

SENATE BILL NO. 54—SENATOR LEE

PREFILED FEBRUARY 1, 2007

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions governing industrial insurance to create a presumption of intoxication or use of a controlled substance under certain circumstances. (BDR 53-803)

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 **fomitted material** is material to be omitted.

AN ACT relating to industrial insurance; creating a rebuttable presumption of intoxication or use of a controlled substance when an injured worker refuses to submit to a postaccident drug test in accordance with the policy of his employer; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

- 1 Existing law states various grounds for the denial of certain forms of industrial
- 2 insurance compensation. (NRS 616C.230) Two of those grounds relate to situations
- 3 where alcohol intoxication or the use of a controlled substance is the proximate
- 4 cause of an employee's injury. (NRS 616C.230)
- 5 This bill creates rebuttable presumptions of intoxication or use of a controlled
- 6 substance when an injured employee refuses to submit to a postaccident drug test in
- 7 accordance with his employer's postaccident drug testing policy.



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

Section 1. NRS 616C.010 is hereby amended to read as follows:

616C.010 1. Whenever any accident occurs to any employee, he shall forthwith report the accident and the injury resulting therefrom to his employer.

2. When an employer learns of an accident, whether or not it is reported, the employer may direct the employee to submit to, or the employee may request, an examination by a physician or chiropractor, in order to ascertain the character and extent of the injury and **to** render medical attention which is required immediately. The employer may furnish the names, addresses and telephone numbers of one or more physicians or chiropractors, but may not require the employee to select any particular physician or chiropractor. Thereupon, the examining physician or chiropractor shall report forthwith to the employer and to the insurer the character and extent of the injury. The employer shall not require the employee to disclose or permit the disclosure of any other information concerning his physical condition.

3. Further medical attention, except as otherwise provided in NRS 616C.265, must be authorized by the insurer.

4. This section does not prohibit an employer from ~~requiring~~ :

(a) Requiring the employee to submit to an examination by a physician or chiropractor specified by the employer at any convenient time after medical attention which is required immediately has been completed ~~H~~ ; or

(b) Requiring the employee to submit to a postaccident drug test in accordance with the postaccident drug testing policy of the employer.

Sec. 2. NRS 616C.230 is hereby amended to read as follows:

616C.230 1. Compensation is not payable pursuant to the provisions of chapters 616A to 616D, inclusive, or chapter 617 of NRS for an injury:

(a) Caused by the employee's willful intention to injure himself.

(b) Caused by the employee's willful intention to injure another.

(c) Proximately caused by the employee's intoxication. If the employee was intoxicated at the time of his injury, intoxication must be presumed to be a proximate cause unless rebutted by evidence to the contrary. ***If the employee refuses to comply with his employer's postaccident drug testing policy with regard to intoxication, the employee must be presumed to have been intoxicated at the time of***



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1 *the injury unless this presumption is rebutted by evidence to the*
2 *contrary.*

3 (d) Proximately caused by the employee's use of a controlled
4 substance. If the employee had any amount of a controlled substance
5 in his system at the time of his injury for which the employee did
6 not have a current and lawful prescription issued in his name or that
7 he was not using in accordance with the provisions of chapter 453A
8 of NRS, the controlled substance must be presumed to be a
9 proximate cause unless rebutted by evidence to the contrary. *If the*
10 *employee refuses to comply with his employer's postaccident drug*
11 *testing policy with regard to a controlled substance, the employee*
12 *must be presumed to have had a controlled substance in his system*
13 *at the time of his injury for which the employee did not have a*
14 *current and lawful prescription issued in his name and that he*
15 *was not using in accordance with the provisions of chapter 453A*
16 *of NRS unless this presumption is rebutted by evidence to the*
17 *contrary.*

18 2. For the purposes of paragraphs (c) and (d) of subsection 1:

19 (a) The affidavit or declaration of an expert or other person
20 described in NRS 50.315 is admissible to prove the existence of any
21 alcohol or the existence, quantity or identity of a controlled
22 substance in an employee's system. If the affidavit or declaration
23 is to be so used, it must be submitted in the manner prescribed in
24 NRS 616C.355.

25 (b) When an examination requested or ordered includes testing
26 for the use of alcohol or a controlled substance, the laboratory that
27 conducts the testing must be licensed pursuant to the provisions of
28 chapter 652 of NRS.

29 3. No compensation is payable for the death, disability or
30 treatment of an employee if his death is caused by, or insofar as his
31 disability is aggravated, caused or continued by, an unreasonable
32 refusal or neglect to submit to or to follow any competent and
33 reasonable surgical treatment or medical aid.

34 4. If any employee persists in an unsanitary or injurious
35 practice that imperils or retards his recovery, or refuses to submit to
36 such medical or surgical treatment as is necessary to promote his
37 recovery, his compensation may be reduced or suspended.

38 5. An injured employee's compensation, other than accident
39 benefits, must be suspended if:

40 (a) A physician or chiropractor determines that the employee is
41 unable to undergo treatment, testing or examination for the
42 industrial injury solely because of a condition or injury that did not
43 arise out of and in the course of his employment; and

44 (b) It is within the ability of the employee to correct the
45 nonindustrial condition or injury.



- 1 ➡ The compensation must be suspended until the injured employee
- 2 is able to resume treatment, testing or examination for the industrial
- 3 injury. The insurer may elect to pay for the treatment of the
- 4 nonindustrial condition or injury.

