

ASSEMBLY BILL NO. 427—COMMITTEE
ON COMMERCE AND LABOR

MARCH 25, 2013

Referred to Committee on Commerce and Labor

SUMMARY—Revises various provisions governing workers' compensation. (BDR 53-754)

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; allowing wages from certain employment in another jurisdiction to be included in calculating average monthly wage of an injured employee for the purposes of industrial insurance; removing provisions authorizing benefit penalties to be imposed against insurers and third-party administrators; revising provisions relating to the payment of benefits; establishing various requirements relating to claims; 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; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

- 1 Under existing law, an employee's average monthly wage for the purposes of
- 2 the Nevada Industrial Insurance Act is calculated using the employee's actual
- 3 wages, less wages from certain employment. (NRS 616A.065) The Nevada
- 4 Supreme Court has held that wages earned from employment with the Federal
- 5 Government were excluded from calculation of the average monthly wage. (*State*
- 6 *Indus. Ins. Sys. v. Prewitt*, 113 Nev. 616 (1997)) **Section 1** of this bill supersedes
- 7 that holding to allow for the inclusion of wages from employment in a different
- 8 jurisdiction under certain circumstances.
- 9 Under existing law, a claimant is entitled to certain benefits relating to
- 10 industrial insurance. (Chapters 616A-616D of NRS) **Section 4** of this bill specifies
- 11 how these benefits must be paid by an insurer. **Section 5** of this bill requires an
- 12 insurer: (1) to provide a claimant with a list of treating physicians or chiropractors
- 13 from which the claimant may choose a treating physician or chiropractor; and (2) to



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post such a list on the insurer's website and email the list to the claimant or his or her representative. **Section 6** of this bill requires various events relating to a medical examination requested by the insurer or employer or ordered by an appeals officer or hearing officer to occur within certain periods of time. **Section 7** of this bill establishes various requirements and time limits relating to requests for medical records. **Section 9** of this bill requires an insurer to comply with a decision rendered by an appeals officer within 15 days after the decision. **Section 10** of this bill reduces the amount of time for a stay of a decision of an appeals officer or the district court to be granted. **Section 15** of this bill revises provisions governing vocational rehabilitation benefits.

Under existing law, an employee who is injured while on a temporary assignment outside of Nevada may receive compensation from the Uninsured Employers' Claim Account if the employee was denied workers' compensation in the state where the injury occurred. (NRS 616C.220) **Section 8** of this bill also allows for such compensation for an injury that occurs in a jurisdiction other than a state.

Under existing law, the degree of permanent partial disability for which an employee may be compensated must be reduced to account for a previous disability. (NRS 616C.490) **Section 13** of this bill revises the method for such a reduction to account for a previous disability or preexisting condition.

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 16** 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. **Section 16** also revises the time within which an insurer must make a payment after a decision is rendered. **Sections 2, 11 and 14** of this bill revise various industrial insurance statutes to be consistent with the revisions made in **section 16**.

Existing law prohibits causes of action from being brought or maintained against insurers or third-party administrators and provides that fines imposed pursuant to certain industrial insurance provisions are the exclusive remedies for violations of the industrial insurance statutes by insurers and third-party administrators. (NRS 616D.030) **Section 17** of this bill repeals this law, allowing causes of action to be brought and maintained against insurers and third-party administrators.

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

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

616A.065 1. Except as otherwise provided in subsection 3, "average monthly wage" means the lesser of:

(a) The monthly wage actually received or deemed to have been received by the employee on the date of the accident or injury to the employee, excluding remuneration from employment:

(1) Not subject to the Nevada Industrial Insurance Act or the Nevada Occupational Diseases Act ~~H~~ and *not subject to similar laws of a state or jurisdiction other than Nevada; and*



(2) For which coverage is elective, but has not been elected;
or

(b) One hundred fifty percent of the state average weekly wage as most recently computed by the Employment Security Division of the Department of Employment, Training and Rehabilitation during the fiscal year preceding the date of the injury or accident, multiplied by 4.33.

2. For the purposes of subsection 1:

(a) The date of the accident or injury to the employee must be determined pursuant to NRS 616C.425.

(b) "Wage":

(1) Does not include any amount paid by an employer for health insurance that covers an employee or the dependents of the employee, or both.

(2) Is increased by the amount of tips reported by an employee to his or her employer pursuant to 26 U.S.C. § 6053(a), except:

(I) Tips in a form other than cash; and

(II) Tips in cash which total less than \$20 per month.

3. For the purpose of increasing compensation for permanent total disability pursuant to NRS 616C.465 or increasing death benefits pursuant to NRS 616C.520, "average monthly wage" has the meaning shown in the following schedule:

Effective Date	Average Monthly Wage for Prior Fiscal Year
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July 1, 1973	\$688.60
July 1, 1974	727.48
July 1, 1975	1,142.21
July 1, 1976	1,211.00
July 1, 1977	1,287.44
July 1, 1978	1,377.08
July 1, 1979	1,488.46
July 1, 1980	1,591.86

Sec. 2. 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:



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

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

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

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

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

17 *An insurer is responsible for the acts of its third-party*
18 *administrators, including, but not limited to, licensing and the*
19 *assessment of benefit penalties and administrative fines.*

20 **Sec. 4.** Chapter 616C of NRS is hereby amended by adding
21 thereto a new section to read as follows:

22 *1. An insurer shall pay any benefits due to a claimant by:*

23 *(a) Mailing a check to the claimant by depositing it with the*
24 *United States Postal Service at a time and place that makes it*
25 *reasonably likely that the check will be received by the claimant*
26 *not later than the day the payment is due;*

27 *(b) Sending a check to the claimant by overnight delivery*
28 *using a nationally recognized carrier not later than 1 day before*
29 *the payment is due; or*

30 *(c) Depositing the payment to the credit of the claimant by*
31 *direct deposit at a bank or credit union in which the claimant has*
32 *an account, if the claimant has authorized direct deposit, not later*
33 *than the day the payment is due.*

34 *2. Any payment made after the deadlines set forth in*
35 *subsection 1 is presumed to be unreasonably delayed pursuant to*
36 *paragraph (g) of subsection 1 of NRS 616D.120. If three or more*
37 *payments are made after the deadlines set forth in subsection 1*
38 *within a 2-month period, such conduct is presumed to be a pattern*
39 *of untimely payments to injured employees pursuant to paragraph*
40 *(h) of subsection 1 of NRS 616D.120.*

41 **Sec. 5.** NRS 616C.050 is hereby amended to read as follows:

42 616C.050 1. An insurer shall provide to each claimant:

43 (a) Upon written request, one copy of any medical information
44 concerning the claimant's injury or illness.



(b) A statement which contains information concerning the claimant's right to:

(1) Receive the information and forms necessary to file a claim;

(2) Select a treating physician or chiropractor and an alternative treating physician or chiropractor in accordance with the provisions of NRS 616C.090;

(3) Request the appointment of the Nevada Attorney for Injured Workers to represent the claimant before the appeals officer;

(4) File a complaint with the Administrator;

(5) When applicable, receive compensation for:

(I) Permanent total disability;

(II) Temporary total disability;

(III) Permanent partial disability;

(IV) Temporary partial disability;

(V) All medical costs related to the claimant's injury or disease; or

(VI) The hours the claimant is absent from the place of employment to receive medical treatment pursuant to NRS 616C.477;

(6) Receive services for rehabilitation if the claimant's injury prevents him or her from returning to gainful employment;

(7) Review by a hearing officer of any determination or rejection of a claim by the insurer within the time specified by statute; and

(8) Judicial review of any final decision within the time specified by statute.

(c) A list of the treating physicians or chiropractors from which the claimant may choose pursuant to NRS 616C.090, by including the list with the written notification that the claim is accepted. The insurer shall also maintain an updated list on the insurer's website and provide the list by electronic mail to the claimant or his or her representative.

2. The insurer's statement must include a copy of the form designed by the Administrator pursuant to subsection 8 of NRS 616C.090 that notifies injured employees of their right to select an alternative treating physician or chiropractor. The Administrator shall adopt regulations for the manner of compliance by an insurer with the other provisions of subsection 1.

Sec. 6. NRS 616C.140 is hereby amended to read as follows:

616C.140 1. Any employee who is entitled to receive compensation under chapters 616A to 616D, inclusive, of NRS shall, if:

(a) Requested by the insurer or employer; or

(b) Ordered by an appeals officer or a hearing officer,



1 ➔ submit to a medical examination at a time and from time to time
2 at a place reasonably convenient for the employee, and as may be
3 provided by the regulations of the Division.

4 2. If the insurer has reasonable cause to believe that an injured
5 employee who is receiving compensation for a permanent total
6 disability is no longer disabled, the insurer may request the
7 employee to submit to an annual medical examination to determine
8 whether the disability still exists. The insurer shall pay the costs of
9 the examination.

10 3. The request or order for an examination must fix *or provide*
11 *for the fixing of* a time and place therefor, with due regard for the
12 nature of the medical examination, the convenience of the
13 employee, the employee's physical condition and the employee's
14 ability to attend at the time and place fixed. *Except as otherwise*
15 *provided in this subsection, the time fixed for the medical*
16 *examination must be not later than 30 days after the date of the*
17 *request or order. An insurer shall:*

18 (a) *Within 14 days after the date of a request or order, submit*
19 *a request to a physician or chiropractor to conduct the medical*
20 *examination and, if required by the physician or chiropractor,*
21 *review the medical records of the employee; and*

22 (b) *If the physician or chiropractor:*

23 (1) *Agrees to conduct the medical examination, schedule*
24 *the examination within 14 days after the date of the agreement*
25 *and notify the employee of the time and place fixed for the*
26 *examination; or*

27 (2) *Does not agree to conduct the medical examination*
28 *within 30 days after the date of the initial request, submit a request*
29 *to a different physician or chiropractor pursuant to paragraph (a).*

30 4. The employee is entitled to have a physician or chiropractor,
31 provided and paid for by the employee, present at any such
32 examination.

33 5. If the employee refuses to submit to an examination ordered
34 or requested pursuant to subsection 1 or 2 or obstructs the
35 examination, the right of the employee to compensation is
36 suspended until the examination has taken place, and no
37 compensation is payable during or for the period of suspension.

38 6. Any physician or chiropractor who makes or is present at
39 any such examination may be required to testify as to the result
40 thereof.

41 7. *If an insurer receives a signed release from an injured*
42 *employee pursuant to NRS 616C.177, the insurer shall schedule a*
43 *medical examination pursuant to this section within 5 days after*
44 *receiving the release.*



1 8. *The examining physician or chiropractor shall issue a*
2 *report of their medical findings to the insurer and to the injured*
3 *employee within 5 days after the examination.*

4 9. *The insurer shall issue a new determination based upon*
5 *the examination within 5 days after receiving the report described*
6 *in subsection 8.*

7 **Sec. 7.** NRS 616C.177 is hereby amended to read as follows:

8 616C.177 1. An insurer may inquire about and request
9 medical records of an injured employee that concern a preexisting
10 medical condition that is reasonably related to the industrial injury
11 of that injured employee.

12 2. *The insurer shall:*

13 (a) *Send to the injured employee any medical releases*
14 *necessary for the insurer to obtain information and records*
15 *pursuant to this section within 5 days after the insurer receives*
16 *notice of either the industrial injury or the preexisting medical*
17 *condition; and*

18 (b) *Inform the injured employee of the basis for the insurer's*
19 *belief that there is a preexisting medical condition at the time that*
20 *the insurer requests that any medical releases be signed.*

21 3. An injured employee must sign all medical releases
22 necessary for the insurer of his or her employer to obtain
23 information and records about a preexisting medical condition that
24 is reasonably related to the industrial injury of the employee and that
25 will assist the insurer to determine the nature and amount of
26 workers' compensation to which the employee is entitled.

27 4. *An insurer shall:*

28 (a) *Request from a medical provider the medical records of an*
29 *injured employee that concern a preexisting medical condition*
30 *that is reasonably related to the industrial injury of the injured*
31 *employee within 5 days after receiving a signed medical release*
32 *from the injured employee;*

33 (b) *Provide the injured employee with a copy of any request for*
34 *such medical records at the time the request is made to the medical*
35 *provider; and*

36 (c) *Make reasonable efforts to obtain all such medical records*
37 *within 30 days after receiving a signed medical release from the*
38 *injured employee.*

39 5. *Except as otherwise provided in this subsection, an insurer*
40 *shall issue a determination regarding the claim of an injured*
41 *employee within 5 days after receiving all the requested medical*
42 *records. The insurer may, within 5 days after receiving the*
43 *medical records of an injured employee that concern a preexisting*
44 *medical condition that is reasonably related to the industrial*
45 *injury of the injured employee, forward those medical records to*



1 *the treating physician or chiropractor or an independent medical*
2 *evaluator for comment. An independent medical evaluator shall*
3 *provide his or her comments in writing within 30 days after the*
4 *date on which the medical records are forwarded to him or her.*
5 *The insurer shall issue a new determination regarding the claim*
6 *within 5 days after receiving all requested comments.*

7 *6. An insurer shall issue a determination letter regarding the*
8 *acceptance or denial or the scope of acceptance of the claim of the*
9 *injured employee not later than 60 days after receiving the signed*
10 *medical release from the injured employee.*

11 **Sec. 8.** NRS 616C.220 is hereby amended to read as follows:

12 616C.220 1. The Division shall designate one:

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

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

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

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

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

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

27 (1) In this State; or

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

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

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

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

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

42 4. For the purposes of this section and NRS 616C.223, the
43 employer has the burden of proving that the employer provided
44 mandatory industrial insurance coverage for the employee or that



1 the employer was not required to maintain industrial insurance for
2 the employee.

3 5. Any employer who has failed to provide mandatory
4 coverage required by the provisions of chapters 616A to 616D,
5 inclusive, of NRS is liable for all payments made on behalf of the
6 employer, including any benefits, administrative costs or attorney's
7 fees paid from the Uninsured Employers' Claim Account or
8 incurred by the Division.

9 6. The Division:

10 (a) May recover from the employer the payments made by the
11 Division that are described in subsection 5 and any accrued interest
12 by bringing a civil action or filing an application for the entry of
13 summary judgment pursuant to NRS 616C.223 in a court of
14 competent jurisdiction. For the purposes of this paragraph, the
15 payments made by the Division that are described in subsection 5
16 are presumed to be:

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

20 (b) In any civil action or application for the entry of summary
21 judgment filed pursuant to NRS 616C.223 against the employer, is
22 not required to prove that negligent conduct by the employer was
23 the cause of the employee's injury.

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

26 (d) In lieu of a civil action or filing an application for the entry
27 of summary judgment pursuant to NRS 616C.223, may enter into an
28 agreement or settlement regarding the collection of any liability of
29 an uninsured employer.

30 7. The Division shall:

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

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

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

40 8. Upon demonstration of the:

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

44 (b) Amount that the designated third-party administrator or
45 insurer will pay for administrative expenses or compensation to the



1 injured employee and that such amounts are justified by the
2 circumstances of the claim,

3 ➡ the Division shall authorize payment from the Uninsured
4 Employers' Claim Account.

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

11 10. Any party aggrieved by a determination to accept or to
12 deny any claim made pursuant to this section or by a determination
13 to pay or to deny the payment of compensation regarding any claim
14 made pursuant to this section may appeal that determination, within
15 70 days after the determination is rendered, to the Hearings Division
16 of the Department of Administration in the manner provided by
17 NRS 616C.305 and 616C.315.

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

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

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

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

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

37 ➡ Any money collected must be deposited to the Uninsured
38 Employers' Claim Account.

39 14. If the Division has not obtained a civil judgment or an
40 entry of summary judgment pursuant to NRS 616C.223 and the
41 Division assigns a debt that arises under this section to the State
42 Controller for collection pursuant to NRS 353C.195, the State
43 Controller may bring an action in his or her own name in a court of
44 competent jurisdiction to recover any amount that the Division is
45 authorized to recover pursuant to this section.



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Sec. 9. NRS 616C.360 is hereby amended to read as follows:

616C.360 1. A stenographic or electronic record must be kept of the hearing before the appeals officer and the rules of evidence applicable to contested cases under chapter 233B of NRS apply to the hearing.

2. The appeals officer must hear any matter raised before him or her on its merits, including new evidence bearing on the matter.

3. If there is a medical question or dispute concerning an injured employee's condition or concerning the necessity of treatment for which authorization for payment has been denied, the appeals officer may:

(a) Order an independent medical examination and refer the employee to a physician or chiropractor of his or her choice who has demonstrated special competence to treat the particular medical condition of the employee, whether or not the physician or chiropractor is on the insurer's panel of providers of health care. If the medical question concerns the rating of a permanent disability, the appeals officer may refer the employee to a rating physician or chiropractor. The rating physician or chiropractor must be selected in rotation from the list of qualified physicians or chiropractors maintained by the Administrator pursuant to subsection 2 of NRS 616C.490, unless the insurer and the injured employee otherwise agree to a rating physician or chiropractor. The insurer shall pay the costs of any examination requested by the appeals officer.

(b) If the medical question or dispute is relevant to an issue involved in the matter before the appeals officer and all parties agree to the submission of the matter to an independent review organization, submit the matter to an independent review organization in accordance with NRS 616C.363 and any regulations adopted by the Commissioner.

4. The appeals officer may consider the opinion of an examining physician or chiropractor, in addition to the opinion of an authorized treating physician or chiropractor, in determining the compensation payable to the injured employee.

5. If an injured employee has requested payment for the cost of obtaining a second determination of his or her percentage of disability pursuant to NRS 616C.100, the appeals officer shall decide whether the determination of the higher percentage of disability made pursuant to NRS 616C.100 is appropriate and, if so, may order the insurer to pay to the employee an amount equal to the maximum allowable fee established by the Administrator pursuant to NRS 616C.260 for the type of service performed, or the usual fee of that physician or chiropractor for such service, whichever is less.

6. The appeals officer shall order an insurer, organization for managed care or employer who provides accident benefits for



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1 injured employees pursuant to NRS 616C.265 to pay to the
2 appropriate person the charges of a provider of health care if the
3 conditions of NRS 616C.138 are satisfied.

4 7. Any party to the appeal or contested case or the appeals
5 officer may order a transcript of the record of the hearing at any
6 time before the seventh day after the hearing. The transcript must be
7 filed within 30 days after the date of the order unless the appeals
8 officer otherwise orders.

9 8. Except as otherwise provided in subsection 9, the appeals
10 officer shall render a decision:

11 (a) If a transcript is ordered within 7 days after the hearing,
12 within 30 days after the transcript is filed; or

13 (b) If a transcript has not been ordered, within 30 days after the
14 date of the hearing.

15 9. The appeals officer shall render a decision on a contested
16 claim submitted pursuant to subsection 2 of NRS 616C.345 within
17 15 days after:

18 (a) The date of the hearing; or

19 (b) If the appeals officer orders an independent medical
20 examination, the date the appeals officer receives the report of the
21 examination,

22 ➔ unless both parties to the contested claim agree to a later date.

23 10. The appeals officer may affirm, modify or reverse any
24 decision made by a hearing officer and issue any necessary and
25 proper order to give effect to his or her decision.

26 ***11. The insurer shall comply with the decision rendered by***
27 ***the appeals officer within 15 days after the decision is rendered.***

28 **Sec. 10.** NRS 616C.375 is hereby amended to read as follows:

29 616C.375 If an insurer, employer or claimant, or the
30 representative of an insurer, employer or claimant, appeals the
31 decision of an appeals officer, that decision is not stayed unless a
32 stay is granted by the appeals officer or the district court within ~~30~~
33 **15** days after the date on which the decision was rendered.

34 **Sec. 11.** NRS 616C.427 is hereby amended to read as follows:

35 616C.427 1. Notwithstanding the provisions of subsection 3
36 of NRS 616C.315 and except as otherwise provided in this section,
37 if an injured employee is receiving compensation based on a
38 calculation of the average monthly wage of the injured employee as
39 determined pursuant to the regulations adopted by the Administrator
40 pursuant to NRS 616C.420, the injured employee or the employer
41 may request a hearing before a hearing officer pursuant to the
42 provisions of NRS 616C.315 to 616C.385, inclusive, asking for a
43 recalculation of the average monthly wage of the injured employee.

44 2. The injured employee is entitled to have his or her average
45 monthly wage recalculated if the injured employee proves by a



preponderance of the evidence that the insurer calculated the 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 or her 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. 12. NRS 616C.475 is hereby amended to read as follows:

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

2. Except as otherwise provided in NRS 616B.028 and 616B.029, an injured employee or his or her dependents are not



1 entitled to accrue or be paid any benefits for a temporary total
2 disability during the time the injured employee is incarcerated. The
3 injured employee or his or her dependents are entitled to receive
4 such benefits when the injured employee is released from
5 incarceration if the injured employee is certified as temporarily
6 totally disabled by a physician or chiropractor.

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

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

13 5. Payments for a temporary total disability must ~~cease when-~~
14 *continue until:*

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

19 (b) The employer offers the employee light-duty employment or
20 employment that is modified according to the limitations or
21 restrictions imposed by a physician or chiropractor pursuant to
22 subsection 7; or

23 (c) Except as otherwise provided in NRS 616B.028 and
24 616B.029, the employee is incarcerated.

25 6. Each insurer may, with each check that it issues to an injured
26 employee for a temporary total disability, include a form approved
27 by the Division for the injured employee to request continued
28 compensation for the temporary total disability.

29 7. A certification of disability issued by a physician or
30 chiropractor must:

31 (a) Include the period of disability and a description of any
32 physical limitations or restrictions imposed upon the work of the
33 employee;

34 (b) Specify whether the limitations or restrictions are permanent
35 or temporary; and

36 (c) Be signed by the treating physician or chiropractor
37 authorized pursuant to NRS 616B.527 or appropriately chosen
38 pursuant to subsection 3 or 4 of NRS 616C.090.

39 8. If the certification of disability specifies that the physical
40 limitations or restrictions are temporary, the employer of the
41 employee at the time of the employee's accident may offer
42 temporary, light-duty employment to the employee. If the employer
43 makes such an offer, the employer shall confirm the offer in writing
44 within 10 days after making the offer. The making, acceptance or
45 rejection of an offer of temporary, light-duty employment pursuant



1 to this subsection does not affect the eligibility of the employee to
2 receive vocational rehabilitation services, including compensation,
3 and does not exempt the employer from complying with NRS
4 616C.545 to 616C.575, inclusive, and 616C.590 or the regulations
5 adopted by the Division governing vocational rehabilitation
6 services. Any offer of temporary, light-duty employment made by
7 the employer must specify a position that:

8 (a) Is substantially similar to the employee's position at the time
9 of his or her injury in relation to the location of the employment and
10 the hours the employee is required to work;

11 (b) Provides a gross wage that is:

12 (1) If the position is in the same classification of
13 employment, equal to the gross wage the employee was earning at
14 the time of his or her injury; or

15 (2) If the position is not in the same classification of
16 employment, substantially similar to the gross wage the employee
17 was earning at the time of his or her injury; and

18 (c) Has the same employment benefits as the position of the
19 employee at the time of his or her injury.

20 **Sec. 13.** NRS 616C.490 is hereby amended to read as follows:

21 616C.490 1. Except as otherwise provided in NRS 616C.175,
22 every employee, in the employ of an employer within the provisions
23 of chapters 616A to 616D, inclusive, of NRS, who is injured by an
24 accident arising out of and in the course of employment is entitled to
25 receive the compensation provided for permanent partial disability.
26 As used in this section, "disability" and "impairment of the whole
27 person" are equivalent terms.

28 2. Within 30 days after receiving from a physician or
29 chiropractor a report indicating that the injured employee may have
30 suffered a permanent disability and is stable and ratable, the insurer
31 shall schedule an appointment with the rating physician or
32 chiropractor selected pursuant to this subsection to determine the
33 extent of the employee's disability. Unless the insurer and the
34 injured employee otherwise agree to a rating physician or
35 chiropractor:

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

42 (b) Rating physicians and chiropractors must be selected in
43 rotation from the list of qualified physicians and chiropractors
44 designated by the Administrator, according to their area of
45 specialization and the order in which their names appear on the list



1 unless the next physician or chiropractor is currently an employee of
2 the insurer making the selection, in which case the insurer must
3 select the physician or chiropractor who is next on the list and who
4 is not currently an employee of the insurer.

5 3. If an insurer contacts the treating physician or chiropractor
6 to determine whether an injured employee has suffered a permanent
7 disability, the insurer shall deliver to the treating physician or
8 chiropractor that portion or a summary of that portion of the
9 American Medical Association's Guides to the Evaluation of
10 Permanent Impairment as adopted by the Division pursuant to NRS
11 616C.110 that is relevant to the type of injury incurred by the
12 employee.

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

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

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

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

24 5. Unless the regulations adopted pursuant to NRS 616C.110
25 provide otherwise, a rating evaluation must include an evaluation of
26 the loss of motion, sensation and strength of an injured employee
27 if the injury is of a type that might have caused such a loss. Except
28 in the case of claims accepted pursuant to NRS 616C.180, no factors
29 other than the degree of physical impairment of the whole person
30 may be considered in calculating the entitlement to compensation
31 for a permanent partial disability.

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

36 (a) Of the compensation to which the employee is entitled
37 pursuant to this section; or

38 (b) That the employee is not entitled to benefits for permanent
39 partial disability.

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

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

44 (b) Of 0.6 percent of the claimant's average monthly wage for
45 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~~ *Except as otherwise provided in subsection 10, if there is a previous disability, as the loss of one eye, one hand, one foot, 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. *Except as otherwise provided in this subsection, if there is a preexisting condition, including, without limitation, degenerative arthritis, rheumatoid variants, obesity or congenital malformations, and the rating physician is able to determine that the preexisting condition caused a ratable disability before the injury, the percentage of disability for an injury must be determined by computing the percentage of the entire disability, deducting therefrom any amount authorized by subsection 9 and further deducting therefrom the percentage of disability for the preexisting condition as it existed at the time of the injury. If there is no documented medical evidence before the injury that a preexisting condition resulted in a disability before the injury in accordance with the American Medical Association's Guides to the Evaluation of Permanent Impairment as adopted by the Division pursuant to NRS 616C.110, the percentage of disability for an injury must not be reduced because of the preexisting condition.*

11. 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.

~~11.1~~ 12. The increase in compensation and benefits effected by the amendment of this section is not retroactive for accidents which occurred before July 1, 1973.

~~11.2~~ 13. 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.



Sec. 14. 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 or her 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 or her 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 elect to receive his or her compensation in a lump sum equal to the present value of an award for a disability of 25 percent. If the claimant elects to receive compensation pursuant to this paragraph, the insurer shall pay in installments to the claimant that portion of the claimant's disability in excess of 25 percent.

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

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

(a) The right of the claimant to:

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



* A B 4 2 7 *

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

(b) Any counseling, training or other rehabilitative services provided by the insurer. ~~}; and~~

~~—(c) The right of the claimant to receive a benefit penalty in accordance with NRS 616D.120.]~~

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

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

4. Except as otherwise provided in this subsection, the total lump-sum payment for disablement must not be less than one-half the product of the average monthly wage multiplied by the percentage of disability. If the claimant received compensation in installment payments for his or her permanent partial disability before electing to receive payment for that disability in a lump sum, the lump-sum payment must be calculated for the remaining payment of compensation.

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

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

Sec. 15. NRS 616C.555 is hereby amended to read as follows:

616C.555 1. A vocational rehabilitation counselor shall develop a plan for a program of vocational rehabilitation for each injured employee who is eligible for vocational rehabilitation services pursuant to NRS 616C.590. The counselor shall work with the insurer and the injured employee to develop a program that is compatible with the injured employee's age, sex and physical condition. *For the purposes of the limitation on the duration of benefits in subsections 2 and 3, the plan must not commence until the injured employee has received notification from the insurer as*



1 *to the percentage of permanent impairment found pursuant to the*
2 *evaluation of the injured employee by the treating physician or*
3 *chiropractor and offered by the insurer. If the insurer disagrees*
4 *with the findings of the treating physician or chiropractor and*
5 *offers the injured employee a percentage of permanent physical*
6 *impairment lower than that found by the treating physician or*
7 *chiropractor, the percentage of permanent physical impairment*
8 *found by the treating physician or chiropractor must be used to*
9 *determine the length of the program.*

10 2. If the counselor determines in a written assessment
11 requested pursuant to NRS 616C.550 that the injured employee has
12 existing marketable skills, the plan must consist of job placement
13 assistance only. When practicable, the goal of job placement
14 assistance must be to aid the employee in finding a position which
15 pays a gross wage that is equal to or greater than 80 percent of the
16 gross wage that the employee was earning at the time of his or her
17 injury. An injured employee must not receive job placement
18 assistance for more than 6 months after the date on which the
19 injured employee was notified that he or she is eligible only for job
20 placement assistance because:

21 (a) The injured employee was physically capable of returning to
22 work; or

23 (b) It was determined that the injured employee had existing
24 marketable skills.

25 3. If the counselor determines in a written assessment
26 requested pursuant to NRS 616C.550 that the injured employee does
27 not have existing marketable skills, the plan must consist of a
28 program which trains or educates the injured employee and provides
29 job placement assistance. Except as otherwise provided in NRS
30 616C.560, such a program must not exceed:

31 (a) If the injured employee has incurred a permanent disability
32 as a result of which permanent restrictions on the ability of the
33 injured employee to work have been imposed but no permanent
34 physical impairment rating has been issued, or a permanent
35 disability with a permanent physical impairment of 1 percent or
36 more but less than 6 percent, 9 months.

37 (b) If the injured employee has incurred a permanent physical
38 impairment of 6 percent or more, but less than 11 percent, 1 year.

39 (c) If the injured employee has incurred a permanent physical
40 impairment of 11 percent or more, 18 months.

41 ➤ The percentage of the injured employee's permanent physical
42 impairment must be determined pursuant to NRS 616C.490.

43 4. A plan for a program of vocational rehabilitation must
44 comply with the requirements set forth in NRS 616C.585.



5. A plan created pursuant to subsection 2 or 3 must assist the employee in finding a job or train or educate the employee and assist the employee in finding a job that is a part of an employer's regular business operations and from which the employee will gain skills that would generally be transferable to a job with another employer.

6. A program of vocational rehabilitation must not commence before the treating physician or chiropractor, or an examining physician or chiropractor determines that the injured employee is capable of safely participating in the program.

7. If, based upon the opinion of a treating or an examining physician or chiropractor, the counselor determines that an injured employee is not eligible for vocational rehabilitation services, the counselor shall provide a copy of the opinion to the injured employee, the injured employee's employer and the insurer.

8. A plan for a program of vocational rehabilitation must be signed by a certified vocational rehabilitation counselor.

9. If an initial program of vocational rehabilitation pursuant to this section is unsuccessful, an injured employee may submit a written request for the development of a second program of vocational rehabilitation which relates to the same injury. An insurer shall authorize a second program for an injured employee upon good cause shown.

10. If a second program of vocational rehabilitation pursuant to subsection 9 is unsuccessful, an injured employee may submit a written request for the development of a third program of vocational rehabilitation which relates to the same injury. The insurer, with the approval of the employer who was the injured employee's employer at the time of his or her injury, may authorize a third program for the injured employee. If such an employer has terminated operations, the employer's approval is not required for authorization of a third program. An insurer's determination to authorize or deny a third program of vocational rehabilitation may not be appealed.

11. *If an injured employee's vocational rehabilitation benefits are suspended, the insurer shall:*

(a) Notify the injured employee of what action is required to reinstate the benefits.

(b) If there is a question as to the physical restrictions of the injured employee, immediately schedule a functional capacity evaluation to determine the current physical restrictions of the injured employee and provide the findings to the injured employee's treating physician for review.

(c) If the basis for the suspension of benefits is outside of the control of the injured employee, provide the injured employee with assistance to remedy the basis for the suspension of benefits.



1 **12.** The Division shall adopt regulations to carry out the
2 provisions of this section. The regulations must specify the contents
3 of a plan for a program of vocational rehabilitation ~~H~~ *and the*
4 *circumstances under which vocational rehabilitation benefits may*
5 *be suspended or terminated.*

6 **Sec. 16.** NRS 616D.120 is hereby amended to read as follows:

7 616D.120 1. Except as otherwise provided in this section, if
8 the Administrator determines that an insurer, organization for
9 managed care, health care provider, third-party administrator,
10 employer or employee leasing company has:

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

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

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

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

17 (3) Accept less than the compensation found to be due the
18 claimant by a hearing officer, appeals officer, court of competent
19 jurisdiction, written settlement agreement, written stipulation or the
20 Division when carrying out its duties pursuant to chapters 616A to
21 617, inclusive, of NRS;

22 (c) Refused to pay or unreasonably delayed payment to a
23 claimant of compensation or other relief found to be due the
24 claimant by a hearing officer, appeals officer, court of competent
25 jurisdiction, written settlement agreement, written stipulation or the
26 Division when carrying out its duties pursuant to chapters 616A to
27 616D, inclusive, or chapter 617 of NRS, if the refusal or delay
28 occurs:

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

31 (2) Later than ~~30~~ *15* days after the date of the decision of a
32 court, hearing officer, appeals officer or the Division, unless a stay
33 has been granted; or

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

36 (d) Refused to process a claim for compensation pursuant to
37 chapters 616A to 616D, inclusive, or chapter 617 of NRS;

38 (e) Made it necessary for a claimant to initiate proceedings
39 pursuant to chapters 616A to 616D, inclusive, or chapter 617 of
40 NRS for compensation or other relief found to be due the claimant
41 by a hearing officer, appeals officer, court of competent jurisdiction,
42 written settlement agreement, written stipulation or the Division
43 when carrying out its duties pursuant to chapters 616A to 616D,
44 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 ~~H~~ *or section 4 of this act*;

(h) Engaged in a pattern of untimely payments to injured employees ~~H~~ *pursuant to section 4 of this act*; or

(i) 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, employer or employee leasing company 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).



1 ➤ The fine imposed must not be greater than \$375 for an initial
2 violation, or more than \$3,000 for any second or subsequent
3 violation.

4 (c) Order a plan of corrective action to be submitted to the
5 Administrator within 30 days after the date of the order.

6 3. If the Administrator determines that ~~the~~ *an*
7 *organization for managed care, health care provider, employer or*
8 *employee leasing company has violated* any of the provisions of
9 paragraphs (a) to (e), inclusive, (h) or (i) of subsection 1, ~~has~~
10 ~~occurred,~~ the Administrator shall order the ~~insurer,~~ organization
11 for managed care, health care provider, ~~third-party administrator,~~
12 employer or employee leasing company to pay to the claimant a
13 benefit penalty:

14 (a) Except as otherwise provided in paragraph (b), in an amount
15 that is not less than \$5,000 and not greater than \$50,000; or

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

19 4. To determine the amount of the benefit penalty, the
20 Administrator shall consider the degree of physical harm suffered by
21 the injured employee or the dependents of the injured employee as a
22 result of the violation of paragraph (a), (b), (c), (d), (e), (h) or (i) of
23 subsection 1, the amount of compensation found to be due the
24 claimant and the number of fines and benefit penalties, other than a
25 benefit penalty described in paragraph (b) of subsection 3,
26 previously imposed against the ~~insurer,~~ organization for managed
27 care, health care provider, ~~third-party administrator,~~ employer or
28 employee leasing company pursuant to this section. The
29 Administrator shall also consider the degree of economic harm
30 suffered by the injured employee or the dependents of the injured
31 employee as a result of the violation of paragraph (a), (b), (c), (d),
32 (e), (h) or (i) of subsection 1. Except as otherwise provided in this
33 section, the benefit penalty is for the benefit of the claimant and
34 must be paid directly to the claimant within 10 days after the date of
35 the Administrator's determination. If the claimant is the injured
36 employee and the claimant dies before the benefit penalty is paid to
37 him or her, the benefit penalty must be paid to the estate of the
38 claimant. Proof of the payment of the benefit penalty must be
39 submitted to the Administrator within 10 days after the date of the
40 Administrator's determination unless an appeal is filed pursuant to
41 NRS 616D.140. Any compensation to which the claimant may
42 otherwise be entitled pursuant to chapters 616A to 616D, inclusive,
43 or chapter 617 of NRS must not be reduced by the amount of any
44 benefit penalty received pursuant to this subsection. To determine
45 the amount of the benefit penalty in cases of multiple violations



1 occurring within a certain period of time, the Administrator shall
2 adopt regulations which take into consideration:

3 (a) The number of violations within a certain number of years
4 for which a benefit penalty was imposed; and

5 (b) The number of claims handled by the ~~insurer,~~ organization
6 for managed care, health care provider, ~~third-party administrator,~~
7 employer or employee leasing company in relation to the number of
8 benefit penalties previously imposed within the period of time
9 prescribed pursuant to paragraph (a).

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

16 6. If:

17 (a) The Administrator determines that a person has violated any
18 of the provisions of NRS 616D.200, 616D.220, 616D.240,
19 616D.300, 616D.310 or 616D.350 to 616D.440, inclusive; and

20 (b) The Fraud Control Unit for Industrial Insurance of the Office
21 of the Attorney General established pursuant to NRS 228.420
22 notifies the Administrator that the Unit will not prosecute the person
23 for that violation,

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

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

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

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

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

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

40 9. If the Administrator determines that a vocational
41 rehabilitation counselor has violated the provisions of NRS
42 616C.543, the Administrator may impose an administrative fine on
43 the vocational rehabilitation counselor of not more than \$250 for a
44 first violation, \$500 for a second violation and \$1,000 for a third or
45 subsequent violation.



1 10. The Administrator may make a claim against the bond
2 required pursuant to NRS 683A.0857 for the payment of any
3 administrative fine or benefit penalty imposed for a violation of the
4 provisions of this section.

5 **Sec. 17.** NRS 616D.030 is hereby repealed.

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.

