

SENATE BILL NO. 366—COMMITTEE ON COMMERCE AND LABOR

MARCH 23, 2009

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions relating to workers' compensation. (BDR 53-590)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

~

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to industrial insurance; providing that an employer bears the burden of proof to show that an injury occurred at work; providing that treatment for an industrial injury must not be delayed while certain determinations are being made; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Section 1 of this bill revises existing law to prohibit an insurer from limiting or denying coverage for care while making a determination to accept or deny a claim for workers' compensation. (NRS 616C.065)

Section 2 of this bill revises provisions regarding the burden of proof to establish that an injury occurred at work to provide that the employer, rather than the employee, bears the burden. (NRS 616C.150)

Sections 3, 4 and 5 of this bill revise existing law to provide that if an insurer makes payments to an injured employee, contests responsibility for the claim and is held not to be responsible, the insurer may seek reimbursement from the responsible insurer or the Uninsured Employers' Claim Account. (NRS 616C.155, 616C.165, 616C.220)

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

Section 1. NRS 616C.065 is hereby amended to read as follows:

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



* S B 3 6 6 *

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

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

2. *An insurer shall not limit or deny coverage for care before making a determination pursuant to subsection 1.*

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

~~[3-]~~ 4. Except as otherwise provided in this subsection, if an insurer unreasonably delays or refuses to pay the claim within 30 days after the insurer has been notified of an industrial accident, the insurer shall pay upon order of the Administrator an additional amount equal to three times the amount specified in the order as refused or unreasonably delayed. This payment is for the benefit of the claimant and must be paid to him with the compensation assessed pursuant to chapters 616A to 617, inclusive, of NRS. The provisions of this section do not apply to the payment of a bill for accident benefits that is governed by the provisions of NRS 616C.136.

~~[4-]~~ 5. The insurer shall notify the claimant or the person acting on behalf of the claimant that a claim has been accepted or denied pursuant to subsection 1 by:

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

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

~~[5-]~~ 6. The failure of the insurer to obtain a certificate of mailing as required by paragraph (b) of subsection 4 shall be deemed to be a failure of the insurer to mail the written determination of the denial of a claim as required by this section.

~~[6-]~~ 7. Upon request, the insurer shall provide a copy of the certificate of mailing, if any, to the claimant or the person acting on behalf of the claimant.

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

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

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

~~[8-]~~ 9. As used in this section, "certificate of mailing" means a 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. 2.** NRS 616C.150 is hereby amended to read as follows:

4 616C.150 1. An injured employee ~~for~~ *and* his dependents
5 are ~~not~~ entitled to receive compensation pursuant to the provisions
6 of chapters 616A to 616D, inclusive, of NRS unless ~~[the employee~~
7 ~~or his dependents establish]~~ *his employer establishes* by a
8 preponderance of the evidence that the employee's injury ~~arose~~ *did*
9 *not arise* out of and in the course of his employment.

10 2. For the purposes of chapters 616A to 616D, inclusive, of
11 NRS, if the employee files a notice of an injury pursuant to NRS
12 616C.015 after his employment has been terminated for any reason,
13 there is a rebuttable presumption that the injury did not arise out of
14 and in the course of his employment.

15 **Sec. 3.** NRS 616C.155 is hereby amended to read as follows:

16 616C.155 1. An insurer shall not provide compensation to or
17 for an employee or his dependents before the compensation is
18 required to be paid pursuant to the provisions of chapters 616A to
19 616D, inclusive, of NRS.

20 2. ~~If~~ *Except as otherwise provided in subsection 4, if*, within
21 30 days after a payment is made to an injured employee pursuant to
22 the provisions of chapters 616A to 616D, inclusive, of NRS, the
23 insurer determines that it has overpaid the injured employee as a
24 result of a clerical error in its calculation of the amount of payment,
25 or as a result of using improper or incorrect information to
26 determine the injured employee's eligibility for payment or to
27 calculate the amount of payment, the insurer may deduct the amount
28 of the overpayment from future benefits related to that claim to
29 which the injured employee is entitled, other than accident benefits,
30 if:

31 (a) The insurer notifies the injured employee in writing of its
32 determination;

33 (b) The insurer informs the injured employee of his right to
34 contest the deduction; and

35 (c) The injured employee fails to contest the deduction or does
36 so and upon final resolution of the contested deduction, it is
37 determined that such an overpayment was made.

38 3. Any deductions made pursuant to subsection 2 must be
39 made in a reasonable manner which does not cause undue hardship
40 to the injured employee.

41 *4. If an insurer who has made payments to an injured*
42 *employee is determined not to be responsible for the claim, the*
43 *insurer may seek reimbursement of the overpayment as provided*
44 *in subsection 2 or 3, as applicable, of NRS 616C.165.*



1 **Sec. 4.** NRS 616C.165 is hereby amended to read as follows:

2 616C.165 **1.** If responsibility for an undisputed claim for
3 compensation by an injured employee is contested, the insurer to
4 which the employee first submits the claim is responsible for
5 providing the required compensation to the employee pending final
6 resolution of the issue regarding which insurer is responsible for the
7 claim.

8 **2.** If the insurer that initially provides compensation to the
9 injured employee is not held responsible for payment of the claim,
10 the insurer that is held responsible shall reimburse that insurer
11 within 30 days after final resolution of the issue of responsibility for
12 payment of the claim.

13 **3.** *If no insurer is held responsible for payment of the claim,*
14 *an insurer that provides compensation to the injured employee*
15 *may receive reimbursement from the Uninsured Employers' Claim*
16 *Account pursuant to the provisions of NRS 616C.220.*

17 **Sec. 5.** NRS 616C.220 is hereby amended to read as follows:

18 616C.220 1. The Division shall designate one:

19 (a) Third-party administrator who has a valid certificate issued
20 by the Commissioner pursuant to NRS 683A.085; or

21 (b) Insurer, other than a self-insured employer or association of
22 self-insured public or private employers,

23 ➔ to administer claims against the uninsured employers' claim
24 account. The designation must be made pursuant to reasonable
25 competitive bidding procedures established by the Administrator.

26 2. Except as otherwise provided in this subsection, an
27 employee may receive compensation from the uninsured employers'
28 claim account if:

29 (a) He was hired in this State or he is regularly employed in this
30 State;

31 (b) He suffers an accident or injury which arises out of and in
32 the course of his employment:

33 (1) In this State; or

34 (2) While on temporary assignment outside the State for not
35 more than 12 months;

36 (c) He files a claim for compensation with the Division; and

37 (d) He makes an irrevocable assignment to the Division of a
38 right to be subrogated to the rights of the injured employee pursuant
39 to NRS 616C.215.

40 ➔ An employee who suffers an accident or injury while on
41 temporary assignment outside the State is not eligible to receive
42 compensation from the uninsured employers' claim account unless
43 he has been denied workers' compensation in the state in which the
44 accident or injury occurred.



3. *An insurer may receive reimbursement from the Uninsured Employers' Claim Account if:*

(a) *The insurer made payments to an injured employee;*
(b) *The insurer was held not to be responsible for payment of an employee's claim;*

(c) *The insurer files a claim for reimbursement with the Division; and*

(d) *The insurer makes an irrevocable assignment to the Division of a right to be subrogated to the rights of the insurer against the employer of the injured employee pursuant to subsection 6.*

4. If the Division receives a claim pursuant to subsection 2 ~~§~~ or 3, the Division shall immediately notify the employer of the claim.

~~4.1~~ 5. For the purposes of this section, the employer has the burden of proving that he provided mandatory industrial insurance coverage for the employee or that he was not required to maintain industrial insurance for the employee.

~~5.1~~ 6. Any employer who has failed to provide mandatory coverage required by the provisions of chapters 616A to 616D, inclusive, of NRS is liable for all payments made on his behalf, including any benefits, administrative costs or attorney's fees paid from the uninsured employers' claim account or incurred by the Division ~~§~~.

~~6.1~~, *or the insurer described in subsection 3.*

7. The Division:

(a) May recover from the employer the payments made by the Division that are described in subsection ~~§~~ 6 and any accrued interest by bringing a civil action in a court of competent jurisdiction.

(b) In any civil action brought against the employer, is not required to prove that negligent conduct by the employer was the cause of the employee's injury.

(c) May enter into a contract with any person to assist in the collection of any liability of an uninsured employer.

(d) In lieu of a civil action, may enter into an agreement or settlement regarding the collection of any liability of an uninsured employer.

~~7.1~~ 8. The Division shall:

(a) Determine whether the employer was insured within 30 days after receiving notice of the claim from the employee ~~§~~ *or insurer.*

(b) Assign the claim to the third-party administrator or insurer designated pursuant to subsection 1 for administration and payment of compensation.



1 ➤ Upon determining whether the claim is accepted or denied, the
2 designated third-party administrator or insurer shall notify the
3 injured employee, the named employer, ~~and~~ the Division *and, if*
4 *applicable, the insurer described in subsection 3* of its
5 determination.

6 ~~[8-]~~ 9. Upon demonstration of the:

7 (a) *Costs incurred by the insurer described in subsection 3, if*
8 *applicable, to administer the claim or pay compensation to the*
9 *injured employee;*

10 (b) Costs incurred by the designated third-party administrator or
11 insurer to administer the claim or pay compensation to the injured
12 employee; or

13 ~~[(b)]~~ (c) Amount that the designated third-party administrator or
14 insurer will pay for administrative expenses or compensation to the
15 injured employee and that such amounts are justified by the
16 circumstances of the claim,

17 ➤ the Division shall authorize payment from the uninsured
18 employers' claim account.

19 ~~[9-]~~ 10. Any party aggrieved by a determination made by the
20 Division regarding the assignment of any claim made pursuant to
21 this section may appeal that determination by filing a notice of
22 appeal with an appeals officer within 30 days after the determination
23 is rendered. The provisions of NRS 616C.345 to 616C.385,
24 inclusive, apply to an appeal filed pursuant to this subsection.

25 ~~[(10-)]~~ 11. Any party aggrieved by a determination to accept or
26 to deny any claim made pursuant to this section or by a
27 determination to pay or to deny the payment of compensation
28 regarding any claim made pursuant to this section may appeal that
29 determination, within 70 days after the determination is rendered, to
30 the Hearings Division of the Department of Administration in the
31 manner provided by NRS 616C.305 and 616C.315.

32 ~~[(11-)]~~ 12. All insurers shall bear a proportionate amount of a
33 claim made pursuant to chapters 616A to 616D, inclusive, of NRS,
34 and are entitled to a proportionate amount of any collection made
35 pursuant to this section as an offset against future liabilities.

36 ~~[(12-)]~~ 13. An uninsured employer is liable for the interest on
37 any amount paid on his claims from the Uninsured Employers'
38 Claim Account. The interest must be calculated at a rate equal to the
39 prime rate at the largest bank in Nevada, as ascertained by the
40 Commissioner of Financial Institutions, on January 1 or July 1, as
41 the case may be, immediately preceding the date of the claim, plus 3
42 percent, compounded monthly, from the date the claim is paid from
43 the account until payment is received by the Division from the
44 employer.



1 ~~{13.}~~ 14. Attorney's fees recoverable by the Division pursuant
2 to this section must be:

3 (a) If a private attorney is retained by the Division, paid at the
4 usual and customary rate for that attorney.

5 (b) If the attorney is an employee of the Division, paid at the
6 rate established by regulations adopted by the Division.

7 ➤ Any money collected must be deposited to the Uninsured
8 Employers' Claim Account.

9 ~~{14.}~~ 15. In addition to any other liabilities provided for in this
10 section, the Administrator may impose an administrative fine of not
11 more than \$10,000 against an employer if the employer fails to
12 provide mandatory coverage required by the provisions of chapters
13 616A to 616D, inclusive, of NRS.

14 **Sec. 6.** This act becomes effective on July 1, 2009.

