

SENATE BILL NO. 437—COMMITTEE ON COMMERCE AND LABOR

MARCH 29, 2005

Referred to Committee on Commerce and Labor

SUMMARY—Enacts provisions relating to use of compromise agreements and payment of lump-sum awards in resolving claims for industrial injuries and occupational diseases. (BDR 53-1315)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

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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; enacting provisions relating to the use of compromise agreements to resolve claims for industrial injuries and occupational diseases; authorizing the payment of lump-sum awards under certain circumstances to resolve claims for industrial injuries and occupational diseases; 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. Chapter 616C of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 15, inclusive, of this act.

Sec. 2. *As used in sections 2 to 9, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 and 4 of this act have the meanings ascribed to them in those sections.*

Sec. 3. *“Compromise agreement” means any agreement between an injured employee and an insurer that:*

1. Settles all or any part of a claim for compensation pursuant to chapters 616A to 617, inclusive, of NRS; and

2. Releases the insurer from future liability with regard to the claim or any part or the claim.



1 **Sec. 4.** *"Insurer" includes an insurer, an organization for*
2 *managed care, a third-party administrator or an employer who*
3 *provides accident benefits for injured employees pursuant to*
4 *NRS 616C.265.*

5 **Sec. 5.** *The provisions of chapters 616A to 617, inclusive, of*
6 *NRS do not:*

7 1. *Impair the right of an injured employee and an insurer to*
8 *enter into a compromise agreement regarding a claim for*
9 *compensation pursuant to chapters 616A to 617, inclusive, of*
10 *NRS.*

11 2. *Confer upon the dependents of an injured employee:*

12 (a) *Any interest which the injured employee may not release*
13 *through a compromise agreement; or*

14 (b) *Any interest for which the injured employee or his estate is*
15 *liable to such dependents if the injured employee enters into a*
16 *compromise agreement.*

17 **Sec. 6.** 1. *An injured employee and an insurer may enter*
18 *into a compromise agreement to settle all or any part of a claim*
19 *for compensation pursuant to chapters 616A to 617, inclusive, of*
20 *NRS.*

21 2. *A compromise agreement is not enforceable unless it*
22 *complies with the provisions of sections 2 to 9, inclusive, of this act*
23 *and is approved by an appeals officer in accordance with those*
24 *provisions.*

25 3. *Upon approval of a compromise agreement, the*
26 *compromise agreement:*

27 (a) *Releases the insurer that entered into the compromise*
28 *agreement from future liability for all or any part of the claim as*
29 *provided in the compromise agreement; and*

30 (b) *Does not constitute a bar to recovery by the injured*
31 *employee for any part of the claim that is not released pursuant to*
32 *the compromise agreement or for any other claim that is not*
33 *released pursuant to the compromise agreement.*

34 **Sec. 7.** *For a compromise agreement to be enforceable, the*
35 *compromise agreement must satisfy the following requirements:*

36 1. *The compromise agreement must be in writing on a form*
37 *prescribed by the Administrator and must be signed by each party*
38 *to the compromise agreement. The signature of the injured*
39 *employee or other beneficiary must be attested to by two*
40 *disinterested witnesses or acknowledged before a notary public.*

41 2. *The compromise agreement must contain the following*
42 *information:*

43 (a) *The date of the injury or the date the injured employee or,*
44 *in the event of his death, his dependents obtained knowledge of the*
45 *occupational disease.*



1 (b) *The average monthly wage of the injured employee as*
2 *determined pursuant to the regulations adopted by the*
3 *Administrator pursuant to NRS 616C.420.*

4 (c) *The nature of the disability, whether total or partial and*
5 *whether permanent or temporary.*

6 (d) *The amount paid, or due and unpaid, to the injured*
7 *employee up to the date of the compromise agreement or the death*
8 *of the employee, and the amount of the payments or benefits to be*
9 *made.*

10 (e) *The length of time such payments or benefits are to*
11 *continue.*

12 (f) *If the employee died as a result of the injury or*
13 *occupational disease:*

14 (1) *The date of death;*

15 (2) *The name of the surviving spouse, if any;*

16 (3) *The names and ages of all dependent children and all*
17 *other dependents, if any; and*

18 (4) *The amount paid or to be paid as a death benefit and to*
19 *whom the death benefit is to be paid.*

20 (g) *Any other information required by the regulations of the*
21 *Administrator.*

22 3. *The compromise agreement must be approved by an*
23 *appeals officer pursuant to sections 2 to 9, inclusive, of this act.*

24 **Sec. 8.** 1. *After entering into a compromise agreement, one*
25 *or more of the parties shall file the compromise agreement with an*
26 *appeals officer for review and approval.*

27 2. *After receiving a compromise agreement, the appeals*
28 *officer may:*

29 (a) *Without a hearing, approve the compromise agreement and*
30 *enter an award based upon the terms of the compromise*
31 *agreement; or*

32 (b) *Schedule a hearing to review the compromise agreement*
33 *and to determine whether to approve it. Such a hearing must be*
34 *scheduled in the same manner as a hearing on a contested case*
35 *before the appeals officer pursuant to NRS 616C.345.*

36 3. *The appeals officer may approve a compromise agreement*
37 *only if the appeals officer determines that:*

38 (a) *The compromise agreement complies with the provisions of*
39 *sections 2 to 9, inclusive, of this act and satisfies the standards set*
40 *forth in the regulations adopted by the Administrator; and*

41 (b) *Approval of the compromise agreement is in the best*
42 *interest of the parties.*

43 **Sec. 9.** 1. *The Administrator shall adopt regulations to*
44 *carry out the provisions of sections 2 to 9, inclusive, of this act.*

45 2. *The regulations must include, without limitation:*



1 (a) *Procedures for conducting a hearing to review a*
2 *compromise agreement;*

3 (b) *Standards for an appeals officer to use in determining*
4 *whether to approve a compromise agreement; and*

5 (c) *Provisions addressing notification of lien claimants.*

6 **Sec. 10.** *To the extent possible, the provisions of sections 10*
7 *to 15, inclusive, of this act are intended to supplement other*
8 *provisions of chapters 616A to 617, inclusive, of NRS regarding*
9 *the payment of awards in a lump sum. If there is a conflict*
10 *between such other provisions and the provisions of sections 10 to*
11 *15, inclusive, of this act, the other provisions control.*

12 **Sec. 11.** *1. Except as otherwise provided in this section, a*
13 *hearing officer or appeals officer may convert any compensation*
14 *payable to an injured employee or his dependents pursuant to*
15 *chapters 616A to 617, inclusive, of NRS to a lump sum and order*
16 *the lump sum to be paid immediately or at some future time if the*
17 *hearing officer or appeals officer makes any of the following*
18 *findings:*

19 (a) *Conversion of the compensation to a lump sum is*
20 *necessary for the protection of the injured employee or his*
21 *dependents or is in the best interest of the injured employee or his*
22 *dependents. In determining what is in the best interest of the*
23 *injured employee or his dependents, the hearing officer or appeals*
24 *officer shall consider the general financial condition of the*
25 *injured employee or his dependents, including, without limitation,*
26 *the ability of the injured employee or his dependents to live*
27 *without periodic payments and to discharge debts incurred before*
28 *the date of injury.*

29 (b) *Conversion of the compensation to a lump sum will avoid*
30 *inequity and will not cause undue expense or hardship to the*
31 *injured employee or his dependents.*

32 (c) *The employer of the injured employee has sold or otherwise*
33 *disposed of the greater part of the employer's assets or is about to*
34 *do so.*

35 (d) *The employer of the injured employee is not a resident of*
36 *this State.*

37 **2.** *A hearing officer or appeals officer may convert any*
38 *compensation payable pursuant to chapters 616A to 617, inclusive,*
39 *of NRS to a lump sum at the time he enters the award for the*
40 *compensation or at anytime thereafter. The hearing officer or*
41 *appeals officer may take such action on his own motion or the*
42 *motion of any party.*



1 3. A hearing officer or appeals officer shall not convert to a
2 lump sum any compensation payable as vocational rehabilitation
3 benefits.

4 **Sec. 12.** 1. If an injured employee has a temporary
5 disability, a hearing officer or appeals officer shall determine the
6 amount of a lump sum payable pursuant to sections 10 to 15,
7 inclusive, of this act by:

8 (a) Estimating the probable duration of the temporary
9 disability and the probable amount of the total payments for the
10 temporary disability pursuant to chapters 616A to 617, inclusive,
11 of NRS; and

12 (b) Fixing the lump sum at the estimated amount.

13 2. If an injured employee has a permanent disability or dies
14 from the injury, a hearing officer or appeals officer shall
15 determine the amount of a lump sum payable pursuant to sections
16 10 to 15, inclusive, of this act by:

17 (a) Calculating the total amount of the payments for the
18 permanent disability or death benefit pursuant to chapters 616A to
19 617, inclusive, of NRS;

20 (b) Estimating the present value of the total payments for the
21 permanent disability or death benefit by:

22 (1) Assuming interest at the rate of 3 percent per annum;
23 and

24 (2) Disregarding the probability of the beneficiary's death
25 except that, in cases where the beneficiary is entitled to a lifetime
26 benefit, the hearing officer or appeals officer shall consider the
27 probability of the beneficiary's death in estimating the present
28 value of the lifetime benefit; and

29 (c) Fixing the lump sum at the estimated present value.

30 **Sec. 13.** 1. A hearing officer or appeals officer may order
31 that a lump sum payable pursuant to sections 10 to 15, inclusive,
32 of this act must be:

33 (a) Paid directly to an injured employee or, in the event of his
34 death, his dependents;

35 (b) Deposited with any savings bank or trust company
36 authorized to transact business in this State which agrees to accept
37 the lump sum as a deposit bearing interest; or

38 (c) Deposited with the State Insurance Fund. The lump sum,
39 together with all interest accrued thereon, must be held in trust for
40 the injured employee or, in the event of his death, for his
41 dependents.

42 2. When appointing a trustee for a trust, the hearing officer
43 or appeals officer may give preference to a trustee selected by the
44 injured employee or, in the event of his death, his dependents.



1 3. A trustee shall make payments from a trust only in the
2 amounts and at the time fixed by the order of the hearing officer
3 or appeals officer. The trustee shall make such payments until the
4 lump sum and interest accrued thereon are exhausted.

5 **Sec. 14.** 1. Upon the payment of a lump sum pursuant to
6 sections 10 to 15, inclusive, of this act, the insurer shall file with
7 the hearing officer or appeals officer a receipt which:

8 (a) Evidences the payment of the lump sum; and

9 (b) Is signed by the injured employee or his dependents or the
10 trustee, if any.

11 2. Upon receiving the receipt, the hearing officer or appeals
12 officer shall issue a certificate which evidences the payment of the
13 lump sum. The certificate operates as a satisfaction of the award
14 and fully discharges the insurer from any further liability to the
15 injured employee or his dependants concerning the award. The
16 insurer may file the certificate with the clerk of the court in which
17 any judgment upon the award has been entered.

18 **Sec. 15.** The Administrator shall adopt regulations to carry
19 out the provisions of sections 10 to 15, inclusive, of this act.

20 **Sec. 16.** NRS 616C.225 is hereby amended to read as follows:

21 616C.225 1. Except as otherwise provided in this section, if
22 an insurer determines that an employee has knowingly
23 misrepresented or concealed a material fact to obtain any benefit or
24 payment under the provisions of chapters 616A to 616D, inclusive,
25 of NRS, the insurer may deduct from any benefits or payments due
26 to the employee, the amount obtained by the employee because of
27 the misrepresentation or concealment of a material fact. The
28 employee shall reimburse the insurer for all benefits or payments
29 received because of the willful misrepresentation or concealment of
30 a material fact.

31 2. An employee who is aggrieved by a determination of an
32 insurer made pursuant to subsection 1 may appeal that determination
33 pursuant to NRS 616C.315 to 616C.385, inclusive. If the final
34 decision by an appeals officer is favorable to the employee, the
35 Administrator shall order the insurer to pay \$2,000 to that employee,
36 in addition to any benefits or payments the employee is entitled to
37 receive, if the Administrator determines that the insurer had no
38 reasonable basis for believing that the employee knowingly
39 misrepresented or concealed a material fact to obtain any benefit or
40 payment.

41 3. If an employee ~~elects to receive~~ receives his award ~~for a~~
42 ~~permanent partial disability~~ in a lump sum pursuant to ~~chapters~~
43 ~~616A to 617, inclusive, of NRS 616C.495~~ and a criminal action is
44 brought against the employee for an alleged violation of NRS
45 616D.300, the insurer shall, upon receiving notice of the action and



1 until a judgment is entered in the action, pay reasonable portions of
2 the lump-sum award in monthly installments. If the employee is not
3 convicted of the alleged violation, the insurer shall pay the
4 employee the balance of the award in a lump sum. The provisions of
5 subsection 2 do not apply to require any additional payment at the
6 conclusion of a criminal action.

7 4. This section does not preclude an insurer from making an
8 investigation pursuant to, or pursuing the remedies provided by,
9 NRS 616D.300.

10 **Sec. 17.** NRS 616C.380 is hereby amended to read as follows:

11 616C.380 1. If a hearing officer, appeals officer or district
12 court renders a decision on a claim for compensation and the insurer
13 or employer appeals that decision, but is unable to obtain a stay of
14 the decision:

15 (a) Payment of that portion of an award for a permanent partial
16 disability which is contested must be made in installment payments
17 until the claim reaches final resolution.

18 (b) Payment of the award must be made in monthly installments
19 of 66 2/3 percent of the average wage of the claimant until the claim
20 reaches final resolution if the claim is for more than 3 months of
21 past benefits for a temporary total disability or rehabilitation, or for
22 a payment in lump sum related to past benefits for rehabilitation,
23 such as costs for purchasing a business or equipment.

24 2. If the final resolution of the claim is in favor of the claimant,
25 the remaining amount of compensation to which the claimant is
26 entitled may be paid in a lump sum if the claimant is otherwise
27 eligible for such a payment pursuant to NRS 616C.495 *or sections*
28 *10 to 15, inclusive, of this act* and any regulations adopted pursuant
29 thereto. If the final resolution of the claim is in favor of the insurer
30 or employer, any amount paid to the claimant in excess of the
31 uncontested amount must be deducted from any future benefits
32 related to that claim, other than medical benefits, to which the
33 claimant is entitled. The deductions must be made in a reasonable
34 manner so as not to create an undue hardship to the claimant.

35 **Sec. 18.** NRS 616C.410 is hereby amended to read as follows:

36 616C.410 Except as otherwise provided by NRS 616C.380,
37 616C.495, 616C.505, 616C.580 and 616C.595, *sections 2 to 9,*
38 *inclusive, of this act and 10 to 15, inclusive, of this act,* the insurer
39 shall not make or allow any lump-sum *payments or* settlements.

40 **Sec. 19.** NRS 617.190 is hereby amended to read as follows:

41 617.190 ~~[1.]~~ Except as otherwise provided ~~[for in this~~
42 ~~chapter, no]~~ *in chapters 616A to 617, inclusive, of NRS:*

43 *1. No* contract of employment, insurance, relief benefit,
44 indemnity ~~[.]~~ or any other device ~~[.]~~ shall modify, change or waive
45 any liability created by ~~[this chapter.]~~ *those chapters.*



1 2. A contract of employment, insurance, relief benefit,
2 indemnity, or other device having for its purpose the waiver or
3 modification of the terms of liability created by ~~this chapter shall~~
4 ~~be~~ *those chapters is* void.

