

## Amendment No. 442

Assembly Amendment to Assembly Bill No. 207

(BDR 53-546)

**Proposed by:** Assembly Committee on Commerce and Labor**Amends:** Summary: Yes Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold* is newly added transitory language.

TMC/BJE



Date: 4/20/2007

A.B. No. 207—Provides for the payment of a cash benefit to certain injured workers unable to return to the positions that they held at the time of injury. (BDR 53-546)



## ASSEMBLY BILL NO. 207—ASSEMBLYMAN OCEGUERA

FEBRUARY 27, 2007

Referred to Committee on Commerce and Labor

SUMMARY—~~[Provides for the payment of a cash benefit to certain injured workers unable to return to the positions that they held at the time of injury.]~~ **Revises provisions governing vocational rehabilitation services.** (BDR 53-546)

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; ~~[repealing provisions which require that vocational rehabilitation services be provided to eligible injured workers; providing for the payment of a cash benefit to certain injured workers who are unable to return to the position they held before the injury.]~~ **revising provisions governing vocational rehabilitation services;** and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Existing law provides for the provision of vocational rehabilitation services to injured employees who are unable to return to the positions that they held at the time of the injury. Existing law also authorizes the payment of a lump-sum cash benefit to an injured employee in lieu of the provision of vocational rehabilitation services. (NRS 616C.530-616C.600) ~~[Sections 1, 6, 8 and 9 of this bill eliminate the provisions which require that vocational rehabilitation services be provided to injured employees who are unable to return to the positions that they held at the time of the injury. Section 7 of this bill provides for the payment of a lump-sum cash benefit to an injured employee who is unable to return to the position that he held at the time of the injury. Section 7 establishes the rate for determining the amount of the cash benefit and establishes minimum and maximum amounts for the cash benefit. Section 10 of this bill provides for the applicability of the eliminated provisions to injured workers who entered programs for vocational rehabilitation services before July 1, 2007.]~~ **Section 3 of this bill prohibits a vocational rehabilitation counselor from performing certain acts concerning injured employees, including offering a lump-sum payment in lieu of vocational rehabilitation services without providing certain notices to the injured employee or his attorney, making certain statements to the injured employee and interfering with the relationship of the injured employee and his attorney. Section 6 of this bill provides administrative penalties for such violations. Section 4 of this bill requires an insurer that receives a written request from an injured employee for a lump-sum payment in lieu of vocational rehabilitation services to respond to the request within 30 days. Section 5 of this bill provides that vocational rehabilitation services may be provided outside of Nevada in any state that borders Nevada.**

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

Delete existing sections 1 through 11 of this bill and replace with the following new sections 1 through 6:

**Section 1. NRS 616A.070 is hereby amended to read as follows:**

616A.070 “Benefit penalty” means an additional amount of money that is payable to a claimant if the Administrator has determined that a violation of any of the provisions of paragraphs (a) to (e), inclusive, or (h) of subsection 1 of NRS 616D.120, or section 3 of this act, has occurred.

**Sec. 2. Chapter 616C of NRS is hereby amended by adding thereto the provisions set forth as sections 3 and 4 of this act.**

**Sec. 3. A vocational rehabilitation counselor shall not:**

1. Offer payment of compensation in a lump sum in lieu of the provision of vocational rehabilitation services to an injured employee;

(a) Without providing written notice of the offer to the attorney for the injured employee; or

(b) If the injured employee is not represented by an attorney, without providing a written notice to the employee which satisfies the requirements of the notice required by paragraph (c) of subsection 3 of NRS 616C.595;

2. Offer any monetary payment to an injured employee in an amount that is less than the amount authorized by the insurer;

3. Make any false statement or implication that an injured employee must make a decision regarding vocational rehabilitation within a certain period of time;

4. Make any statement or implication to an injured employee that he should not hire an attorney or recommend that an injured employee terminate an existing relationship with an attorney; or

5. Interfere in any other manner with the relationship between an injured employee and his attorney, including, without limitation, interfering in any manner with an agreement regarding attorney’s fees.

**Sec. 4. An insurer shall, within 30 days after receiving a written request from an injured employee for payment of compensation in a lump sum in lieu of the provision of vocational rehabilitation services, respond in writing to the request and, if the insurer agrees to the request, include in the response:**

1. The amount of the lump sum that the insurer is offering to pay;

2. A statement that the injured employee has 30 days after the date of the written response to accept or reject the lump-sum offer; and

3. A statement indicating that, if the injured employee rejects the lump-sum offer, he must continue working with his vocational rehabilitation counselor in accordance with the provisions of this chapter and the regulations adopted pursuant thereto.

**Sec. 5. NRS 616C.580 is hereby amended to read as follows:**

616C.580 1. Except as otherwise provided in this section, vocational rehabilitation services must not be provided outside of this State.

2. An injured employee ~~who~~

~~(a) Resides outside of this State, within 50 miles from any border of this State, on the date of injury; or~~

~~(b) Was injured while temporarily employed in this State by an employer subject to the provisions of chapters 616A to 617, inclusive, of NRS who can~~

1 ~~demonstrate that, on the date of injury, his permanent residence was outside of this~~  
2 ~~State;~~  
3 ~~↪ may receive vocational rehabilitation services [at a location within 50 miles~~  
4 ~~from his residence if such services are available at such a location.]~~ outside of this  
5 State if the state in which the vocational rehabilitation services are provided  
6 borders this State.

7 3. An injured employee who:

8 (a) Is eligible for vocational rehabilitation services pursuant to NRS 616C.590;  
9 and

10 (b) Resides outside of this State but does not qualify to receive vocational  
11 rehabilitation services outside of this State pursuant to subsection 2,

12 ↪ may execute a written agreement with the insurer which provides for the  
13 payment of compensation in a lump sum in lieu of the provision of vocational  
14 rehabilitation services pursuant to NRS 616C.595. The amount of the lump sum  
15 must not exceed \$20,000.

16 4. An injured employee who resides outside of this State but does not qualify  
17 to receive vocational rehabilitation services outside of this State pursuant to  
18 subsection 2 may receive the vocational rehabilitation services to which he is  
19 entitled pursuant to NRS 616C.545 to 616C.575, inclusive, and 616C.590 if he  
20 relocates to:

21 (a) This State; or

22 (b) A ~~location within 50 miles from any border of~~ state that borders this  
23 State,

24 ↪ at his own expense, if such services are available at such a location.

25 5. An injured employee who resides in this State may receive vocational  
26 rehabilitation services outside of this State at a location ~~[within 50 miles from his~~  
27 ~~residence]~~ in a state that borders this State if such services are available at such a  
28 location. An insurer may not unreasonably deny a request made by an injured  
29 employee pursuant to this subsection to receive vocational rehabilitation services  
30 outside of this State.

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

32 616D.120 1. Except as otherwise provided in this section, if the  
33 Administrator determines that an insurer, organization for managed care, health  
34 care provider, third-party administrator or employer has:

35 (a) Induced a claimant to fail to report an accidental injury or occupational  
36 disease;

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

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

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

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

45 (c) Refused to pay or unreasonably delayed payment to a claimant of  
46 compensation or other relief found to be due him by a hearing officer, appeals  
47 officer, court of competent jurisdiction, written settlement agreement, written  
48 stipulation or the Division when carrying out its duties pursuant to chapters 616A to  
49 616D, inclusive, or chapter 617 of NRS, if the refusal or delay occurs:

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

52 (2) Later than 30 days after the date of the decision of a court, hearing  
53 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 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 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 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 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 notifies the Administrator that the Unit will not prosecute the person for that violation,

the Administrator shall impose an administrative fine of not more than \$15,000.

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

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

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

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

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

8. If the Administrator determines that a vocational rehabilitation counselor has violated the provisions of section 3 of this act, the Administrator may impose an administrative fine or benefit penalty of not more than \$250 for a first violation, \$500 for a second violation and \$1,000 for a third or subsequent violation.