

Senate Bill No. 63—Committee on
Commerce, Labor and Energy

CHAPTER.....

AN ACT relating to industrial insurance; establishing provisions for the collection of certain amounts owed to the Division of Industrial Relations of the Department of Business and Industry for payments from the Uninsured Employers' Claim Account; revising provisions governing the penalty for failure to provide mandatory industrial insurance; prohibiting certain conduct by persons who fail to pay certain amounts owed to the Division; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Sections 1 and 5 of this bill establish a process whereby the Division of Industrial Relations of the Department of Business and Industry may apply for the entry of summary judgment against an employer who fails to pay to the Division an amount owed for payments from the Uninsured Employers' Claim Account which were paid on behalf of that employer. **Sections 1 and 5** also provide that, upon entry of summary judgment, the Division may record the summary judgment with the recorder of any county and the judgment constitutes a lien against all real and personal property of the employer that is located in the county. The duration of the lien is 6 years, and the lien may be extended for additional 6-year periods. **Section 7** of this bill provides that the provisions of **sections 1 and 5** apply to certain amounts owed to the Division on or after July 1, 2011.

Existing law provides general penalties for failure to comply with the provisions of law governing the provision of industrial insurance, including, without limitation, the imposition of an administrative fine of not more than \$15,000 for failure to provide and maintain mandatory coverage. (NRS 616D.120, 616D.200) **Section 2** of this bill deletes a redundant provision that authorized the imposition of an administrative fine of \$10,000 against an employer who failed to provide such coverage.

Section 4 of this bill prohibits the owner of a business that owes money to the Division for certain unpaid administrative fines, benefit penalties, unpaid premiums or interest or payments from the Uninsured Employers' Claim Account from becoming, or inducing or procuring another person to become, the owner of a similar business and prohibits a person from knowingly aiding or abetting such conduct. A person who commits such a violation is liable for the costs associated with investigating and acting upon that conduct. **Section 4** also revises provisions which prohibit a private carrier from knowingly insuring any business which engages in such conduct by expanding the prohibition to apply to the following insurers: (1) a self-insured employer; (2) an association of self-insured public employers; (3) an association of self-insured private employers; and (4) a private carrier.

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



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

Section 1. Chapter 616C of NRS is hereby amended by adding thereto a new section to read as follows:

1. Except as otherwise provided in this subsection, if an employer fails to pay to the Division any amount due pursuant to NRS 616C.220, the Division may, after the date on which the debt became due, file with the office of the clerk of a court of competent jurisdiction an application for the entry of summary judgment against the employer for the amount due. The Division may not enforce a judgment against an employer if an appeal requested by the employer pursuant to NRS 616C.220 is pending.

2. If the Division intends to file an application for the entry of summary judgment, the Division shall, not less than 15 days before the date on which the application is filed, notify the employer of the Division's intention to file the application. The notification must be sent by certified mail to the last known address of the employer and must include the name of the employee for whom the claim was paid, the amount sought to be recovered and the date on which the application will be filed with the court.

3. An application for the entry of summary judgment must:

(a) Be accompanied by a certificate which specifies:

(1) The amount owed by the employer, including any attorney's fees, interest and administrative costs due;

(2) The name and address of the employer; and

(3) That the Division has complied with the applicable provisions of law relating to the determination of the amount required to be paid; and

(b) Include:

(1) A request that judgment be entered against the employer for the amount specified in the certificate; and

(2) Evidence that the employer was notified of the application for the entry of summary judgment in accordance with subsection 2.

4. The court clerk, upon the filing of an application for the entry of summary judgment which complies with the requirements set forth in this section, shall forthwith enter a judgment against the employer in the amount of the debt, plus any attorney's fees, interest and administrative costs, as set forth in the certificate. The Division shall serve a copy of the judgment, together with a copy of the application and the certificate, upon the employer against



whom the judgment is entered, either by personal service or by mailing a copy to the last known address of the employer.

5. An abstract of the judgment entered pursuant to subsection 4, or a copy thereof, may be recorded in the office of the county recorder of any county.

6. From the time of its recordation, the judgment constitutes a lien upon all real and personal property situated in the county that is owned by the employer, or which the employer may afterward acquire, until the lien expires. The lien has the force, effect and priority of a judgment lien and continues for 6 years after the date of the judgment so entered by the court clerk unless sooner released or otherwise discharged.

7. Within 6 years after the date of the recording of the judgment or within 6 years after the date of the last extension of the lien pursuant to this subsection, the lien may be extended by recording an affidavit of renewal in the office of the county recorder. From the date of recording, the lien is extended for 6 years to all real and personal property situated in the county that is owned by the employer or acquired by the employer afterwards, unless the lien is sooner released or otherwise discharged.

Sec. 2. NRS 616C.220 is hereby amended to read as follows:

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

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

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

➡ to administer claims against the Uninsured Employers' Claim Account. The designation must be made pursuant to reasonable competitive bidding procedures established by the Administrator.

2. Except as otherwise provided in this subsection, an employee may receive compensation from the Uninsured Employers' Claim Account if:

(a) The employee was hired in this State or is regularly employed in this State;

(b) The employee suffers an accident or injury which arises out of and in the course of his or her employment:

(1) In this State; or

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

(c) The employee files a claim for compensation with the Division; and



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

➡ An employee who suffers an accident or injury while on temporary assignment outside the State is not eligible to receive compensation from the Uninsured Employers' Claim Account unless the employee has been denied workers' compensation in the state in which the accident or injury occurred.

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

4. For the purposes of this section ~~§~~ *and section 1 of this act*, the employer has the burden of proving that the employer provided mandatory industrial insurance coverage for the employee or that the employer was not required to maintain industrial insurance for the employee.

5. 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 behalf of the employer, including any benefits, administrative costs or attorney's fees paid from the Uninsured Employers' Claim Account or incurred by the Division.

6. The Division:

(a) May recover from the employer the payments made by the Division that are described in subsection 5 and any accrued interest by bringing a civil action *or filing an application for the entry of summary judgment pursuant to section 1 of this act* in a court of competent jurisdiction. For the purposes of this paragraph, the payments made by the Division that are described in subsection 5 are presumed to be:

- (1) Justified by the circumstances of the claim;
- (2) Made in accordance with applicable law; and
- (3) Reasonable and necessary.

(b) In any civil action ~~brought~~ *or application for the entry of summary judgment filed pursuant to section 1 of this act* 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 ~~§~~ *or filing an application for the entry of summary judgment pursuant to section 1 of this act*, may enter into an agreement or settlement regarding the collection of any liability of an uninsured employer.

7. The Division shall:



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

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

↳ Upon determining whether the claim is accepted or denied, the designated third-party administrator or insurer shall notify the injured employee, the named employer and the Division of its determination.

8. Upon demonstration of the:

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

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

↳ the Division shall authorize payment from the Uninsured Employers' Claim Account.

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

10. Any party aggrieved by a determination to accept or to deny any claim made pursuant to this section or by a determination to pay or to deny the payment of compensation regarding any claim made pursuant to this section may appeal that determination, within 70 days after the determination is rendered, to the Hearings Division of the Department of Administration in the manner provided by NRS 616C.305 and 616C.315.

11. All insurers shall bear a proportionate amount of a claim made pursuant to chapters 616A to 616D, inclusive, of NRS, and are entitled to a proportionate amount of any collection made pursuant to this section as an offset against future liabilities.

12. An uninsured employer is liable for the interest on any amount paid on his or her claims from the Uninsured Employers' Claim Account. The interest must be calculated at a rate equal to the prime rate at the largest bank in Nevada, as ascertained by the Commissioner of Financial Institutions, on January 1 or July 1, as the case may be, immediately preceding the date of the claim, plus 3 percent, compounded monthly, from the date the claim is paid from



the account until payment is received by the Division from the employer.

13. Attorney's fees recoverable by the Division pursuant to this section must be:

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

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

➔ Any money collected must be deposited to the Uninsured Employers' Claim Account.

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

~~—15.1~~ If the Division *has not obtained a civil judgment or an entry of summary judgment pursuant to section 1 of this act and the Division* assigns a debt that arises under this section to the State Controller for collection pursuant to NRS 353C.195, the State Controller may bring an action in his or her own name in a court of competent jurisdiction to recover any amount that the Division is authorized to recover pursuant to this section.

Sec. 3. NRS 616D.200 is hereby amended to read as follows:

616D.200 1. If the Administrator finds that an employer within the provisions of NRS 616B.633 has failed to provide and secure compensation as required by the terms of chapters 616A to 616D, inclusive, or chapter 617 of NRS or that the employer has provided and secured that compensation but has failed to maintain it, the Administrator shall make a determination thereon and may charge the employer an amount equal to the sum of:

(a) The premiums that would otherwise have been owed to a private carrier pursuant to the terms of chapters 616A to 616D, inclusive, or chapter 617 of NRS, as determined by the Administrator based upon the manual rates adopted by the Commissioner, for the period that the employer was doing business in this State without providing, securing or maintaining that compensation, but not to exceed 6 years; and

(b) Interest at a rate determined pursuant to NRS 17.130 computed from the time that the premiums should have been paid.

➔ The money collected pursuant to this subsection must be paid into the Uninsured Employers' Claim Account.

2. The Administrator shall deliver a copy of his or her determination to the employer. An employer who is aggrieved by



the determination of the Administrator may appeal from the determination pursuant to subsection 2 of NRS 616D.220.

3. Any employer within the provisions of NRS 616B.633 who fails to provide, secure or maintain compensation as required by the terms of chapters 616A to 616D, inclusive, or chapter 617 of NRS, shall be punished as follows:

(a) Except as otherwise provided in paragraph (b), if it is a first offense, for a misdemeanor.

(b) If it is a first offense and, during the period the employer was doing business in this State without providing, securing or maintaining compensation, one of his or her employees suffers an injury arising out of and in the course of his or her employment that results in substantial bodily harm to the employee or the death of the employee, for a category C felony punishable by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 5 years and by a fine of not less than \$1,000 nor more than \$50,000.

(c) If it is a second or subsequent offense committed within 7 years after the previous offense, for a category C felony punishable by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 5 years and by a fine of not less than \$1,000 nor more than \$50,000.

4. In addition to any other penalty imposed pursuant to paragraph (b) or (c) of subsection 3, the court shall order the employer to:

(a) Pay restitution to an insurer who has incurred costs as a result of the violation in an amount equal to the costs that have been incurred minus any costs incurred that have otherwise been recovered; and

(b) Reimburse the Uninsured Employers' Claim Account for all payments made from the account on the employer's behalf, including any benefits, administrative costs or attorney's fees paid from the account, that have not otherwise been recovered pursuant to NRS 616C.220 ~~H~~ *or 617.401, or included in a civil judgment or a summary judgment entered pursuant to section 1 or 5 of this act.*

5. Any criminal penalty imposed pursuant to subsections 3 and 4 must be in addition to the amount charged pursuant to subsection 1.

Sec. 4. NRS 616D.210 is hereby amended to read as follows:
616D.210 1. Any person who:

(a) Is the legal or beneficial owner of 25 percent or more of a business which terminates operations while owing a premium, interest or penalty to a private carrier and becomes, or induces or



procures another person to become, the legal or beneficial owner of 25 percent or more of a new business engaging in similar operations; or

(b) Knowingly aids or abets another person in carrying out such conduct,

↪ is liable in a civil action for the payment of any premium, interest and penalties owed to the private carrier and the reasonable costs incurred by the private carrier to investigate and act upon such conduct.

2. ~~{The}~~ **Any person who:**

(a) Is the legal or beneficial owner of 25 percent or more of a business which terminates operations while owing money to the Division for any unpaid administrative fine imposed or benefit penalty ordered pursuant to NRS 616D.120, unpaid premium or interest charged pursuant to NRS 616D.200 or payments made from the Uninsured Employers' Claim Account pursuant to NRS 616C.220 or 617.401, including attorney's fees, administrative costs, interest or penalties, and becomes, or induces or procures another person to become, the legal or beneficial owner of 25 percent or more of a new business engaging in similar operations; or

(b) Knowingly aids or abets another person in carrying out such conduct,

↪ *is liable for the payment of any amount owed to the Division and the reasonable costs incurred by the Division to investigate and act upon such conduct.*

3. ~~{private carrier}~~ **An insurer** shall not knowingly insure any business which engages in the conduct described in ~~{subsection}~~ :

(a) Subsection 1 unless the premium and any interest and penalties owed to the prior insurer have been paid to that insurer ~~f~~.

~~—3.1; or~~

(b) Subsection 2 unless the amount due the Division pursuant to NRS 616C.220, 616D.120, 616D.200 or 617.401, including any attorney's fees, administrative costs, interest and penalties, has been paid to the Division.

4. As used in this section, "business" includes, but is not limited to, a firm, sole proprietorship, general or limited partnership, voluntary association or private corporation.

Sec. 5. Chapter 617 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Except as otherwise provided in this subsection, if an employer fails to pay to the Division any amount due pursuant to NRS 617.401, the Division may, after the date on which the debt



became due, file with the office of the clerk of a court of competent jurisdiction an application for the entry of summary judgment against the employer for the amount due. The Division may not enforce a judgment against an employer if an appeal requested by the employer pursuant to NRS 617.401 is pending.

2. If the Division intends to file an application for the entry of summary judgment, the Division shall, not less than 15 days before the date on which the application is filed, notify the employer of the Division's intention to file the application. The notification must be sent by certified mail to the last known address of the employer and must include the name of the employee for whom the claim was paid, the amount sought to be recovered and the date on which the application will be filed with the court.

3. An application for the entry of summary judgment must:

(a) Be accompanied by a certificate which specifies:

(1) The amount owed by the employer, including any attorney's fees, interest and administrative costs due;

(2) The name and address of the employer; and

(3) That the Division has complied with the applicable provisions of law relating to the determination of the amount required to be paid; and

(b) Include:

(1) A request that judgment be entered against the employer for the amount specified in the certificate; and

(2) Evidence that the employer was notified of the application for the entry of summary judgment in accordance with subsection 2.

4. The court clerk, upon the filing of an application for the entry of summary judgment which complies with the requirements set forth in this section, shall forthwith enter a judgment against the employer in the amount of the debt, plus any attorney's fees, interest and administrative costs, as set forth in the certificate. The Division shall serve a copy of the judgment, together with a copy of the application and the certificate, upon the employer against whom the judgment is entered, either by personal service or by mailing a copy to the last known address of the employer.

5. An abstract of the judgment entered pursuant to subsection 4, or a copy thereof, may be recorded in the office of the county recorder of any county.

6. From the time of its recordation, the judgment constitutes a lien upon all real and personal property situated in the county that is owned by the employer, or which the employer may



afterward acquire, until the lien expires. The lien has the force, effect and priority of a judgment lien and continues for 6 years after the date of the judgment so entered by the court clerk unless sooner released or otherwise discharged.

7. Within 6 years after the date of the recording of the judgment or within 6 years after the date of the last extension of the lien pursuant to this subsection, the lien may be extended by recording an affidavit of renewal in the office of the county recorder. From the date of recording, the lien is extended for 6 years to all real and personal property situated in the county that is owned by the employer or acquired by the employer afterwards, unless the lien is sooner released or otherwise discharged.

Sec. 6. NRS 617.401 is hereby amended to read as follows:

617.401 1. The Division shall designate one:

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

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

↳ to administer claims against the Uninsured Employers' Claim Account. The designation must be made pursuant to reasonable competitive bidding procedures established by the Administrator.

2. Except as otherwise provided in this subsection, an employee may receive compensation from the Uninsured Employers' Claim Account if:

(a) The employee was hired in this State or is regularly employed in this State;

(b) The employee contracts an occupational disease that arose out of and in the course of employment:

(1) In this State; or

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

(c) The employee files a claim for compensation with the Division; and

(d) The employee makes an irrevocable assignment to the Division of a right to be subrogated to the rights of the employee pursuant to NRS 616C.215.

↳ An employee who contracts an occupational disease that arose out of and in the course of employment while on temporary assignment outside the State is not entitled to receive compensation from the Uninsured Employers' Claim Account unless the employee has been denied workers' compensation in the state in which the disease was contracted.



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

4. For the purposes of this section ~~§~~ *and section 5 of this act*, the employer has the burden of proving that the employer provided mandatory coverage for occupational diseases for the employee or that the employer was not required to maintain industrial insurance for the employee.

5. Any employer who has failed to provide mandatory coverage required by the provisions of this chapter is liable for all payments made on behalf of the employer, including, but not limited to, any benefits, administrative costs or attorney's fees paid from the Uninsured Employers' Claim Account or incurred by the Division.

6. The Division:

(a) May recover from the employer the payments made by the Division that are described in subsection 5 and any accrued interest by bringing a civil action *or filing an application for the entry of summary judgment pursuant to section 5 of this act* in a court of competent jurisdiction. For the purposes of this paragraph, the payments made by the Division that are described in subsection 5 are presumed to be:

- (1) Justified by the circumstances of the claim;
- (2) Made in accordance with applicable law; and
- (3) Reasonable and necessary.

(b) In any civil action ~~brought~~ *or application for the entry of summary judgment filed pursuant to section 5 of this act* against the employer, is not required to prove that negligent conduct by the employer was the cause of the occupational disease.

(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 ~~§~~ *or filing an application for the entry of summary judgment pursuant to section 5 of this act*, may enter into an agreement or settlement regarding the collection of any liability of an uninsured employer.

7. The Division shall:

(a) Determine whether the employer was insured within 30 days after receiving the claim from the employee.

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

➔ Upon determining whether the claim is accepted or denied, the designated third-party administrator or insurer shall notify the injured employee, the named employer and the Division of its determination.



8. Upon demonstration of the:

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

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

→ the Division shall authorize payment from the Uninsured Employers' Claim Account.

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

10. Any party aggrieved by a determination to accept or to deny any claim made pursuant to this section or by a determination to pay or to deny the payment of compensation regarding any claim made pursuant to this section may appeal that determination, within 70 days after the determination is rendered, to the Hearings Division of the Department of Administration in the manner provided by NRS 616C.305 and 616C.315.

11. All insurers shall bear a proportionate amount of a claim made pursuant to this chapter, and are entitled to a proportionate amount of any collection made pursuant to this section as an offset against future liabilities.

12. An uninsured employer is liable for the interest on any amount paid on his or her claims from the Uninsured Employers' Claim Account. The interest must be calculated at a rate equal to the prime rate at the largest bank in Nevada, as ascertained by the Commissioner of Financial Institutions, on January 1 or July 1, as the case may be, immediately preceding the date of the claim, plus 3 percent, compounded monthly, from the date the claim is paid from the Account until payment is received by the Division from the employer.

13. Attorney's fees recoverable by the Division pursuant to this section must be:

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

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



↳ Any money collected must be deposited to the Uninsured Employers' Claim Account.

14. ~~In addition to any other liabilities provided for in this section, the Administrator may impose an administrative fine of not more than \$10,000 against an employer if the employer fails to provide mandatory coverage required by the provisions of this chapter.~~

~~15.]~~ If the Division *has not obtained a civil judgment or an entry of summary judgment pursuant to section 5 of this act and the Division* assigns a debt that arises under this section to the State Controller for collection pursuant to NRS 353C.195, the State Controller may bring an action in his or her own name in a court of competent jurisdiction to recover any amount that the Division is authorized to recover pursuant to this section.

Sec. 7. 1. The amendatory provisions of section 1 of this act apply to any amount owed by an employer on or after July 1, 2011, to the Division of Industrial Relations of the Department of Business and Industry pursuant to NRS 616C.220, including, without limitation, any amount owed for payments made from the Uninsured Employers' Claim Account and for any attorney's fees, interest and administrative costs.

2. The amendatory provisions of section 5 of this act apply to any amount owed by an employer on or after July 1, 2011, to the Division of Industrial Relations of the Department of Business and Industry pursuant to NRS 617.401, including, without limitation, any amount owed for payments made from the Uninsured Employers' Claim Account and for any attorney's fees, interest and administrative costs.

Sec. 8. This act becomes effective on July 1, 2011.

