

ASSEMBLY BILL NO. 178—ASSEMBLYMAN CLABORN

FEBRUARY 16, 2009

Referred to Committee on Commerce and Labor

SUMMARY—Makes various changes to provisions relating to industrial insurance. (BDR 53-221)

FISCAL NOTE: Effect on Local Government: No.  
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; prohibiting insurers from issuing certain insurance policies; establishing the Death Benefits Living Increase Account to provide for cost-of-living increases in the payment of death benefits; requiring insurers to provide additional information when informing claimants of the acceptance or denial of a claim; revising provisions relating to claims for a permanent partial disability or a temporary total disability; establishing provisions relating to reprisal or retaliatory actions by employers; revising provisions relating to the imposition of administrative fines and benefit penalties for certain violations; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

1 **Section 3** of this bill: (1) creates the Death Benefits Living Increase Account in  
2 the Fund for Workers' Compensation and Safety to provide for cost-of-living  
3 increases for recipients of death benefits; and (2) provides for the administration of  
4 the Account. **Section 11** of this bill requires an insurer to deposit \$150,000 into the  
5 Account if there are no surviving dependents who would otherwise be entitled to  
6 receive death benefits. (NRS 616C.505) **Section 4** of this bill requires an insurer, in  
7 addition to a written determination of acceptance or denial of a claim for  
8 compensation, to issue a notice of claim acceptance or denial specifying each part  
9 of the body and the corresponding diagnosis for which a claim is accepted or  
10 denied. (NRS 616C.065) **Section 6** of this bill requires that the Fifth Edition, rather  
11 than the most recent edition, of the American Medical Association's *Guides to the*  
12 *Evaluation of Permanent Impairment* must be applied in all examinations for a  
13 permanent partial disability. (NRS 616C.110) **Sections 6 and 10** of this bill also  
14 eliminate the requirement that no factor other than the degree of physical



impairment of the whole man may be considered in calculating the entitlement to compensation. (NRS 616C.110, 616C.490) **Section 7** of this bill revises existing law regarding denial of compensation based on an employee's misconduct. (NRS 616C.232) **Section 8** of this bill revises the provisions governing the reopening of a claim for compensation for a permanent partial disability. (NRS 616C.392) **Section 9** of this bill: (1) provides that a certification of disability may be signed by either the treating or examining physician or chiropractor; and (2) revises requirements governing temporary, light-duty employment. (NRS 616C.475) **Section 13** of this bill makes it unlawful for an employer to refuse to rehire an injured employee if suitable employment is available and the injured employee is eligible for or seeking compensation for an industrial insurance claim. **Section 14** of this bill: (1) allows an employee to file an appeal if his employer takes any reprisal or retaliatory action against the employee for filing a claim for compensation; and (2) imposes damages and fines to be paid by the employer to the employee for each reprisal or retaliatory action. **Section 2** of this bill prohibits an insurer from issuing a policy of industrial insurance to an employer to cover any claim by an employee for any reprisal or retaliatory action. **Section 15** of this bill revises provisions governing the imposition of administrative fines for certain violations by an insurer, organization for managed care, health care provider, third-party administrator or employer. (NRS 616D.120)

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

**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)~~ (j) of subsection 1 of NRS 616D.120 has occurred.

**Sec. 2.** Chapter 616B of NRS is hereby amended by adding thereto a new section to read as follows:

*1. An insurer shall not issue a policy of industrial insurance to an employer to cover any claim relating to matters involving any reprisal or retaliatory action pursuant to section 14 of this act.*

*2. As used in this section, "reprisal or retaliatory action" has the meaning ascribed to it in section 14 of this act.*

**Sec. 3.** Chapter 616C of NRS is hereby amended by adding thereto a new section to read as follows:

*1. There is hereby established in the State Treasury the Death Benefits Living Increase Account in the Fund for Workers' Compensation and Safety to provide for cost-of-living increases with respect to the payment of death benefits pursuant to NRS 616C.505. Money in the Account must be used solely to carry out the provisions of this section. All claims against the Account must be paid as other claims against the State are paid. The State Treasurer shall invest money in the Account in the same manner*



1 *and in the same securities in which he may invest money in the*  
2 *State General Fund. Income realized from the investment of the*  
3 *money in the Account must be credited to the Account.*

4 2. *Each year, the Administrator shall withdraw from the*  
5 *Death Benefits Living Increase Account an amount of the income*  
6 *realized from the investment of the assets in the Account that*  
7 *is necessary to fund the payments calculated pursuant to*  
8 *subsection 3.*

9 3. *The Administrator shall adopt regulations:*

10 (a) *Establishing a method for the equitable distribution of the*  
11 *money withdrawn from the Account pursuant to subsection 2. The*  
12 *regulations must provide for payments which reflect the annual*  
13 *cost-of-living increases and which result in the largest*  
14 *proportional share of the money being paid to dependents who*  
15 *receive the lowest amount of compensation pursuant to*  
16 *NRS 616C.505.*

17 (b) *Establishing a formula for the measurement of annual*  
18 *cost-of-living increases.*

19 4. *Except as otherwise provided in subsection 5, the*  
20 *Administrator shall make the payment required by this section to*  
21 *each dependent who is entitled to the payment not later than*  
22 *October 1 of each year. Any payment received by the dependent*  
23 *pursuant to this section is in addition to any compensation to*  
24 *which the dependent is otherwise entitled by law.*

25 5. *The Administrator may make a payment from the Account*  
26 *to a dependent that would have been payable in a prior year*  
27 *pursuant to subsection 4 if the Administrator determines that the*  
28 *dependent was entitled to the payment pursuant to subsection 4.*

29 6. *The Administrator may adopt any other regulations that*  
30 *are necessary to carry out the provisions of this section.*

31 **Sec. 4.** NRS 616C.065 is hereby amended to read as follows:

32 616C.065 1. Except as otherwise provided in NRS 616C.136,  
33 within 30 days after the insurer has been notified of an industrial  
34 accident, every insurer shall:

35 (a) Accept a claim for compensation, notify the claimant or the  
36 person acting on behalf of the claimant that the claim has been  
37 accepted and commence payment of the claim; or

38 (b) Deny the claim and notify the claimant or the person acting  
39 on behalf of the claimant and the Administrator that the claim has  
40 been denied.

41 2. Payments made by an insurer pursuant to this section are not  
42 an admission of liability for the claim or any portion of the claim.

43 3. Except as otherwise provided in this subsection, if an insurer  
44 unreasonably delays or refuses to pay the claim within 30 days after  
45 the insurer has been notified of an industrial accident, the insurer



1 shall pay upon order of the Administrator an additional amount  
2 equal to three times the amount specified in the order as refused or  
3 unreasonably delayed. This payment is for the benefit of the  
4 claimant and must be paid to him with the compensation assessed  
5 pursuant to chapters 616A to 617, inclusive, of NRS. The provisions  
6 of this section do not apply to the payment of a bill for accident  
7 benefits that is governed by the provisions of NRS 616C.136.

8 4. The insurer shall notify the claimant or the person acting on  
9 behalf of the claimant that a claim has been accepted or denied  
10 pursuant to subsection 1 by:

11 (a) Mailing its written determination to the claimant or the  
12 person acting on behalf of the claimant; and

13 (b) If the claim has been denied, in whole or in part, obtaining a  
14 certificate of mailing.

15 5. The failure of the insurer to obtain a certificate of mailing as  
16 required by paragraph (b) of subsection 4 shall be deemed to be a  
17 failure of the insurer to mail the written determination of the denial  
18 of a claim as required by this section.

19 6. *In addition to the written determination required pursuant*  
20 *to subsection 4, the insurer shall issue a separate notice of claim*  
21 *acceptance or denial. The notice must:*

22 (a) *List each part of the body for which the insurer accepts the*  
23 *underlying claim and contain a summary of the corresponding*  
24 *diagnosis;*

25 (b) *Describe any condition or part of the body for which the*  
26 *underlying claim is denied; and*

27 (c) *Inform the claimant of his right to request a hearing*  
28 *pursuant to subsection 3 of NRS 616C.315.*

29 *↪ For purposes of this subsection, the failure of the insurer to*  
30 *indicate the acceptance or denial of a claim for a part of the body*  
31 *or condition does not constitute a denial thereof.*

32 7. Upon request, the insurer shall provide a copy of the  
33 certificate of mailing, if any, to the claimant or the person acting on  
34 behalf of the claimant.

35 ~~[7-]~~ 8. For the purposes of this section, the insurer shall mail  
36 the written determination to:

37 (a) The mailing address of the claimant or the person acting on  
38 behalf of the claimant that is provided on the form prescribed by the  
39 Administrator for filing the claim; or

40 (b) Another mailing address if the claimant or the person acting  
41 on behalf of the claimant provides to the insurer written notice of  
42 another mailing address.

43 ~~[8-]~~ 9. As used in this section, "certificate of mailing" means a  
44 receipt that provides evidence of the date on which the insurer



1 presented its written determination to the United States Postal  
2 Service for mailing.

3 **Sec. 5.** NRS 616C.070 is hereby amended to read as follows:

4 616C.070 1. A person is conclusively presumed to be totally  
5 dependent upon an injured or deceased employee if:

6 (a) The person is a natural, posthumous or adopted child,  
7 whether legitimate or illegitimate, under the age of 18 years; or

8 (b) The person is a natural, posthumous or adopted child, there  
9 is no surviving parent and the person is:

10 (1) Over the age of 18 years and physically or mentally  
11 incapacitated from wage earning; or

12 (2) Over the age of 18 years but under the age of 22 years  
13 and enrolled as a full-time student in an accredited vocational or  
14 educational institution.

15 2. Stepparents may be regarded in chapters 616A to 616D,  
16 inclusive, or chapter 617 of NRS as parents if the fact of  
17 dependency is shown, and a stepchild or stepchildren may be  
18 regarded in chapters 616A to 616D, inclusive, or chapter 617 of  
19 NRS as a natural child or children if the existence and fact of  
20 dependency are shown.

21 3. Except as otherwise provided in subsection ~~144~~ 15 of NRS  
22 616C.505, questions as to who constitute dependents and the extent  
23 of their dependency must be determined as of the date of the  
24 accident or injury to the employee, and their right to any benefit  
25 becomes fixed at that time, irrespective of any subsequent change in  
26 conditions, and the benefits are directly recoverable by and payable  
27 to the dependent or dependents entitled thereto or to their legal  
28 guardians or trustees.

29 4. The presumptions of this section do not apply in favor of  
30 aliens who are nonresidents of the United States at the time of the  
31 accident, injury to ~~14~~ or death of the employee.

32 **Sec. 6.** NRS 616C.110 is hereby amended to read as follows:

33 616C.110 1. For the purposes of NRS 616B.557, 616B.578,  
34 616B.587, 616C.490 and 617.459 ~~14~~

35 ~~—(a) Not~~, *not* later than August 1, 2003, the Division shall adopt  
36 regulations incorporating the American Medical Association's  
37 Guides to the Evaluation of Permanent Impairment, Fifth Edition,  
38 by reference. The regulations:

39 ~~[(1)]~~ (a) Must ~~become effective on October 1, 2003; and~~

40 ~~—(2) Must be applied to all examinations for a permanent~~  
41 ~~partial disability that are conducted on or after October 1, 2003,~~  
42 ~~regardless of the date of the injury, until regulations incorporating~~  
43 ~~the Sixth Edition by reference have become effective pursuant to~~  
44 ~~paragraph (b).~~



~~—(b) Beginning with the Sixth Edition and continuing for each edition thereafter, the Division shall adopt regulations incorporating the most recent edition of the American Medical Association's Guides to the Evaluation of Permanent Impairment by reference. The regulations:~~

~~—(1) Must become effective not later than 18 months after the most recent edition is published by the American Medical Association; and~~

~~—(2) provide that the American Medical Association's Guides to the Evaluation of Permanent Impairment, Fifth Edition, must be applied to all examinations; and~~

(b) Must be applied to all examinations for a permanent partial disability that are conducted on or after the effective date of the regulations, regardless of the date of injury . ~~[until regulations incorporating the next edition by reference have become effective pursuant to this paragraph.]~~

2. After adopting the regulations required pursuant to subsection 1, the Division may amend those regulations as it deems necessary, except that the amendments to those regulations:

(a) Must be consistent with the Fifth Edition of the American Medical Association's Guides to the Evaluation of Permanent Impairment ~~[most recently adopted by the Division;]~~ ; and

(b) Must not incorporate any contradictory matter from any other edition of the American Medical Association's Guides to the Evaluation of Permanent Impairment . ~~[; and~~

~~—(c) Must not consider any factors other than the degree of physical impairment of the whole man in calculating the entitlement to compensation.]~~

3. If the Fifth Edition of the American Medical Association's Guides to the Evaluation of Permanent Impairment ~~[most recently adopted by the Division]~~ contains more than one method of determining the rating of an impairment, the Administrator shall designate by regulation the method from that edition which must be used to rate an impairment pursuant to NRS 616C.490.

**Sec. 7.** NRS 616C.232 is hereby amended to read as follows:

616C.232 1. If an injured employee is discharged from his employment as a result of misconduct, an insurer may deny compensation to the injured employee because of that discharge for misconduct only if the insurer proves by a preponderance of the evidence that:

(a) The injured employee was discharged from his employment solely for his misconduct and not for any reason relating to his claim for compensation; and

(b) It is the injured employee's discharge from his employment for misconduct, and not his injury, that is the sole cause for the



1 injured employee's inability to return to work . ~~[with the preinjury~~  
2 ~~employer.]~~

3 2. An insurer waives its rights under subsection 1 if the insurer  
4 does not make a determination to deny or suspend compensation to  
5 the injured employee within 70 days after the date on which the  
6 insurer learns that the injured employee has been discharged for  
7 misconduct.

8 **Sec. 8.** NRS 616C.392 is hereby amended to read as follows:

9 616C.392 1. An insurer shall reopen a claim to consider the  
10 payment of compensation for a permanent partial disability if:

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

13 (b) The claimant demonstrates by a preponderance of the  
14 evidence that, at the time that the case was closed, the claimant was,  
15 because of the injury, qualified to be scheduled for an evaluation for  
16 a permanent partial disability ~~[-]~~ and *the insurer failed to schedule*  
17 *an evaluation; and*

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

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

23 3. Notwithstanding any specific statutory provision to the  
24 contrary, the consideration of whether a claimant is entitled to  
25 payment of compensation for a permanent partial disability for a  
26 claim that is reopened pursuant to this section must be made in  
27 accordance with the provisions of the applicable statutory and  
28 regulatory provisions that existed on the date on which the claim  
29 was closed, including, without limitation, using the edition of the  
30 American Medical Association's Guides to the Evaluation of  
31 Permanent Impairment as adopted by the Division pursuant to NRS  
32 616C.110 that was applicable on the date the claim was closed.

33 **Sec. 9.** NRS 616C.475 is hereby amended to read as follows:

34 616C.475 1. Except as otherwise provided in this section,  
35 NRS 616C.175 and 616C.390, every employee in the employ of an  
36 employer, within the provisions of chapters 616A to 616D,  
37 inclusive, of NRS, who is injured by accident arising out of and in  
38 the course of employment, or his dependents, is entitled to receive  
39 for the period of temporary total disability, 66 2/3 percent of the  
40 average monthly wage.

41 2. Except as otherwise provided in NRS 616B.028 and  
42 616B.029, an injured employee or his dependents are not entitled to  
43 accrue or be paid any benefits for a temporary total disability during  
44 the time the injured employee is incarcerated. The injured employee  
45 or his dependents are entitled to receive such benefits when the





1 injured employee is released from incarceration if he is certified as  
2 temporarily totally disabled by a physician or chiropractor.

3 3. If a claim for the period of temporary total disability is  
4 allowed, the first payment pursuant to this section must be issued by  
5 the insurer within 14 working days after receipt of the initial  
6 certification of disability and regularly thereafter.

7 4. Any increase in compensation and benefits effected by the  
8 amendment of subsection 1 is not retroactive.

9 5. Payments for a temporary total disability must cease when:

10 (a) A physician or chiropractor determines that the employee is  
11 physically capable of any gainful employment for which the  
12 employee is suited, after giving consideration to the employee's  
13 education, training and experience;

14 (b) The employer offers the employee light-duty employment or  
15 employment that is modified according to the limitations or  
16 restrictions imposed by a physician or chiropractor pursuant to  
17 subsection 7; or

18 (c) Except as otherwise provided in NRS 616B.028 and  
19 616B.029, the employee is incarcerated.

20 6. Each insurer may, with each check that it issues to an injured  
21 employee for a temporary total disability, include a form approved  
22 by the Division for the injured employee to request continued  
23 compensation for the temporary total disability.

24 7. A certification of disability issued by a physician or  
25 chiropractor must:

26 (a) Include the period of disability and a description of any  
27 physical limitations or restrictions imposed upon the work of the  
28 employee;

29 (b) Specify whether the limitations or restrictions are permanent  
30 or temporary; and

31 (c) Be signed by the treating *or examining* physician or  
32 chiropractor authorized pursuant to NRS 616B.527 or appropriately  
33 chosen pursuant to subsection 3 of NRS 616C.090.

34 8. If the certification of disability specifies that the physical  
35 limitations or restrictions are temporary, the employer of the  
36 employee at the time of his accident may offer temporary, light-duty  
37 employment to the employee. If the employer makes such an offer,  
38 the employer shall confirm the offer in writing within 10 days after  
39 making the offer. The making, acceptance or rejection of an offer of  
40 temporary, light-duty employment pursuant to this subsection does  
41 not affect the eligibility of the employee to receive vocational  
42 rehabilitation services, including compensation, and does not  
43 exempt the employer from complying with NRS 616C.545 to  
44 616C.575, inclusive, and 616C.590 or the regulations adopted by  
45 the Division governing vocational rehabilitation services. Any offer





1 of temporary, light-duty employment made by the employer must  
2 specify a position that:

3 (a) Is substantially similar to the employee's position at the time  
4 of his injury in relation to the location of the employment and the  
5 hours he is required to work;

6 (b) Provides a gross wage that is:

7 (1) If the position is in the same classification of  
8 employment, equal to the gross wage the employee was earning at  
9 the time of his injury; or

10 (2) If the position is not in the same classification of  
11 employment, substantially similar to the gross wage the employee  
12 was earning at the time of his injury; and

13 (c) Has the same employment benefits as the position of the  
14 employee at the time of his injury.

15 *9. In addition to the information required pursuant to*  
16 *subsection 8, a written confirmation of an offer of temporary,*  
17 *light-duty employment must specify at least the following*  
18 *information:*

19 (a) *The gross wage to be paid;*

20 (b) *The exact number of hours the employee is expected to*  
21 *work, including the beginning and end of each shift;*

22 (c) *The exact location of the employment; and*

23 (d) *An explanation of the employment benefits.*

24 *10. If an injured employee accepts an offer of temporary,*  
25 *light-duty employment and it is subsequently determined that the*  
26 *employment does not meet the requirements of subsection 8 or the*  
27 *actual employment differs from the description provided pursuant*  
28 *to subsection 9:*

29 (a) *The insurer shall pay compensation for the employee's*  
30 *temporary total disability in addition to any wages earned or being*  
31 *earned by the employee; and*

32 (b) *The insurer may bring a separate action against the*  
33 *employer to recover the amount of benefits for the employee's*  
34 *temporary total disability paid by the insurer pursuant to*  
35 *paragraph (a).*

36 **Sec. 10.** NRS 616C.490 is hereby amended to read as follows:

37 616C.490 1. Except as otherwise provided in NRS 616C.175,  
38 every employee, in the employ of an employer within the provisions  
39 of chapters 616A to 616D, inclusive, of NRS, who is injured by an  
40 accident arising out of and in the course of employment is entitled to  
41 receive the compensation provided for permanent partial disability.  
42 As used in this section, "disability" and "impairment of the whole  
43 man" are equivalent terms.

44 2. Within 30 days after receiving from a physician or  
45 chiropractor a report indicating that the injured employee may have



1 suffered a permanent disability and is stable and ratable, the insurer  
2 shall schedule an appointment with the rating physician or  
3 chiropractor selected pursuant to this subsection to determine the  
4 extent of the employee's disability. Unless the insurer and the  
5 injured employee otherwise agree to a rating physician or  
6 chiropractor:

7 (a) The insurer shall select the rating physician or chiropractor  
8 from the list of qualified rating physicians and chiropractors  
9 designated by the Administrator, to determine the percentage of  
10 disability in accordance with the American Medical Association's  
11 Guides to the Evaluation of Permanent Impairment as adopted and  
12 supplemented by the Division pursuant to NRS 616C.110.

13 (b) Rating physicians and chiropractors must be selected in  
14 rotation from the list of qualified physicians and chiropractors  
15 designated by the Administrator, according to their area of  
16 specialization and the order in which their names appear on the list  
17 unless the next physician or chiropractor is currently an employee of  
18 the insurer making the selection, in which case the insurer must  
19 select the physician or chiropractor who is next on the list and who  
20 is not currently an employee of the insurer.

21 3. If an insurer contacts the treating physician or chiropractor  
22 to determine whether an injured employee has suffered a permanent  
23 disability, the insurer shall deliver to the treating physician or  
24 chiropractor that portion or a summary of that portion of the  
25 American Medical Association's Guides to the Evaluation of  
26 Permanent Impairment as adopted by the Division pursuant to NRS  
27 616C.110 that is relevant to the type of injury incurred by the  
28 employee.

29 4. At the request of the insurer, the injured employee shall,  
30 before an evaluation by a rating physician or chiropractor is  
31 performed, notify the insurer of:

32 (a) Any previous evaluations performed to determine the extent  
33 of any of the employee's disabilities; and

34 (b) Any previous injury, disease or condition sustained by the  
35 employee which is relevant to the evaluation performed pursuant to  
36 this section.

37 ➤ The notice must be on a form approved by the Administrator and  
38 provided to the injured employee by the insurer at the time of the  
39 insurer's request.

40 5. Unless the regulations adopted pursuant to NRS 616C.110  
41 provide otherwise, a rating evaluation must include an evaluation of  
42 the loss of motion, sensation and strength of an injured employee if  
43 the injury is of a type that might have caused such a loss. ~~No~~  
44 ~~factors other than the degree of physical impairment of the whole~~



~~man may be considered in calculating the entitlement to compensation for a permanent partial disability.]~~

6. The rating physician or chiropractor shall provide the insurer with his evaluation of the injured employee. After receiving the evaluation, the insurer shall, within 14 days, provide the employee with a copy of the evaluation and notify the employee:

(a) Of the compensation to which he is entitled pursuant to this section; or

(b) That he is not entitled to benefits for permanent partial disability.

7. Each 1 percent of impairment of the whole man must be compensated by a monthly payment:

(a) Of 0.5 percent of the claimant's average monthly wage for injuries sustained before July 1, 1981;

(b) Of 0.6 percent of the claimant's average monthly wage for injuries sustained on or after July 1, 1981, and before June 18, 1993;

(c) Of 0.54 percent of the claimant's average monthly wage for injuries sustained on or after June 18, 1993, and before January 1, 2000; and

(d) Of 0.6 percent of the claimant's average monthly wage for injuries sustained on or after January 1, 2000.

➤ Compensation must commence on the date of the injury or the day following the termination of temporary disability compensation, if any, whichever is later, and must continue on a monthly basis for 5 years or until the claimant is 70 years of age, whichever is later.

8. Compensation benefits may be paid annually to claimants who will be receiving less than \$100 a month.

9. Where there is a previous disability, as the loss of one eye, one hand, one foot [H] or any other previous permanent disability, the percentage of disability for a subsequent injury must be determined by computing the percentage of the entire disability and deducting therefrom the percentage of the previous disability as it existed at the time of the subsequent injury.

10. The Division may adopt schedules for rating permanent disabilities resulting from injuries sustained before July 1, 1973, and reasonable regulations to carry out the provisions of this section.

11. The increase in compensation and benefits effected by the amendment of this section is not retroactive for accidents which occurred before July 1, 1973.

12. This section does not entitle any person to double payments for the death of an employee and a continuation of payments for a permanent partial disability, or to a greater sum in the aggregate than if the injury had been fatal.



\* A B 1 7 8 \*

**Sec. 11.** NRS 616C.505 is hereby amended to read as follows:

616C.505 If an injury by accident arising out of and in the course of employment causes the death of an employee in the employ of an employer, within the provisions of chapters 616A to 616D, inclusive, of NRS, the compensation is known as a death benefit and is payable as follows:

1. In addition to any other compensation payable pursuant to chapters 616A to 616D, inclusive, of NRS, burial expenses are payable in an amount not to exceed \$5,000. When the remains of the deceased employee and the person accompanying the remains are to be transported to a mortuary or mortuaries, the charge of transportation must be borne by the insurer.

2. Except as otherwise provided in subsection 3 and NRS 616C.507, to the surviving spouse of the deceased employee, 66 2/3 percent of the average monthly wage is payable until his death or remarriage, with 2 years' compensation payable in one lump sum upon remarriage.

3. If there is a surviving spouse and any surviving children of the deceased employee who are not the children of the surviving spouse, the compensation otherwise payable pursuant to subsection 2 must be paid as follows until the entitlement of all children of the deceased employee to receive compensation pursuant to this subsection ceases:

(a) To the surviving spouse, 50 percent of the death benefit is payable until his death or remarriage, with 2 years' compensation payable in one lump sum upon remarriage; and

(b) To each child of the deceased employee, regardless of whether the child is the child of the surviving spouse, his proportionate share of 50 percent of the death benefit and, except as otherwise provided in subsection 12, if the child has a guardian, the compensation he is entitled to receive may be paid to the guardian.

4. In the event of the subsequent death of the surviving spouse:

(a) Each surviving child of the deceased employee, in addition to any amount the child may be entitled to pursuant to subsection 3, must share equally the compensation theretofore paid to the surviving spouse but not in excess thereof, and it is payable until the youngest child reaches the age of 18 years.

(b) Except as otherwise provided in subsection 12, if the children have a guardian, the compensation they are entitled to receive may be paid to the guardian.

5. Upon the remarriage of a surviving spouse with children:

(a) The surviving spouse must be paid 2 years' compensation in one lump sum and further benefits must cease; and



(b) Each child must be paid 15 percent of the average monthly wage, up to a maximum family benefit of 66 2/3 percent of the average monthly wage.

➤ The provisions of this subsection do not apply to the remarriage of a surviving spouse of a deceased police officer or firefighter if the provisions of NRS 616C.507 apply to the surviving spouse.

6. If there are any surviving children of the deceased employee under the age of 18 years, but no surviving spouse, then each such child is entitled to his proportionate share of 66 2/3 percent of the average monthly wage for his support.

7. Except as otherwise provided in subsection 8, if there is no surviving spouse or child under the age of 18 years, there must be paid:

(a) To a parent, if wholly dependent for support upon the deceased employee at the time of the injury causing his death, 33 1/3 percent of the average monthly wage.

(b) To both parents, if wholly dependent for support upon the deceased employee at the time of the injury causing his death, 66 2/3 percent of the average monthly wage.

(c) To each brother or sister until he or she reaches the age of 18 years, if wholly dependent for support upon the deceased employee at the time of the injury causing his death, his proportionate share of 66 2/3 percent of the average monthly wage.

8. The aggregate compensation payable pursuant to subsection 7 must not exceed 66 2/3 percent of the average monthly wage.

9. In all other cases involving a question of total or partial dependency:

(a) The extent of the dependency must be determined in accordance with the facts existing at the time of the injury.

(b) If the deceased employee leaves dependents only partially dependent upon his earnings for support at the time of the injury causing his death, the monthly compensation to be paid must be equal to the same proportion of the monthly payments for the benefit of persons totally dependent as the amount contributed by the deceased employee to the partial dependents bears to the average monthly wage of the deceased employee at the time of the injury resulting in his death.

(c) The duration of compensation to partial dependents must be fixed in accordance with the facts shown, but may not exceed compensation for 100 months.

10. Compensation payable to a surviving spouse is for the use and benefit of the surviving spouse and the dependent children, and the insurer may, from time to time, apportion such compensation between them in such a way as it deems best for the interest of all dependents.



11. In the event of the death of any dependent specified in this section before the expiration of the time during which compensation is payable to him, funeral expenses are payable in an amount not to exceed \$5,000.

12. If a dependent is entitled to receive a death benefit pursuant to this section and is less than 18 years of age or incompetent, the legal representative of the dependent shall petition for a guardian to be appointed for that dependent pursuant to NRS 159.044. An insurer shall not pay any compensation in excess of \$3,000, other than burial expenses, to the dependent until a guardian is appointed and legally qualified. Upon receipt of a certified letter of guardianship, the insurer shall make all payments required by this section to the guardian of the dependent until the dependent is emancipated, the guardianship terminates or the dependent reaches the age of 18 years, whichever occurs first, unless paragraph (a) of subsection 13 is applicable. The fees and costs related to the guardianship must be paid from the estate of the dependent. A guardianship established pursuant to this subsection must be administered in accordance with chapter 159 of NRS, except that after the first annual review required pursuant to NRS 159.176, a court may elect not to review the guardianship annually. The court shall review the guardianship at least once every 3 years. As used in this subsection, "incompetent" has the meaning ascribed to it in NRS 159.019.

13. Except as otherwise provided in paragraphs (a) and (b), the entitlement of any child to receive his proportionate share of compensation pursuant to this section ceases when he dies, marries or reaches the age of 18 years. A child is entitled to continue to receive compensation pursuant to this section if he is:

(a) Over 18 years of age and incapable of supporting himself, until such time as he becomes capable of supporting himself; or

(b) Over 18 years of age and enrolled as a full-time student in an accredited vocational or educational institution, until he reaches the age of 22 years.

14. *If there is no surviving spouse, child or any other dependent who qualifies for compensation pursuant to this section, the insurer shall pay compensation in the amount of \$150,000 for deposit in the Death Benefits Living Increase Account established pursuant to section 3 of this act.*

15. As used in this section, "surviving spouse" means a surviving husband or wife who was married to the employee at the time of the employee's death.



1     **Sec. 12.** Chapter 616D of NRS is hereby amended by adding  
2 thereto the provisions set forth as sections 13 and 14 of this act.

3     **Sec. 13.** *It is unlawful and contrary to public policy for an*  
4 *employer to refuse to rehire an employee who has suffered an*  
5 *industrial injury or occupational disease for which he is eligible*  
6 *for or in the course of seeking compensation pursuant to chapters*  
7 *616A to 616D, inclusive, or 617 of NRS when suitable employment*  
8 *for the injured employee is available through the employer.*

9     **Sec. 14.** 1. *If an employee believes that any reprisal or*  
10 *retaliatory action is taken by the preinjury employer against an*  
11 *injured employee for filing a claim for compensation or for*  
12 *exercising any other right pursuant to chapters 616A to 616D,*  
13 *inclusive, or 617 of NRS within 2 years after the claim is filed or*  
14 *the right is exercised, in addition to any action in tort, the*  
15 *employee may file a written appeal with the Hearings Division of*  
16 *the Department of Administration for a hearing on the matter and*  
17 *a determination of whether the action taken was a reprisal or*  
18 *retaliatory action. The written appeal must be filed within 2 years*  
19 *after the reprisal or retaliatory action is alleged to have occurred*  
20 *and must be accompanied by a statement that sets forth with*  
21 *particularity:*

22     (a) *The facts and circumstances pursuant to which the claim*  
23 *for compensation or exercise of any other right pursuant to*  
24 *chapters 616A to 616D, inclusive, or 617 of NRS was made; and*

25     (b) *The reprisal or retaliatory action that is alleged to have*  
26 *been taken against the employee.*

27     ↪ *The hearing must be conducted in accordance with the rules of*  
28 *procedure adopted by the Chief of the Hearings Division of the*  
29 *Department of Administration pursuant to subsection 5.*

30     2. *If the Hearings Division of the Department of*  
31 *Administration determines that the action taken was a reprisal or*  
32 *retaliatory action, it may issue an order directing the employer to*  
33 *desist and refrain from engaging in such action, order*  
34 *reinstatement for the employee and impose a fine to be paid to the*  
35 *employee as follows:*

36     (a) *\$300 for the first violation; and*

37     (b) *Not less than \$300 or more than \$2,000 for each*  
38 *subsequent violation.*

39     3. *In addition to any fine imposed pursuant to subsection 2,*  
40 *whether or not compensation for temporary total disability has*  
41 *already been paid, the employer shall pay to the employee an*  
42 *amount equal to 1 year of lost wages, or \$10,000, whichever is*  
43 *greater.*

44     4. *The burden of proof is on the employee to prove by a*  
45 *preponderance of evidence that his filing of a claim for*





1 *compensation or exercise of any other right pursuant to chapters*  
2 *616A to 616D, inclusive, or 617 of NRS was a substantial*  
3 *contributing cause of the reprisal or retaliatory action.*

4 5. *The Chief of the Hearings Division of the Department of*  
5 *Administration shall adopt rules of procedure for conducting a*  
6 *hearing pursuant to this section.*

7 6. *As used in this section, "reprisal or retaliatory action"*  
8 *includes, without limitation:*

9 (a) *Frequent or undesirable changes in the location of an*  
10 *office;*

11 (b) *Frequent or undesirable transfers or reassignments;*

12 (c) *The issuance of letters of reprimand, letters of admonition*  
13 *or evaluations of poor performance;*

14 (d) *A demotion;*

15 (e) *A reduction in pay;*

16 (f) *The denial of a promotion;*

17 (g) *A suspension;*

18 (h) *A dismissal;*

19 (i) *A transfer; or*

20 (j) *Frequent changes in working hours or workdays,*

21 *↪ if such action is taken, in whole or in part, because the*  
22 *employee filed a claim for compensation or exercised any other*  
23 *right pursuant to chapters 616A to 616D, inclusive, or 617 of NRS.*

24 **Sec. 15.** NRS 616D.120 is hereby amended to read as follows:

25 616D.120 1. Except as otherwise provided in this section, if  
26 the Administrator determines that an insurer, organization for  
27 managed care, health care provider, third-party administrator or  
28 employer has:

29 (a) Induced a claimant to fail to report an accidental injury or  
30 occupational disease;

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

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

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

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

40 (c) Refused to pay or unreasonably delayed payment to a  
41 claimant of compensation or other relief found to be due him by a  
42 hearing officer, appeals officer, court of competent jurisdiction,  
43 written settlement agreement, written stipulation or the Division  
44 when carrying out its duties pursuant to chapters 616A to 616D,  
45 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]~~ *Failed* 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]~~ *Failed to schedule an evaluation for a permanent disability for an injured employee pursuant to subsection 2 of NRS 616C.490 when the injured employee was qualified to be scheduled for the evaluation;*

(i) *Failed to make a determination regarding a claim within 30 days after receipt of a written request from the claimant or the employer of the claimant to issue the determination; or*

(j) *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)~~ (j) 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:

(a) Except as otherwise provided in paragraph (b), in an amount that is not less than \$5,000 and not greater than \$37,500; or

(b) Of \$3,000 if the violation involves a late payment of compensation or other relief to a claimant in an amount which is less than \$500 or which is not more than 14 days late.

4. 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)~~ (j) of subsection 1, the amount of compensation found to be due the claimant and the number of fines and benefit penalties, other than a benefit penalty described in paragraph (b) of subsection 3, 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, other than a benefit penalty described in paragraph (b) of subsection 3, 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)~~ (j) 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.

5. 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 ~~(f)~~ an administrative penalty of up to twice the amount of any underpaid assessment.

6. 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.

7. 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.

8. 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



1 hearing, it is shown that the self-insured employer, association of  
2 self-insured public or private employers or third-party administrator  
3 violated any provision of subsection 1.

4 9. If the Administrator determines that a vocational  
5 rehabilitation counselor has violated the provisions of NRS  
6 616C.543, the Administrator may impose an administrative fine on  
7 the vocational rehabilitation counselor of not more than \$250 for a  
8 first violation, \$500 for a second violation and \$1,000 for a third or  
9 subsequent violation.

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