

ASSEMBLY BILL NO. 511—COMMITTEE ON COMMERCE AND LABOR

MARCH 23, 2009

Referred to Committee on Commerce and Labor

SUMMARY—Revises industrial insurance provisions relating to insurers and third-party administrators. (BDR 53-115)

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; repealing the prohibition against bringing or maintaining a cause of action against an insurer or third-party administrator for certain violations relating to industrial insurance; removing provisions authorizing benefit penalties to be imposed against insurers and third-party administrators; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law, enacted in 1995: (1) prohibits causes of action from being brought or maintained against insurers or third-party administrators; and (2) provides that fines imposed pursuant to certain industrial insurance provisions were the exclusive remedies for violations of the industrial insurance statutes committed by insurers and third-party administrators. (NRS 616D.030) **Section 5** of this bill repeals this existing law, thereby allowing causes of action to be brought and maintained against insurers and third-party administrators.

Existing law provides for benefit penalties, in addition to administrative fines, to be imposed against various persons, including insurers and third-party administrators, for certain violations of the industrial insurance statutes. (NRS 616D.120) **Section 4** of this bill: (1) removes those provisions which authorize benefit penalties to be imposed against insurers and third-party administrators; and (2) leaves intact those provisions which authorize administrative fines to be imposed against insurers and third-party administrators. **Sections 1-3** of this bill revise various industrial insurance statutes to be consistent with the revisions made in **section 4**.



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

Section 1. NRS 616A.403 is hereby amended to read as follows:

616A.403 1. The Administrator shall prepare an annual report concerning the enforcement of the provisions of chapters 616A to 617, inclusive, of NRS through the imposition of fines ~~and~~ *or* benefit penalties against insurers, organizations for managed care, health care providers, third-party administrators and employers.

2. The annual report must include, without limitation:

(a) The total number of complaints filed with the Administrator involving alleged conduct that is sanctionable by a fine or benefit penalty;

(b) The total number of investigations conducted by the Administrator involving alleged conduct that is sanctionable by a fine or benefit penalty;

(c) The disposition of each such complaint and investigation, including, without limitation, whether the Administrator imposed or refused to impose a fine or benefit penalty and, if the Administrator imposed a fine or benefit penalty, the amount of the fine or benefit penalty; and

(d) The disposition of any administrative appeal or action for judicial review involving the decision of the Administrator to impose or refuse to impose a fine or benefit penalty.

Sec. 2. NRS 616C.427 is hereby amended to read as follows:

616C.427 1. Notwithstanding the provisions of subsection 3 of NRS 616C.315 and except as otherwise provided in this section, if an injured employee is receiving compensation based on a calculation of his average monthly wage as determined pursuant to the regulations adopted by the Administrator pursuant to NRS 616C.420, the injured employee or the employer may request a hearing before a hearing officer pursuant to the provisions of NRS 616C.315 to 616C.385, inclusive, asking for a recalculation of the average monthly wage of the injured employee.

2. The injured employee is entitled to have his average monthly wage recalculated if he proves by a preponderance of the evidence that the insurer calculated his average monthly wage improperly or incorrectly as a result of:

(a) The use of any improper or incorrect information or methodology;

(b) The failure to use any proper or correct information or methodology;

(c) Any error of law or fact; or



(d) Any other error, omission, neglect or wrongful act.

3. If the injured employee proves that the insurer calculated his average monthly wage improperly or incorrectly, resulting in an underpayment of compensation:

(a) The insurer shall:

(1) Increase the injured employee's future compensation based on the correct average monthly wage; and

(2) Pay the injured employee a lump sum in an amount equal to the underpayment of compensation for the period during which the insurer was using the incorrect average monthly wage; and

(b) The remedy provided in paragraph (a) is the sole remedy for the underpayment and the insurer is not subject to the imposition of any fine ~~for benefit penalty~~ therefor.

4. If the hearing officer determines that the calculation of the average monthly wage resulted in an overpayment of compensation, the insurer may require the injured employee to repay to the insurer an amount equal to the overpayment received by the injured employee during any one 30-day period.

5. The average monthly wage of an injured employee may not be challenged by the insurer, the employer or the injured employee after the date on which any portion of an award for permanent partial disability is paid or the claim closes, whichever occurs first.

6. The provisions of this section do not apply if the issue of the average monthly wage of the injured employee was previously adjudicated to a final decision in:

(a) A hearing before a hearing officer or appeals officer pursuant to the provisions of NRS 616C.315 to 616C.385, inclusive; or

(b) Any proceedings for judicial review.

Sec. 3. NRS 616C.495 is hereby amended to read as follows:

616C.495 1. Except as otherwise provided in NRS 616C.380, an award for a permanent partial disability may be paid in a lump sum under the following conditions:

(a) A claimant injured on or after July 1, 1973, and before July 1, 1981, who incurs a disability that does not exceed 12 percent may elect to receive his compensation in a lump sum. A claimant injured on or after July 1, 1981, and before July 1, 1995, who incurs a disability that does not exceed 25 percent may elect to receive his compensation in a lump sum.

(b) The spouse, or in the absence of a spouse, any dependent child of a deceased claimant injured on or after July 1, 1973, who is not entitled to compensation in accordance with NRS 616C.505, is entitled to a lump sum equal to the present value of the deceased claimant's undisbursed award for a permanent partial disability.

(c) Any claimant injured on or after July 1, 1981, and before July 1, 1995, who incurs a disability that exceeds 25 percent may



1 elect to receive his compensation in a lump sum equal to the present
2 value of an award for a disability of 25 percent. If the claimant
3 elects to receive compensation pursuant to this paragraph, the
4 insurer shall pay in installments to the claimant that portion of the
5 claimant's disability in excess of 25 percent.

6 (d) Any claimant injured on or after July 1, 1995, may elect to
7 receive his compensation in a lump sum in accordance with
8 regulations adopted by the Administrator and approved by the
9 Governor. The Administrator shall adopt regulations for
10 determining the eligibility of such a claimant to receive all or any
11 portion of his compensation in a lump sum. Such regulations may
12 include the manner in which an award for a permanent partial
13 disability may be paid to such a claimant in installments.
14 Notwithstanding the provisions of NRS 233B.070, any regulation
15 adopted pursuant to this paragraph does not become effective unless
16 it is first approved by the Governor.

17 2. If the claimant elects to receive his payment for a permanent
18 partial disability in a lump sum pursuant to subsection 1, all of his
19 benefits for compensation terminate. His acceptance of that payment
20 constitutes a final settlement of all factual and legal issues in the
21 case. By so accepting he waives all of his rights regarding the claim,
22 including the right to appeal from the closure of the case or the
23 percentage of his disability, except:

24 (a) His right to:

25 (1) Reopen his claim in accordance with the provisions of
26 NRS 616C.390; or

27 (2) Have his claim considered by his insurer pursuant to NRS
28 616C.392; **and**

29 (b) Any counseling, training or other rehabilitative services
30 provided by the insurer. **[-; and**

31 ~~—(c) His right to receive a benefit penalty in accordance with~~
32 ~~NRS 616D.120.]~~

33 ➔ The claimant, when he demands his payment in a lump sum,
34 must be provided with a written notice which prominently displays a
35 statement describing the effects of accepting payment in a lump sum
36 of an entire permanent partial disability award, any portion of such
37 an award or any uncontested portion of such an award, and that he
38 has 20 days after the mailing or personal delivery of the notice
39 within which to retract or reaffirm his demand, before payment may
40 be made and his election becomes final.

41 3. Any lump-sum payment which has been paid on a claim
42 incurred on or after July 1, 1973, must be supplemented if necessary
43 to conform to the provisions of this section.

44 4. Except as otherwise provided in this subsection, the total
45 lump-sum payment for disablement must not be less than one-half



1 the product of the average monthly wage multiplied by the
2 percentage of disability. If the claimant received compensation in
3 installment payments for his permanent partial disability before
4 electing to receive his payment for that disability in a lump sum, the
5 lump-sum payment must be calculated for the remaining payment of
6 compensation.

7 5. The lump sum payable must be equal to the present value of
8 the compensation awarded, less any advance payment or lump sum
9 previously paid. The present value must be calculated using monthly
10 payments in the amounts prescribed in subsection 7 of NRS
11 616C.490 and actuarial annuity tables adopted by the Division. The
12 tables must be reviewed annually by a consulting actuary.

13 6. If a claimant would receive more money by electing to
14 receive compensation in a lump sum than he would if he receives
15 installment payments, he may elect to receive the lump-sum
16 payment.

17 **Sec. 4.** NRS 616D.120 is hereby amended to read as follows:

18 616D.120 1. Except as otherwise provided in this section, if
19 the Administrator determines that an insurer, organization for
20 managed care, health care provider, third-party administrator or
21 employer has:

22 (a) Induced a claimant to fail to report an accidental injury or
23 occupational disease;

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

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

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

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

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

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

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

44 (3) Later than 10 days after a stay of the decision of a court,
45 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



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(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}~~ *an organization for managed care, health care provider or employer has violated* 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:

(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) 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) 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



1 compensation to which the claimant may otherwise be entitled
2 pursuant to chapters 616A to 616D, inclusive, or chapter 617 of
3 NRS must not be reduced by the amount of any benefit penalty
4 received pursuant to this subsection.

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

11 6. If:

12 (a) The Administrator determines that a person has violated any
13 of the provisions of NRS 616D.200, 616D.220, 616D.240,
14 616D.300, 616D.310 or 616D.350 to 616D.440, inclusive; and

15 (b) The Fraud Control Unit for Industrial Insurance of the Office
16 of the Attorney General established pursuant to NRS 228.420
17 notifies the Administrator that the Unit will not prosecute the person
18 for that violation,

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

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

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

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

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

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

35 9. If the Administrator determines that a vocational
36 rehabilitation counselor has violated the provisions of NRS
37 616C.543, the Administrator may impose an administrative fine on
38 the vocational rehabilitation counselor of not more than \$250 for a
39 first violation, \$500 for a second violation and \$1,000 for a third or
40 subsequent violation.

41 **Sec. 5.** NRS 616D.030 is hereby repealed.



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TEXT OF REPEALED SECTION

616D.030 Limitation of liability of insurer or third-party administrator; administrative fines are exclusive remedies.

1. No cause of action may be brought or maintained against an insurer or a third-party administrator who violates any provision of this chapter or chapter 616A, 616B, 616C or 617 of NRS.

2. The administrative fines provided for in NRS 616B.318 and 616D.120 are the exclusive remedies for any violation of this chapter or chapter 616A, 616B, 616C or 617 of NRS committed by an insurer or a third-party administrator.

