

SENATE BILL NO. 281—COMMITTEE ON COMMERCE AND LABOR

MARCH 13, 2007

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions governing industrial insurance.
(BDR 53-1136)

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; revising provisions governing administrative fines and benefit penalties; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law regarding industrial insurance provides that an administrative fine must be imposed against an insurer, organization for managed care, health care provider, third-party administrator or employer if such a person refuses to "process" a claim for compensation. (NRS 616D.120) This bill revises this requirement so that the administrative fine must be imposed if such a person refuses to "accept or deny" a claim for compensation.

Existing law regarding industrial insurance provides that an insurer, organization for managed care, health care provider, third-party administrator or employer must pay a benefit penalty to a claimant under certain circumstances. (NRS 616D.120) Existing law also provides that the amount of this benefit penalty varies in accordance with the number of fines and benefit penalties previously imposed against the insurer, organization for managed care, health care provider, third-party administrator or employer. This bill revises this provision so that the amount of the benefit penalty varies in accordance with the number of fines and benefit penalties previously imposed against a particular party only with regard to the claim at issue. Existing law further provides that the benefit penalty must be paid to the claimant within 10 days after the determination of the Administrator of the Division of Industrial Relations of the Department of Business and Industry regarding the benefit penalty, unless an appeal is filed with an appeals officer. (NRS 616D.120) This bill provides that the payment of the benefit penalty may be further suspended if judicial proceedings are instituted to review the decision of the appeals officer.



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

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

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

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

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

(d) Refused to ~~process~~ **accept or deny** a claim for compensation pursuant to chapters 616A to 616D, inclusive, or chapter 617 of NRS;

(e) Made it necessary for a claimant to initiate proceedings pursuant to chapters 616A to 616D, inclusive, or chapter 617 of NRS for 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 when carrying out its duties pursuant to chapters 616A to 616D, 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 \$1,500 for each initial violation, or a fine of \$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 \$375 for an initial violation, or more than \$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.



3. If the Administrator determines that a violation of any of the provisions of paragraphs (a) to (e), inclusive, or (h) of subsection 1 has occurred, the Administrator shall order the insurer, organization for managed care, health care provider, third-party administrator or employer to pay to the claimant a benefit penalty in an amount that is not less than \$5,000 and not greater than \$37,500. To determine the amount of the benefit penalty, the Administrator shall consider the degree of physical harm suffered by the injured employee or his dependents as a result of the violation of paragraph (a), (b), (c), (d), (e) or (h) of subsection 1, the amount of compensation found to be due the claimant and the number of fines and benefit penalties previously imposed *in this claim* against the insurer, organization for managed care, health care provider, third-party administrator or employer pursuant to this section. If this is the third violation within 5 years for which a benefit penalty has been imposed *in this claim* against the insurer, organization for managed care, health care provider, third-party administrator or employer, the Administrator shall also consider the degree of economic harm suffered by the injured employee or his dependents as a result of the violation of paragraph (a), (b), (c), (d), (e) or (h) of subsection 1. Except as otherwise provided in this section, the benefit penalty is for the benefit of the claimant and must be paid directly to him within 10 days after the date of the Administrator's determination. If the claimant is the injured employee and he dies before the benefit penalty is paid to him, the benefit penalty must be paid to his estate. Proof of the payment of the benefit penalty must be submitted to the Administrator within 10 days after the date of his determination unless an appeal is filed pursuant to NRS *616C.370 or* 616D.140. Any compensation to which the claimant may otherwise be entitled pursuant to chapters 616A to 616D, inclusive, or chapter 617 of NRS must not be reduced by the amount of any benefit penalty received pursuant to this subsection.

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

5. If:

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

(b) The Fraud Control Unit for Industrial Insurance of the Office of the Attorney General established pursuant to NRS 228.420



1 notifies the Administrator that the Unit will not prosecute the person
2 for that violation,
3 ➡ the Administrator shall impose an administrative fine of not more
4 than \$15,000.

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

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

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

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

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

