

SENATE BILL NO. 231—COMMITTEE ON  
COMMERCE, LABOR AND ENERGY

MARCH 9, 2015

Referred to Committee on Commerce, Labor and Energy

SUMMARY—Revises provisions relating to workers' compensation. (BDR 53-986)

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 workers' compensation; limiting the amount of a controlled substance that certain providers of health care may dispense to an injured employee; revising provisions related to the time that an insurer has to pay a bill submitted by a provider of health care; revising provisions relating to injured employees who were injured while intoxicated or under the influence of a controlled or prohibited substance; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

This bill revises various provisions of the Nevada Industrial Insurance Act which provides for the payment of compensation to employees who are injured or disabled as a result of an occupational injury or disease. (Chapters 616A-616D of NRS)

**Section 1** of this bill sets forth that a provider of health care (not including a pharmacist or hospital) may dispense only an initial 15-day supply of a schedule II or III controlled substance to an injured employee. In addition, the provider of health care must include the original manufacturer's National Drug Code for the drug on all bills and reports submitted to the insurer. **Section 1** also provides that an insurer that provides coverage for prescription drugs must provide coverage for any drug: (1) prescribed for a covered indication that is approved by the United States Food and Drug Administration for the indication; (2) recognized in a standard reference compendia for treatment of the indication; or (3) is substantially accepted for treatment for the indication in peer-reviewed medical literature.

Existing law provides a two-step process for an insurer to pay a bill submitted by a provider of health care. First, the insurer must approve or deny the bill within 30 days of receipt. Second, if the insurer approves the bill, they must pay the bill within 30 days of the approval. (NRS 616C.136) **Section 2** of this bill consolidates



\* S B 2 3 1 R 1 \*

these two steps and requires that an insurer pay or deny a bill within 45 days after receipt.

Existing law provides that compensation is not payable to an employee whose injury is proximately caused by the employee's intoxication or use of a controlled substance. Existing law also provides a rebuttable presumption that an employee's intoxication or use of a controlled substance at the time of the injury is the proximate cause of the injury. (NRS 616C.230) **Section 3** of this bill revises these provisions by replacing them with a requirement that the employee not receive compensation whenever an injury occurs to the employee while the employee is intoxicated or under the influence of a controlled or prohibited substance, unless the employee can prove by clear and convincing evidence that his or her intoxication or being under the influence of a controlled or prohibited substance was not the proximate cause of the injury. Further, **section 3** provides that the employee is intoxicated or under the influence of a controlled or prohibited substance for the purposes of not receiving compensation whenever the employee meets or exceeds the limits for intoxication or use of a controlled or prohibited substance as set forth in NRS 484C.110, which prescribes such limits in the context of driving under the influence. In addition, **section 3** provides that the results of any alcohol or drug test performed as a result of an injury must be made available to an insurer or employer upon request.

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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. With respect to drugs prescribed and dispensed directly to an injured employee by a provider of health care:*

*(a) The provider of health care may dispense an initial supply of a controlled substance which is listed in schedule II or III by the State Board of Pharmacy pursuant to NRS 453.146 to an injured employee. Any controlled substances prescribed to an injured employee beyond the initial supply must be filled by a pharmacy that is registered with the State Board of Pharmacy.*

*(b) The provider of health care shall include the original manufacturer's National Drug Code, as assigned by the United States Food and Drug Administration, on all bills and reports submitted to an insurer pursuant to this chapter.*

*(c) A repackaged National Drug Code must not be used and must not be considered an original manufacturer's National Drug Code for the purposes of this section.*

*(d) A provider of health care who provides care on an outpatient basis may not charge an insurer or seek reimbursement for dispensing a nonprescription drug to an injured employee.*

*2. An insurer who provides coverage for prescription drugs shall provide coverage for any drug prescribed to treat a covered medical condition if the drug:*



(a) *Has been approved by the United States Food and Drug Administration for the treatment of at least one medical condition;*

(b) *Is recognized in a standard reference compendia for treatment of the covered medical condition; or*

(c) *Is substantially accepted for treatment of the covered medical condition in peer-reviewed medical literature.*

3. *As used in this section:*

(a) *"Initial supply" means a quantity of a controlled substance that when used as prescribed does not exceed a 15-day supply and that is provided on a one-time basis.*

(b) *"Provider of health care" has the meaning ascribed to it in NRS 629.031, but does not include a pharmacist or a hospital as defined in NRS 449.012.*

**Sec. 2.** NRS 616C.136 is hereby amended to read as follows:

616C.136 1. Except as otherwise provided in this section, an insurer shall ~~approve or deny a bill for accident benefits received from a provider of health care within 30 calendar days after the insurer receives the bill. If the bill for accident benefits is approved, the insurer shall~~ pay ~~the~~ or deny a bill for accident benefits received from a provider of health care within ~~30~~ 45 calendar days after ~~it is approved.~~ the insurer or third-party administrator receives the bill. Except as otherwise provided in this section, if the ~~approved~~ bill for accident benefits is not paid within that period, the insurer shall pay interest to the provider of health care at a rate of interest 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 on which the payment was due, plus 6 percent. The interest must be calculated from ~~30~~ 45 calendar days after the date on which the bill is ~~approved~~ received until the date on which the bill is paid.

2. If an insurer needs additional information to determine whether to ~~approve~~ pay or deny a bill for accident benefits received from a provider of health care, the insurer shall notify the provider of health care of his or her request for the additional information within 20 calendar days after the insurer receives the bill. The insurer shall notify the provider of health care of all the specific reasons for the delay in ~~approving~~ paying or denying the bill for accident benefits. Upon the receipt of such a request, the provider of health care shall furnish the additional information to the insurer within 20 calendar days after receiving the request. If the provider of health care fails to furnish the additional information within that period, the provider of health care is not entitled to the payment of interest to which the provider of health care would otherwise be entitled for the late payment of the



1 bill for accident benefits. The insurer shall ~~approve~~ **pay** or deny  
2 the bill for accident benefits within 20 calendar days after the  
3 insurer receives the additional information. ~~[If the bill for accident~~  
4 ~~benefits is approved, the insurer shall pay the bill within 20 calendar~~  
5 ~~days after the insurer receives the additional information.]~~ Except as  
6 otherwise provided in this subsection, if the ~~approved~~ bill for  
7 accident benefits is not paid within that period, the insurer shall pay  
8 interest to the provider of health care at the rate set forth in  
9 subsection 1. The interest must be calculated from 20 calendar days  
10 after the date on which the insurer receives the additional  
11 information until the date on which the bill is paid.

12 3. An insurer shall not request a provider of health care to  
13 resubmit information that the provider of health care has previously  
14 provided to the insurer, unless the insurer provides a legitimate  
15 reason for the request and the purpose of the request is not to delay  
16 the payment of the accident benefits, harass the provider of health  
17 care or discourage the filing of claims.

18 4. An insurer shall not pay only a portion of a bill for accident  
19 benefits that ~~has been approved and~~ is fully payable.

20 5. The Administrator may require an insurer to provide  
21 evidence which demonstrates that the insurer has substantially  
22 complied with the requirements of this section, including, without  
23 limitation, payment within the time required of at least 95 percent of  
24 ~~approved~~ accident benefits . ~~[for at least 90 percent of the total~~  
25 ~~dollar amount of approved accident benefits.]~~ If the Administrator  
26 determines that an insurer is not in substantial compliance with the  
27 requirements of this section, the Administrator may require the  
28 insurer to pay an administrative fine in an amount to be determined  
29 by the Administrator.

30 6. The payment of interest provided for in this section for ~~the~~  
31 **a** late payment ~~[of an approved claim]~~ may be waived only if the  
32 payment was delayed because of an act of God or another cause  
33 beyond the control of the insurer.

34 7. Payments made by an insurer pursuant to this section are not  
35 an admission of liability for the accident benefits or any portion of  
36 the accident benefits.

37 **Sec. 3.** NRS 616C.230 is hereby amended to read as follows:

38 616C.230 1. Compensation is not payable pursuant to the  
39 provisions of chapters 616A to 616D, inclusive, or chapter 617 of  
40 NRS for an injury:

41 (a) Caused by the employee's willful intention to injure himself  
42 or herself.

43 (b) Caused by the employee's willful intention to injure another.

44 (c) ~~[Proximately caused by the employee's]~~ **That occurred**  
45 **while the employee was in a state of** intoxication ~~[If the employee~~



1 ~~was intoxicated at the time of his or her injury, intoxication must be~~  
2 ~~presumed to be a proximate cause unless rebutted by evidence to the~~  
3 ~~contrary.], unless the employee can prove by clear and convincing~~  
4 ~~evidence that his or her state of intoxication was not the proximate~~  
5 ~~cause of the injury. For the purposes of this paragraph, an~~  
6 ~~employee is in a state of intoxication if the level of alcohol in the~~  
7 ~~bloodstream of the employee meets or exceeds the limits set forth~~  
8 ~~in subsection 1 of NRS 484C.110.~~

9 (d) ~~[Proximately caused by the employee's use] That occurred~~  
10 ~~while the employee was under the influence of a controlled or~~  
11 ~~prohibited substance [If the employee had any], unless the~~  
12 ~~employee can prove by clear and convincing evidence that his or~~  
13 ~~her being under the influence of a controlled or prohibited~~  
14 ~~substance was not the proximate cause of the injury. For the~~  
15 ~~purposes of this paragraph, an employee is under the influence of~~  
16 ~~a controlled or prohibited substance if the employee had an~~  
17 ~~amount of a controlled or prohibited substance in his or her system~~  
18 ~~at the time of his or her injury that was equal to or greater than the~~  
19 ~~limits set forth in subsection 3 of NRS 484C.110 and for which the~~  
20 ~~employee did not have a current and lawful prescription issued in~~  
21 ~~the employee's name. [for that the employee was not using in~~  
22 ~~accordance with the provisions of chapter 453A of NRS, the~~  
23 ~~controlled substance must be presumed to be a proximate cause~~  
24 ~~unless rebutted by evidence to the contrary.]~~

25 2. For the purposes of paragraphs (c) and (d) of subsection 1:

26 (a) The affidavit or declaration of an expert or other person  
27 described in NRS 50.310, 50.315 or 50.320 is admissible to prove  
28 the existence of ~~[any]~~ *an impermissible quantity of* alcohol or the  
29 existence, quantity or identity of ~~[a]~~ *an impermissible controlled or*  
30 *prohibited* substance in an employee's system. If the affidavit or  
31 declaration is to be so used, it must be submitted in the manner  
32 prescribed in NRS 616C.355.

33 (b) When an examination requested or ordered includes testing  
34 for the use of alcohol or a controlled *or prohibited* substance, the  
35 laboratory that conducts the testing must be licensed pursuant to the  
36 provisions of chapter 652 of NRS.

37 (c) *The results of any testing for the use of alcohol or a*  
38 *controlled or prohibited substance, irrespective of the purpose for*  
39 *performing the test, must be made available to an insurer or*  
40 *employer upon request, to the extent that doing so does not*  
41 *conflict with federal law.*

42 3. No compensation is payable for the death, disability or  
43 treatment of an employee if the employee's death is caused  
44 by, or insofar as the employee's disability is aggravated, caused or  
45 continued by, an unreasonable refusal or neglect to submit to or to



1 follow any competent and reasonable surgical treatment or medical  
2 aid.

3 4. If any employee persists in an unsanitary or injurious  
4 practice that imperils or retards his or her recovery, or refuses to  
5 submit to such medical or surgical treatment as is necessary to  
6 promote his or her recovery, the employee's compensation may be  
7 reduced or suspended.

8 5. An injured employee's compensation, other than accident  
9 benefits, must be suspended if:

10 (a) A physician or chiropractor determines that the employee is  
11 unable to undergo treatment, testing or examination for the  
12 industrial injury solely because of a condition or injury that did not  
13 arise out of and in the course of employment; and

14 (b) It is within the ability of the employee to correct the  
15 nonindustrial condition or injury.

16 ➡ The compensation must be suspended until the injured employee  
17 is able to resume treatment, testing or examination for the industrial  
18 injury. The insurer may elect to pay for the treatment of the  
19 nonindustrial condition or injury.

20 ***6. As used in this section, "prohibited substance" has the***  
21 ***meaning ascribed to it in NRS 484C.080.***

22 **Sec. 4.** This act becomes effective upon passage and approval  
23 for the purposes of adopting any regulations or performing any  
24 preparatory administrative tasks that are necessary to carry out the  
25 provisions of this act, and on January 1, 2016, for all other purposes.

