

SENATE BILL NO. 324—SENATOR SCHNEIDER

MARCH 16, 2009

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions relating to industrial insurance.
(BDR 53-1064)

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; revising provisions for assessments imposed on certain insurers; revising provisions relating to administrative fines and penalties for certain violations; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 **Section 1** of this bill provides for the doubling of penalties against insurers,
2 organizations for managed care, health care providers, third-party administrators
3 and employers for serious injury claims. (NRS 616D.120) Those claims are defined
4 as a claim where medical costs exceed \$100,000 or where the injured worker died
5 as a proximate result of the injury. **Section 2** of this bill requires the Administrator
6 of the Division of Industrial Relations of the Department of Business and Industry
7 to provide in the regulations that establish the formula for assessments against
8 insurers and employers for the support of the Division for an increase or decrease to
9 the assessment rates of insurers and employers based on whether any penalties were
10 imposed against the insurer or employer for violations. (NRS 232.680)

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

1 **Section 1.** NRS 616D.120 is hereby amended to read as
2 follows:

3 616D.120 1. Except as otherwise provided in this section, if
4 the Administrator determines that an insurer, organization for
5 managed care, health care provider, third-party administrator or
6 employer has:



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

(b) Without justification, persuaded a claimant to:

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

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

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

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

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

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

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

(d) Refused to process 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.



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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:

(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



1 the injured employee or his dependents as a result of the violation of
2 paragraph (a), (b), (c), (d), (e) or (h) of subsection 1, the amount of
3 compensation found to be due the claimant and the number of fines
4 and benefit penalties, other than a benefit penalty described in
5 paragraph (b) of subsection 3, previously imposed against the
6 insurer, organization for managed care, health care provider, third-
7 party administrator or employer pursuant to this section. If this is the
8 third violation within 5 years for which a benefit penalty, other than
9 a benefit penalty described in paragraph (b) of subsection 3, has
10 been imposed against the insurer, organization for managed care,
11 health care provider, third-party administrator or employer, the
12 Administrator shall also consider the degree of economic harm
13 suffered by the injured employee or his dependents as a result of the
14 violation of paragraph (a), (b), (c), (d), (e) or (h) of subsection 1.
15 Except as otherwise provided in this section, the benefit penalty is
16 for the benefit of the claimant and must be paid directly to him
17 within 10 days after the date of the Administrator's determination. If
18 the claimant is the injured employee and he dies before the benefit
19 penalty is paid to him, the benefit penalty must be paid to his estate.
20 Proof of the payment of the benefit penalty must be submitted to the
21 Administrator within 10 days after the date of his determination
22 unless an appeal is filed pursuant to NRS 616D.140. Any
23 compensation to which the claimant may otherwise be entitled
24 pursuant to chapters 616A to 616D, inclusive, or chapter 617 of
25 NRS must not be reduced by the amount of any benefit penalty
26 received pursuant to this subsection.

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

33 6. If:

34 (a) The Administrator determines that a person has violated any
35 of the provisions of NRS 616D.200, 616D.220, 616D.240,
36 616D.300, 616D.310 or 616D.350 to 616D.440, inclusive; and

37 (b) The Fraud Control Unit for Industrial Insurance of the Office
38 of the Attorney General established pursuant to NRS 228.420
39 notifies the Administrator that the Unit will not prosecute the person
40 for that violation,

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

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



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- 1 (a) A certificate to act as a self-insured employer.
2 (b) A certificate to act as an association of self-insured public or
3 private employers.

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

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

12 9. If the Administrator determines that a vocational
13 rehabilitation counselor has violated the provisions of NRS
14 616C.543, the Administrator may impose an administrative fine on
15 the vocational rehabilitation counselor of not more than \$250 for a
16 first violation, \$500 for a second violation and \$1,000 for a third or
17 subsequent violation.

18 *10. The Administrator shall double the fine for any violation*
19 *under this section involving a serious injury claim, except that the*
20 *violation must have occurred during or after a claim is deemed a*
21 *serious injury claim.*

22 *11. As used in this section, "serious injury claim" means:*

23 *(a) A claim where the medical costs for treatment of an injury,*
24 *excluding any other cost, exceeds \$100,000; or*

25 *(b) A claim involving the death of an injured employee as the*
26 *proximate result of an injury, regardless of the amount of medical*
27 *costs incurred.*

28 **Sec. 2.** NRS 232.680 is hereby amended to read as follows:

29 232.680 1. The cost of carrying out the provisions of NRS
30 232.550 to 232.700, inclusive, and of supporting the Division, a
31 full-time employee of the Legislative Counsel Bureau and the Fraud
32 Control Unit for Industrial Insurance established pursuant to NRS
33 228.420, and that portion of the cost of the Office for Consumer
34 Health Assistance established pursuant to NRS 223.550 that is
35 related to providing assistance to consumers and injured employees
36 concerning workers' compensation, must be paid from assessments
37 payable by each insurer, including each employer who provides
38 accident benefits for injured employees pursuant to NRS 616C.265.

39 2. The Administrator shall assess each insurer, including each
40 employer who provides accident benefits for injured employees
41 pursuant to NRS 616C.265. To establish the amount of the
42 assessment, the Administrator shall determine the amount of money
43 necessary for each of the expenses set forth in subsections 1 and 4 of
44 this section and subsection 3 of NRS 616A.425 and determine the
45 amount that is payable by the private carriers, the self-insured



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1 employers, the associations of self-insured public or private
2 employers and the employers who provide accident benefits
3 pursuant to NRS 616C.265 for each of the programs. For the
4 expenses from which more than one group of insurers receives
5 benefit, the Administrator shall allocate a portion of the amount
6 necessary for that expense to be payable by each of the relevant
7 group of insurers, based upon the expected annual expenditures for
8 claims of each group of insurers. After allocating the amounts
9 payable among each group of insurers for all the expenses from
10 which each group receives benefit, the Administrator shall apply an
11 assessment rate to the:

12 (a) Private carriers that reflects the relative hazard of the
13 employments covered by the private carriers, results in an equitable
14 distribution of costs among the private carriers and is based upon
15 expected annual premiums to be received;

16 (b) Self-insured employers that results in an equitable
17 distribution of costs among the self-insured employers and is based
18 upon expected annual expenditures for claims;

19 (c) Associations of self-insured public or private employers that
20 results in an equitable distribution of costs among the associations
21 of self-insured public or private employers and is based upon
22 expected annual expenditures for claims; and

23 (d) Employers who provide accident benefits pursuant to NRS
24 616C.265 that reflect the relative hazard of the employments
25 covered by those employers, results in an equitable distribution of
26 costs among the employers and is based upon expected annual
27 expenditures for claims.

28 ➔ The Administrator shall adopt regulations that establish the
29 formula for the assessment and for the administration of payment,
30 and any penalties that the Administrator determines are necessary to
31 carry out the provisions of this subsection **H**, *which must include*
32 *the penalty set forth in NRS 616D.130. The regulations must*
33 *provide for an increase or decrease to the assessment rates of*
34 *insurers and employers based on whether any penalties were*
35 *imposed against the insurer or employer pursuant to NRS*
36 *616D.130.* The formula may use actual expenditures for claims. As
37 used in this subsection, the term "group of insurers" includes the
38 group of employers who provide accident benefits for injured
39 employees pursuant to NRS 616C.265.

40 3. Federal grants may partially defray the costs of the Division.

41 4. Assessments made against insurers by the Division after the
42 adoption of regulations must be used to defray all costs and
43 expenses of administering the program of workers' compensation,
44 including the payment of:



1 (a) All salaries and other expenses in administering the Division,
2 including the costs of the office and staff of the Administrator.

3 (b) All salaries and other expenses of administering NRS
4 616A.435 to 616A.460, inclusive, the offices of the Hearings
5 Division of the Department of Administration and the programs of
6 self-insurance and review of premium rates by the Commissioner of
7 Insurance.

8 (c) The salary and other expenses of a full-time employee of the
9 Legislative Counsel Bureau whose principal duties are limited to
10 conducting research and reviewing and evaluating data related to
11 industrial insurance.

12 (d) All salaries and other expenses of the Fraud Control Unit for
13 Industrial Insurance established pursuant to NRS 228.420.

14 (e) Claims against uninsured employers arising from compliance
15 with NRS 616C.220 and 617.401.

16 (f) That portion of the salaries and other expenses of the Office
17 for Consumer Health Assistance established pursuant to NRS
18 223.550 that is related to providing assistance to consumers and
19 injured employees concerning workers' compensation.

20 5. If the Division refunds any part of an assessment, the
21 Division shall include in that refund any interest earned by the
22 Division from the refunded part of the assessment.

