

Amendment No. 537

Assembly Amendment to Assembly Bill No. 267	(BDR 53-650)
Proposed by: Assembly Committee on Commerce and Labor	
Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes	

ASSEMBLY ACTION		Initial and Date	SENATE ACTION		Initial and Date
Adopted	<input type="checkbox"/>	Lost <input type="checkbox"/>	Adopted	<input type="checkbox"/>	Lost <input type="checkbox"/>
Concurred In	<input type="checkbox"/>	Not <input type="checkbox"/>	Concurred In	<input type="checkbox"/>	Not <input type="checkbox"/>
Receded	<input type="checkbox"/>	Not <input type="checkbox"/>	Receded	<input type="checkbox"/>	Not <input type="checkbox"/>

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.



ASSEMBLY BILL NO. 267—ASSEMBLYMEN ARAUJO, CARLTON, FRIERSON; DALY,
FUMO, JAUREGUI, MONROE-MORENO AND SPIEGEL

MARCH 7, 2017

JOINT SPONSORS: SENATORS SEGERBLOM, CANCELA,
MANENDO, PARKS AND CANNIZZARO

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions governing industrial insurance. (BDR 53-650)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

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

AN ACT relating to industrial insurance; revising provisions governing prohibitions on the payment of compensation for disability caused by certain occupational diseases under certain circumstances; restricting the dissemination and use of the results of certain physical examinations required of certain firefighters, arson investigators and police officers for insurance coverage of cancer, lung disease and heart disease; providing for the payment of a claimant's reasonable attorney's fees and other associated costs under certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides for the payment of compensation under chapter 617 of NRS for temporary or permanent disability or death for the occupational diseases of lung disease and heart disease for certain firefighters, arson investigators and police officers. Existing law provides that these occupational diseases are conclusively presumed to have arisen out of and in the course of the employment under certain circumstances. (NRS 617.455, 617.457) **Sections 4 and 5** of this bill provide that if an employer, insurer or third-party administrator denies a claim for compensation for these occupational diseases and the claimant ultimately prevails, the employer, insurer or third-party administrator must pay ~~full~~ the claimant's reasonable attorney's fees and associated costs. Sections 4 and 5 further set forth that reasonable attorney's fees and associated costs do not include any attorney's fees and associated costs that are incurred by the claimant on or before the date of the hearing before the hearing officer.

Existing law requires certain tests when administering certain physical examinations to firefighters, arson investigators and police officers regarding the occupational diseases of lung and heart disease for the purposes of industrial insurance coverage. (NRS 617.454) Section 3 of this bill restricts: (1) to whom the results of such physical examinations may be disseminated; and (2) the use of such results. Section 3 additionally authorizes the employer's officer who is responsible for risk management or human resources or a

similar position to release to certain persons a report only containing certain information based on the results of a physical examination.

Existing law prohibits the payment of compensation for disability because of an occupational injury or disease which does not incapacitate the employee for at least 5 cumulative days within a 20-day period from earning full wages. (NRS 616C.400, 617.420) **Section 1** of this bill exempts a claim for compensation under chapters 616A to 616D of NRS for disability for the occupational diseases of cancer, lung disease and heart disease from that prohibition. **Section 2** of this bill: (1) revises the prohibition as it relates to occupational diseases to apply exclusively to compensation for temporary total disability; and (2) clarifies that the prohibition does not apply to medical benefits for the occupational diseases of cancer, lung disease or heart disease.

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

Section 1. NRS 616C.400 is hereby amended to read as follows:

616C.400 1. Temporary compensation benefits must not be paid under chapters 616A to 616D, inclusive, of NRS for an injury which does not incapacitate the employee for at least 5 consecutive days, or 5 cumulative days within a 20-day period, from earning full wages, but if the incapacity extends for 5 or more consecutive days, or 5 cumulative days within a 20-day period, compensation must then be computed from the date of the injury.

2. The period prescribed in this section does not apply to:

(a) Accident benefits, whether they are furnished pursuant to NRS 616C.255 or 616C.265, if the injured employee is otherwise covered by the provisions of chapters 616A to 616D, inclusive, of NRS and entitled to those benefits.

(b) Compensation paid to the injured employee pursuant to subsection 1 of NRS 616C.477.

(c) A claim which is filed pursuant to NRS 617.453, 617.455 or 617.457.

Sec. 2. NRS 617.420 is hereby amended to read as follows:

617.420 1. No compensation may be paid under this chapter for *temporary total* disability which does not incapacitate the employee for at least 5 cumulative days within a 20-day period from earning full wages, but if the incapacity extends for 5 or more days within a 20-day period, the compensation must then be computed from the date of disability.

2. The limitations in this section do not apply to medical benefits, *including, without limitation, medical benefits pursuant to NRS 617.453, 617.455 or 617.457*, which must be paid from the date of application for payment of medical benefits.

Sec. 3. NRS 617.454 is hereby amended to read as follows:

617.454 1. Any physical examination administered pursuant to NRS 617.455 or 617.457 must include:

(a) A thorough test of the functioning of the hearing of the employee; and

(b) A purified protein derivative skin test to screen for exposure to tuberculosis.

2. Except as otherwise provided in subsection 8 of NRS 617.457, the tests required by this section must be paid for by the employer.

3. *Except as otherwise provided by the provisions governing privacy in the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, as amended, and applicable regulations, or an employee's collective bargaining agreement, whichever is more restrictive, ~~for the~~ :*

(a) The results of a physical examination administered pursuant to NRS 617.455 or 617.457 may only be ~~for~~

~~(a) Provided to the~~ provided to:

(1) The examining physician ~~for the~~;

(2) The employee ~~and the~~;

(3) The employer's officer who is responsible for risk management or human resources or a similar position; and

~~(b) Used~~

(4) If the employee has filed a claim pursuant to NRS 617.455 or 617.457, the insurer.

(b) A person who receives the results of a physical examination pursuant to paragraph (a) may only use the results for the purposes of ~~complying~~;

(1) Complying with the requirements of NRS 617.455 or 617.457, as applicable ~~for~~; or

(2) Creating a report pursuant to paragraph (c).

(c) The employer's officer who is responsible for risk management or human resources or a similar position may create and release a report that is based on the results of a physical examination administered pursuant to NRS 617.455 or 617.457 to any person whom the employer's officer determines has a need to know the information in the report. The report must only contain the following information:

(1) The name of the employee who was the subject of the physical examination; and

(2) A statement that the employee, as applicable:

(I) Satisfies the physical qualifications required for his or her employment; or

(II) Does not satisfy the physical qualifications required for his or her employment.

Sec. 4. NRS 617.455 is hereby amended to read as follows:

617.455 1. Notwithstanding any other provision of this chapter, diseases of the lungs, resulting in either temporary or permanent disability or death, are occupational diseases and compensable as such under the provisions of this chapter if caused by exposure to heat, smoke, fumes, tear gas or any other noxious gases, arising out of and in the course of the employment of a person who, for 2 years or more, has been:

(a) Employed in this State in a full-time salaried occupation of fire fighting or the investigation of arson for the benefit or safety of the public;

(b) Acting as a volunteer firefighter in this State and is entitled to the benefits of chapters 616A to 616D, inclusive, of NRS pursuant to the provisions of NRS 616A.145; or

(c) Employed in a full-time salaried occupation as a police officer in this State.

2. Except as otherwise provided in subsection 3, each employee who is to be covered for diseases of the lungs pursuant to the provisions of this section shall submit to a physical examination, including a thorough test of the functioning of his or her lungs and the making of an X-ray film of the employee's lungs, upon employment, upon commencement of the coverage, once every 2 years until the employee is 40 years of age or older and thereafter on an annual basis during his or her employment.

3. Each volunteer firefighter who is to be covered for diseases of the lungs pursuant to the provisions of this section shall submit to:

(a) A physical examination upon employment and upon commencement of the coverage; and

(b) The making of an X-ray film of the volunteer firefighter's lungs once every 3 years after the physical examination that is required upon commencement of the coverage,

until the volunteer firefighter reaches the age of 50 years. Each volunteer firefighter who is 50 years of age or older shall submit to a physical examination once every 2 years during his or her employment. As used in this subsection, "physical examination" includes the making of an X-ray film of the volunteer firefighter's lungs but excludes a thorough test of the functioning of his or her lungs.

4. All physical examinations required pursuant to subsections 2 and 3 must be paid for by the employer.

5. A disease of the lungs is conclusively presumed to have arisen out of and in the course of the employment of a person who has been employed in a full-time continuous, uninterrupted and salaried occupation as a police officer, firefighter or arson investigator for 2 years or more before the date of disablement if the disease is diagnosed and causes the disablement:

(a) During the course of that employment;

(b) If the person ceases employment before completing 20 years of service as a police officer, firefighter or arson investigator, during the period after separation from employment which is equal to the number of years worked; or

(c) If the person ceases employment after completing 20 years or more of service as a police officer, firefighter or arson investigator, at any time during the person's life.

Service credit which is purchased in a retirement system must not be calculated towards the years of service of a person for the purposes of this section.

6. Frequent or regular use of a tobacco product within 1 year, or a material departure from a physician's prescribed plan of care by a person within 3 months, immediately preceding the filing of a claim for compensation excludes a person who has separated from service from the benefit of the conclusive presumption provided in subsection 5.

7. Failure to correct predisposing conditions which lead to lung disease when so ordered in writing by the examining physician after a physical examination required pursuant to subsection 2 or 3 excludes the employee from the benefits of this section if the correction is within the ability of the employee.

8. A person who is determined to be:

(a) Partially disabled from an occupational disease pursuant to the provisions of this section; and

(b) Incapable of performing, with or without remuneration, work as a firefighter, police officer or arson investigator,

may elect to receive the benefits provided under NRS 616C.440 for a permanent total disability.

9. A person who files a claim for a disease of the lungs specified in this section after he or she retires from employment as a police officer, firefighter or arson investigator is not entitled to receive any compensation for that disease other than medical benefits.

10. ~~##~~ Except as otherwise provided in this subsection, if an employer, insurer or third-party administrator denies a claim that was filed pursuant to this section and the claimant ultimately prevails, the employer, insurer or third-party administrator, as applicable, must pay all the claimant's reasonable attorney's fees and associated costs. Such fees and costs are payable in addition to any benefits to which the claimant is entitled under the claim and any fines and penalties imposed by the Administrator pursuant to NRS 616D.120. If a hearing before a hearing officer is requested pursuant to NRS 616C.315 and held

pursuant to NRS 616C.330, such fees and costs do not include any attorney's fees and associated costs that are incurred by the claimant on or before the date of the hearing before the hearing officer.

Sec. 5. NRS 617.457 is hereby amended to read as follows:

617.457 1. Notwithstanding any other provision of this chapter, diseases of the heart of a person who, for 2 years or more, has been employed in a full-time continuous, uninterrupted and salaried occupation as a firefighter, arson investigator or police officer in this State before the date of disablement are conclusively presumed to have arisen out of and in the course of the employment if the disease is diagnosed and causes the disablement:

(a) During the course of that employment;

(b) If the person ceases employment before completing 20 years of service as a police officer, firefighter or arson investigator, during the period after separation from employment which is equal to the number of years worked; or

(c) If the person ceases employment after completing 20 years or more of service as a police officer, firefighter or arson investigator, at any time during the person's life.

➤ Service credit which is purchased in a retirement system must not be calculated towards the years of service of a person for the purposes of this section.

2. Frequent or regular use of a tobacco product within 1 year, or a material departure from a physician's prescribed plan of care by a person within 3 months, immediately preceding the filing of a claim for compensation excludes a person who has separated from service from the benefit of the conclusive presumption provided in subsection 1.

3. Notwithstanding any other provision of this chapter, diseases of the heart, resulting in either temporary or permanent disability or death, are occupational diseases and compensable as such under the provisions of this chapter if caused by extreme overexertion in times of stress or danger and a causal relationship can be shown by competent evidence that the disability or death arose out of and was caused by the performance of duties as a volunteer firefighter by a person entitled to the benefits of chapters 616A to 616D, inclusive, of NRS pursuant to the provisions of NRS 616A.145 and who, for 5 years or more, has served continuously as a volunteer firefighter in this State by continuously maintaining an active status on the roster of a volunteer fire department.

4. Except as otherwise provided in subsection 5, each employee who is to be covered for diseases of the heart pursuant to the provisions of this section shall submit to a physical examination, including an examination of the heart, upon employment, upon commencement of coverage and thereafter on an annual basis during his or her employment.

5. During the period in which a volunteer firefighter is continuously on active status on the roster of a volunteer fire department, a physical examination for the volunteer firefighter is required:

(a) Upon employment;

(b) Upon commencement of coverage; and

(c) Once every 3 years after the physical examination that is required pursuant to paragraph (b),

➤ until the firefighter reaches the age of 50 years. Each volunteer firefighter who is 50 years of age or older shall submit to a physical examination once every 2 years during his or her employment.

6. The employer of the volunteer firefighter is responsible for scheduling the physical examination. The employer shall mail to the volunteer firefighter a written notice of the date, time and place of the physical examination at least 10 days

1 before the date of the physical examination and shall obtain, at the time of mailing,
2 a certificate of mailing issued by the United States Postal Service.

3 7. Failure to submit to a physical examination that is scheduled by his or her
4 employer pursuant to subsection 6 excludes the volunteer firefighter from the
5 benefits of this section.

6 8. The chief of a volunteer fire department may require an applicant to pay for
7 any physical examination required pursuant to this section if the applicant:

- 8 (a) Applies to the department for the first time as a volunteer firefighter; and
9 (b) Is 50 years of age or older on the date of his or her application.

10 9. The volunteer fire department shall reimburse an applicant for the cost of a
11 physical examination required pursuant to this section if the applicant:

- 12 (a) Paid for the physical examination in accordance with subsection 8;
13 (b) Is declared physically fit to perform the duties required of a firefighter; and
14 (c) Becomes a volunteer with the volunteer fire department.

15 10. Except as otherwise provided in subsection 8, all physical examinations
16 required pursuant to subsections 4 and 5 must be paid for by the employer.

17 11. Failure to correct predisposing conditions which lead to heart disease
18 when so ordered in writing by the examining physician subsequent to a physical
19 examination required pursuant to subsection 4 or 5 excludes the employee from the
20 benefits of this section if the correction is within the ability of the employee.

21 12. A person who is determined to be:

22 (a) Partially disabled from an occupational disease pursuant to the provisions
23 of this section; and

24 (b) Incapable of performing, with or without remuneration, work as a
25 firefighter, arson investigator or police officer,

26 ➤ may elect to receive the benefits provided under NRS 616C.440 for a permanent
27 total disability.

28 13. Claims filed under this section may be reopened at any time during the
29 life of the claimant for further examination and treatment of the claimant upon
30 certification by a physician of a change of circumstances related to the occupational
31 disease which would warrant an increase or rearrangement of compensation.

32 14. A person who files a claim for a disease of the heart specified in this
33 section after he or she retires from employment as a firefighter, arson investigator
34 or police officer is not entitled to receive any compensation for that disease other
35 than medical benefits.

36 *15. ~~HA~~ Except as otherwise provided in this subsection, if an employer,*
37 *insurer or third-party administrator denies a claim that was filed pursuant to this*
38 *section and the claimant ultimately prevails, the employer, insurer or third-party*
39 *administrator, as applicable, must pay all the claimant's reasonable attorney's*
40 *fees and associated costs. Such fees and costs are payable in addition to any*
41 *benefits to which the claimant is entitled under the claim and any fines and*
42 *penalties imposed by the Administrator pursuant to NRS 616D.120. If a hearing*
43 *before a hearing officer is requested pursuant to NRS 616C.315 and held*
44 *pursuant to NRS 616C.330, such fees and costs do not include any attorney's fees*
45 *and associated costs that are incurred by the claimant on or before the date of the*
46 *hearing before the hearing officer.*

47 **Sec. 6.** The amendatory provisions of sections 1, 2, 4 and 5 of this act apply
48 only to claims filed on or after October 1, 2017.