than 30 days after receiving the written request for the accounting from the injured employee. Any accounting provided by an insurer to an injured employee pursuant to this subsection must be provided in addition to, and not in lieu of, the annual accountings required pursuant to subsection 1.

Sec. 6. *1. An insurer shall reopen a claim to consider the payment of compensation for a permanent partial disability if:*

(a) The claim was closed and the claimant was not scheduled for an evaluation of the injury in accordance with NRS 616C.490;

(b) The claimant demonstrates by a preponderance of the evidence that, at the time that the case was closed, the claimant was, because of the injury, qualified to be scheduled for an evaluation for a permanent partial disability; and

(c) The insurer has violated a provision of NRS 616D.120 with regard to the claim.

2. The demonstration required pursuant to paragraph (b) of subsection 1 must be made with documentation that existed at the time that the case was closed.

3. Notwithstanding any specific statutory provision to the contrary, the consideration of whether a claimant is entitled to payment of compensation for a permanent partial disability for a claim that is reopened pursuant to this section must be made in accordance with the provisions of the applicable statutory and regulatory provisions that existed on the date on which the claim was closed, including, without limitation, using the edition of the American Medical Association's Guides to the Evaluation of Permanent Impairment as adopted by the Division pursuant to NRS 616C.110 that was applicable on the date the claim was closed.

Sec. 7. *1. If the employer of a vocational rehabilitation counselor is also the entity administering an injured employee's case, the vocational rehabilitation counselor shall not provide services as a vocational rehabilitation counselor to the injured employee, including, without limitation, completing a written assessment pursuant to NRS 616C.550, unless, before the commencement of such services, the injured employee is provided with a written disclosure that:*

(a) Discloses the relationship between the vocational rehabilitation counselor and the entity administering the injured employee's case; and

(b) Informs the injured employee of his right to be assigned an alternate vocational rehabilitation counselor who is not affiliated with the entity administering the injured employee's case.

2. After receiving the written disclosure required pursuant to subsection 1, the injured employee has a right to be assigned an alternate vocational rehabilitation counselor who is not affiliated

with the entity administering the injured employee's case. To be assigned an alternate vocational rehabilitation counselor, the injured employee must submit a written request to the entity administering the injured employee's case before the commencement of vocational rehabilitation services. Not later than 10 days after receiving such a request, the entity administering the injured employee's case shall assign the injured employee an alternate vocational rehabilitation counselor who is not affiliated with the entity administering the injured employee's case.

Sec. 8. NRS 616C.390 is hereby amended to read as follows:

616C.390 ***Except as otherwise provided in section 6 of this act:***

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

(a) A change of circumstances warrants an increase or rearrangement of compensation during the life of the claimant;

(b) The primary cause of the change of circumstances is the injury for which the claim was originally made; and

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

2. After a claim has been closed, the insurer, upon receiving an application and for good cause shown, may authorize the reopening of the claim for medical investigation only. The application must be accompanied by a written request for treatment from the physician or chiropractor treating the claimant, certifying that the treatment is indicated by a change in circumstances and is related to the industrial injury sustained by the claimant.

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

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

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

(b) There is clear and convincing evidence that the primary cause of the change of circumstances is the injury for which the claim was originally made.

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

(a) The claimant was not off work as a result of the injury; and

(b) The claimant did not receive benefits for a permanent partial disability.

➥ If an application to reopen a claim to increase or rearrange compensation is made pursuant to this subsection, the insurer shall reopen the claim if the requirements set forth in paragraphs (a), (b) and (c) of subsection 1 are met.

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

(a) Retired; or

(b) Otherwise voluntarily removed himself from the workforce,

➥ for reasons unrelated to the injury for which the claim was originally made.

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

8. An increase or rearrangement of compensation is not effective before an application for reopening a claim is made unless good cause is shown. The insurer shall, upon good cause shown, allow the cost of emergency treatment the necessity for which has been certified by a physician or a chiropractor.

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

10. The provisions of this section apply to any claim for which an application to reopen the claim or to increase or rearrange compensation is made pursuant to this section, regardless of the date of the injury or accident to the claimant. If a claim is reopened pursuant to this section, the amount of any compensation or benefits provided must be determined in accordance with the provisions of NRS 616C.425.

Sec. 9. NRS 616C.495 is hereby amended to read as follows:

616C.495 1. Except as otherwise provided in NRS 616C.380, an award for a permanent partial disability may be paid in a lump sum under the following conditions:

(a) A claimant injured on or after July 1, 1973, and before July 1, 1981, who incurs a disability that does not exceed 12 percent may elect to receive his compensation in a lump sum. A claimant injured on or after July 1, 1981, and before July 1, 1995, who incurs a disability that does not exceed 25 percent may elect to receive his compensation in a lump sum.

(b) The spouse, or in the absence of a spouse, any dependent child of a deceased claimant injured on or after July 1, 1973, who is

not entitled to compensation in accordance with NRS 616C.505, is entitled to a lump sum equal to the present value of the deceased claimant's undisbursed award for a permanent partial disability.

(c) Any claimant injured on or after July 1, 1981, and before July 1, 1995, who incurs a disability that exceeds 25 percent may elect to receive his compensation in a lump sum equal to the present value of an award for a disability of 25 percent. If the claimant elects to receive compensation pursuant to this paragraph, the insurer shall pay in installments to the claimant that portion of the claimant's disability in excess of 25 percent.

(d) Any claimant injured on or after July 1, 1995, may elect to receive his compensation in a lump sum in accordance with regulations adopted by the Administrator and approved by the Governor. The Administrator shall adopt regulations for determining the eligibility of such a claimant to receive all or any portion of his compensation in a lump sum. Such regulations may include the manner in which an award for a permanent partial disability may be paid to such a claimant in installments. Notwithstanding the provisions of NRS 233B.070, any regulation adopted pursuant to this paragraph does not become effective unless it is first approved by the Governor.

2. If the claimant elects to receive his payment for a permanent partial disability in a lump sum pursuant to subsection 1, all of his benefits for compensation terminate. His acceptance of that payment constitutes a final settlement of all factual and legal issues in the case. By so accepting he waives all of his rights regarding the claim, including the right to appeal from the closure of the case or the percentage of his disability, except:

(a) His right to ~~[reopen]~~ ***:***

(1) Reopen his claim ~~[according to]~~ ***in accordance with*** the provisions of NRS 616C.390; ***or***

(2) Have his claim considered by his insurer pursuant to section 6 of this act;

(b) Any counseling, training or other rehabilitative services provided by the insurer; and

(c) His right to receive a benefit penalty in accordance with NRS 616D.120.

➥ The claimant must be advised in writing of the provisions of this subsection when he demands his payment in a lump sum, and has 20 days after the mailing or personal delivery of the notice within which to retract or reaffirm his demand, before payment may be made and his election becomes final.

3. Any lump-sum payment which has been paid on a claim incurred on or after July 1, 1973, must be supplemented if necessary to conform to the provisions of this section.

4. Except as otherwise provided in this subsection, the total lump-sum payment for disablement must not be less than one-half the product of the average monthly wage multiplied by the percentage of disability. If the claimant received compensation in installment payments for his permanent partial disability before electing to receive his payment for that disability in a lump sum, the lump-sum payment must be calculated for the remaining payment of compensation.

5. The lump sum payable must be equal to the present value of the compensation awarded, less any advance payment or lump sum previously paid. The present value must be calculated using monthly payments in the amounts prescribed in subsection 7 of NRS 616C.490 and actuarial annuity tables adopted by the Division. The tables must be reviewed annually by a consulting actuary.

6. If a claimant would receive more money by electing to receive compensation in a lump sum than he would if he receives installment payments, he may elect to receive the lump-sum payment.

Sec. 10. NRS 616C.550 is hereby amended to read as follows:

616C.550 1. ~~[Except as otherwise provided in this section, if]~~ ***If*** benefits for a temporary total disability will be paid to an injured employee for more than 90 days, ~~[a vocational rehabilitation counselor shall, within 30 days after being assigned to the claim, make]~~ ***the insurer or injured employee may request a vocational rehabilitation counselor to prepare*** a written assessment of the injured employee's ability or potential to return to:

(a) The position he held at the time that he was injured; or

(b) Any other gainful employment.

2. Before completing the written assessment, the counselor shall:

(a) Contact the injured employee and:

(1) Identify the injured employee's educational background, work experience and career interests; and

(2) Determine whether the injured employee has any existing marketable skills.

(b) Contact the injured employee's treating physician or chiropractor and determine:

(1) Whether the employee has any temporary or permanent physical limitations;

(2) The estimated duration of the limitations;

(3) Whether there is a plan for continued medical treatment; and

(4) When the employee may return to the position that he held at the time of his injury or to any other position. The treating physician or chiropractor shall determine whether an employee may return to the position that he held at the time of his injury.

3. ***Except as otherwise provided in section 7 of this act, the counselor shall prepare the written assessment within 30 days after receiving the request for the written assessment pursuant to subsection 1.*** The written assessment must contain a determination as to whether the employee is eligible for vocational rehabilitation services pursuant to NRS 616C.590. If the insurer, with the assistance of the counselor, determines that the employee is eligible for vocational rehabilitation services, a plan for a program of vocational rehabilitation must be completed pursuant to NRS 616C.555.

4. The Division may, by regulation, require a written assessment to include additional information.

5. If an insurer determines that ~~[the]~~ ***a*** written assessment ~~[required by this section]~~ ***requested for an injured employee pursuant to subsection 1*** is impractical because of the expected duration of the ***injured*** employee's total temporary disability, the insurer shall:

(a) Complete a written report which specifies his reasons for the decision; and

(b) Review the claim at least once every 60 days.

6. The insurer shall deliver a copy of the written assessment or the report completed pursuant to subsection 5 to the injured employee, his employer, the treating physician or chiropractor and the injured employee's attorney or representative, if applicable.

7. For the purposes of this section, "existing marketable skills" include, but are not limited to:

(a) Completion of:

(1) A program at a trade school;

(2) A program which resulted in an associate's degree; or

(3) A course of study for certification,

➥ if the program or course of study provided the skills and training necessary for the injured employee to be gainfully employed on a reasonably continuous basis in an occupation that is reasonably available in this State.

(b) Completion of a 2-year or 4-year program at a college or university which resulted in a degree.

(c) Completion of any portion of a program for a graduate's degree at a college or university.

(d) Skills acquired in previous employment, including those acquired during an apprenticeship or a program for on-the-job training.

➥ The skills set forth in paragraphs (a) to (d), inclusive, must have been acquired within the preceding 7 years and be compatible with the physical limitations of the injured employee to be considered existing marketable skills.

Sec. 11. NRS 616C.555 is hereby amended to read as follows:

616C.555 1. A vocational rehabilitation counselor shall develop a plan for a program of vocational rehabilitation for each injured employee who is eligible for vocational rehabilitation services pursuant to NRS 616C.590. The counselor shall work with the insurer and the injured employee to develop a program that is compatible with the injured employee's age, sex and physical condition.

2. If the counselor ~~[determined in the]~~ ***determines in a*** written assessment ~~[developed]~~ ***requested*** pursuant to NRS 616C.550 that the injured employee has existing marketable skills, the plan must consist of job placement assistance only. When practicable, the goal of job placement assistance must be to aid the employee in finding a position which pays a gross wage that is equal to or greater than 80 percent of the gross wage that he was earning at the time of his injury. An injured employee must not receive job placement assistance for more than 6 months after the date on which he was notified that he is eligible only for job placement assistance because:

(a) He was physically capable of returning to work; or

(b) It was determined that he had existing marketable skills.

3. If the counselor ~~[determined in the]~~ ***determines in a*** written assessment ~~[developed]~~ ***requested*** pursuant to NRS 616C.550 that the injured employee does not have existing marketable skills, the plan must consist of a program which trains or educates the injured employee and provides job placement assistance. Except as otherwise provided in NRS 616C.560, such a program must not exceed:

(a) If the injured employee has incurred a permanent disability as a result of which permanent restrictions on his ability to work have been imposed but no permanent physical impairment rating has been issued, or a permanent disability with a permanent physical impairment of 1 percent or more but less than 6 percent, 9 months.

(b) If the injured employee has incurred a permanent physical impairment of 6 percent or more, but less than 11 percent, 1 year.

(c) If the injured employee has incurred a permanent physical impairment of 11 percent or more, 18 months.

➥ The percentage of the injured employee's permanent physical impairment must be determined pursuant to NRS 616C.490.

4. A plan for a program of vocational rehabilitation must comply with the requirements set forth in NRS 616C.585.

5. A plan created pursuant to subsection 2 or 3 must assist the employee in finding a job or train or educate the employee and assist him in finding a job that is a part of an employer's regular business operations and from which the employee will gain skills that would generally be transferable to a job with another employer.

6. A program of vocational rehabilitation must not commence before the treating physician or chiropractor, or an examining physician or chiropractor determines that the injured employee is capable of safely participating in the program.

7. If, based upon the opinion of a treating or an examining physician or chiropractor, the counselor determines that an injured employee is not eligible for vocational rehabilitation services, the counselor shall provide a copy of the opinion to the injured employee, the injured employee's employer and the insurer.

8. A plan for a program of vocational rehabilitation must be signed by a certified vocational rehabilitation counselor.

9. If an initial program of vocational rehabilitation pursuant to this section is unsuccessful, an injured employee may submit a written request for the development of a second program of vocational rehabilitation which relates to the same injury. An insurer shall authorize a second program for an injured employee upon good cause shown.

10. If a second program of vocational rehabilitation pursuant to subsection 9 is unsuccessful, an injured employee may submit a written request for the development of a third program of vocational rehabilitation which relates to the same injury. The insurer, with the approval of the employer who was the injured employee's employer at the time of his injury, may authorize a third program for the injured employee. If such an employer has terminated operations, his approval is not required for authorization of a third program. An insurer's determination to authorize or deny a third program of vocational rehabilitation may not be appealed.

11. The Division shall adopt regulations to carry out the provisions of this section. The regulations must specify the contents of a plan for a program of vocational rehabilitation.

Sec. 12. NRS 687A.033 is hereby amended to read as follows:

687A.033 1. "Covered claim" means an unpaid claim or judgment, including a claim for unearned premiums, which arises out of and is within the coverage of an insurance policy to which this chapter applies issued by an insurer which becomes an insolvent insurer, if one of the following conditions exists:

(a) The claimant or insured, if a natural person, is a resident of this State at the time of the insured event.

(b) The claimant or insured, if other than a natural person, maintains its principal place of business in this State at the time of the insured event.

(c) The property from which the first party property damage claim arises is permanently located in this State.

(d) The claim is not a covered claim pursuant to the laws of any other state and the premium tax imposed on the insurance policy is payable in this State pursuant to NRS 680B.027.

2. The term does not include:

(a) An amount that is directly or indirectly due a reinsurer, insurer, insurance pool or underwriting association, as recovered by subrogation, indemnity or contribution, or otherwise.

(b) That part of a loss which would not be payable because of a provision for a deductible or a self-insured retention specified in the policy.

(c) Except as otherwise provided in this paragraph, any claim filed with the Association:

(1) More than 18 months after the date of the order of liquidation; or

(2) After the final date set by the court for the filing of claims against the liquidator or receiver of the insolvent insurer,

➥ whichever is earlier. The provisions of this paragraph do not apply to a claim for workers' compensation that is reopened pursuant to the provisions of NRS 616C.390 ~~.~~ ***or section 6 of this act.***

(d) A claim filed with the Association for a loss that is incurred but is not reported to the Association before the expiration of the period specified in subparagraph (1) or (2) of paragraph (c).

(e) An obligation to make a supplementary payment for adjustment or attorney's fees and expenses, court costs or interest and bond premiums incurred by the insolvent insurer before the appointment of a liquidator, unless the expenses would also be a valid claim against the insured.

(f) A first party or third party claim brought by or against an insured, if the aggregate net worth of the insured and any affiliate of the insured, as determined on a consolidated basis, is more than $25,000,000 on December 31 of the year immediately preceding the date the insurer becomes an insolvent insurer. The provisions of this paragraph do not apply to a claim for workers' compensation. As used in this paragraph, "affiliate" means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For the purpose of this definition, the terms "owns," "is owned" and "ownership" mean ownership of an equity interest, or the equivalent thereof, of 10 percent or more.