

Amendment No. 757

Assembly Amendment to Senate Bill No. 209 First Reprint (BDR 53-485)

Proposed by: Assemblywoman Bustamante Adams

Amendment Box: Consistent with Amendment No. 756.

Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION			Initial and Date	SENATE ACTION			Initial and Date	
Adopted	☐	Lost	☐ _____		Adopted	☐	Lost	☐ _____
Concurred In	☐	Not	☐ _____		Concurred In	☐	Not	☐ _____
Receded	☐	Not	☐ _____		Receded	☐	Not	☐ _____

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.

ALA/WLK



Date: 5/19/2017

S.B. No. 209—Revises provisions relating to insurance. (BDR 53-485)



SENATE BILL NO. 209—COMMITTEE ON
COMMERCE, LABOR AND ENERGY

FEBRUARY 27, 2017

Referred to Committee on Commerce, Labor and Energy

SUMMARY—Revises provisions relating to insurance. (BDR 53-485)

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

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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 insurance; authorizing an insurer to process claims of industrial insurance at an office located outside of this State; requiring that persons processing claims of industrial insurance be accessible to an employer and his or her employees who are located in this State; removing the requirement that an insurer who provides industrial insurance provide an office in this State; authorizing the Commissioner of Insurance to accept an independent audit in lieu of an examination of a nonprofit organization of surplus lines brokers; limiting when a surplus lines broker may charge a fee; authorizing the Commissioner to adopt regulations for the charging and collection of certain fees for the purchase of individual or group life or health insurance or an individual or group annuity; authorizing an employee or authorized representative of a vendor to receive certain compensation ~~for selling or~~ relating to offering portable electronics insurance; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires an insurer who provides industrial insurance to provide an office in this State that is operated by the insurer or its third-party administrator. Such an office must have persons authorized to act for the insurer who may receive information related to a claim and provide services to an employer and his or her employees. Additionally, an insurer shall provide a statewide toll-free telephone service to its in-state office or accept collect calls from injured employees. (NRS 616B.027) **Section 1** of this bill authorizes persons who are authorized to act for the insurer to handle, at an office located outside of this State, a claim of industrial insurance that is filed in this State. **Section 1** further requires that such persons located outside of this State be accessible: (1) through electronic communications, videoconferencing, teleconferencing or other available technology that is provided by the insurer; and (2) by a statewide toll-free telephone service provided by the insurer or by the insurer accepting collect calls from injured employees on all days other than Saturdays, Sundays and legal holidays in the jurisdiction in which the office is located from 9 a.m. to 5 p.m. Pacific time. **Section 1** additionally sets forth that such persons located outside of this State are subject to the jurisdiction of the courts of this State and to service of process. **Section 1** additionally authorizes the Administrator of the Division of Industrial Relations of the

Department of Business and Industry to adopt regulations concerning: (1) the handling of a claim that is filed in this State at an office located outside of this State; and (2) the accessibility to persons located outside of this State who are working on such claims.

Section 3 of this bill amends existing law by removing the requirement that an insurer who provides industrial insurance provide an office in this State that is operated by the insurer or its third-party administrator. **Sections 2, 4 and 5** of this bill make conforming changes.

Existing law requires the Commissioner of Insurance to make an examination of the affairs, transactions, accounts, records and assets of a nonprofit organization of surplus lines brokers. (NRS 685A.075) **Section 7** of this bill authorizes the Commissioner to accept the report of an independent audit in lieu of an examination if the Commissioner deems an independent audit to be in the best interest of the residents of this State.

Existing law authorizes a surplus lines broker to charge a fee for procuring surplus lines coverage. (NRS 685A.155) **Section 8** of this bill limits existing law by only authorizing a broker who places any insurance coverage with an authorized insurer to charge a fee for procuring surplus lines coverage.

Existing law authorizes the Commissioner to adopt regulations to allow for the charging and collection of a fee by an insurance broker, consultant or financial planner for consultation or related advice on the purchase of life or health insurance or an annuity. (NRS 686A.230) **Section 11** of this bill clarifies existing law by authorizing the Commissioner to adopt regulations to allow for the charging and collection of a fee by an insurance broker, consultant or financial planner for consultation or related advice on the purchase of individual or group life or health insurance or an individual or group annuity.

Section 12 of this bill authorizes an employee or authorized representative of a vendor to receive from the vendor certain incidental compensation ~~(for the selling of)~~ relating to offering ~~and~~ coverage and enrolling a customer under a policy of portable electronics insurance. **Section 6** of this bill makes conforming changes.

Existing law authorizes the Commissioner, with the approval of the State Board of Examiners, to enter into a multi-state agreement to preserve the ability of this State to collect premium tax on multi-state risks. (NRS 685A.185) **Section 13** of this bill repeals this provision. **Sections 9 and 10** of this bill make conforming changes.

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

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

1. Persons authorized to act for an insurer at an office located outside of this State may process a claim filed in this State.

2. In processing a claim filed in this State, persons authorized to act for an insurer at an office located outside of this State may receive information related to that claim and provide the services to an employer and his or her employees required by chapters 616A to 617, inclusive, of NRS. Such persons must be accessible:

(a) Through electronic communications, videoconferencing, teleconferencing or other available technology that is provided by the insurer; and

(b) By a statewide toll-free telephone service provided by the insurer or by the insurer accepting collect calls from injured employees on all days, other than Saturdays, Sundays and legal holidays in the jurisdiction in which the office is located, from 9 a.m. to 5 p.m. Pacific time.

3. In processing a claim filed in this State pursuant to this section, persons authorized to act for an insurer at an office located outside of this State are, to the extent not inconsistent with the Nevada Constitution or the United States Constitution, subject to the jurisdiction of the courts of this State and to service of process as provided in NRS 14.065.

4. *The Administrator may adopt regulations concerning the:*
(a) *Processing of a claim filed in this State at an office located outside of this State pursuant to subsection 1; and*

(b) *Access required by subsection 2 to persons who are authorized to act for an insurer pursuant to subsection 1.*

5. *As used in this section, "Pacific time" means the actual measure of time that is used and observed by the general population as the uniform time for the portion of Nevada which lies within the Pacific time zone, or any legal successor to the Pacific time zone, and which includes the seat of government of this State as designated by Section 1 of Article 15 of the Nevada Constitution.*

Sec. 2. NRS 616B.021 is hereby amended to read as follows:

616B.021 1. An insurer shall provide access to the files of claims in its offices.

2. The physical records in a file concerning a claim filed in this State may be kept at an office located outside this State if all records in the file are accessible at its offices ~~located in this State~~ on computer in a microphotographic, electronic or other similar format that produces an accurate reproduction of the original. If a claim filed in this State is open, the records in the file must be reproduced and available for inspection during regular business hours within 24 hours after requested by the employee or the employee's designated agent, the employer or the employer's designated agent, or the Administrator or the Administrator's designated agent. If a claim filed in this State is closed, the records in the file must be reproduced and available for inspection during regular business hours within 14 days after requested by such persons.

3. Upon request, the insurer shall make copies or other reproductions of anything in the file and may charge a reasonable fee for this service. Copies or other reproductions of materials in the file which are requested by the Administrator or the Administrator's designated agent, or the Nevada Attorney for Injured Workers or his or her designated agent must be provided free of charge.

4. The Administrator may adopt regulations concerning the:

(a) Maintenance of records in a file on claims that are open or closed; and

(b) Preservation, examination and use of records which have been stored on computer or in a microphotographic, electronic or similar format by an insurer.

5. This section does not require an insurer to allow inspection or reproduction of material regarding which a legal privilege against disclosure has been conferred.

Sec. 3. NRS 616B.027 is hereby amended to read as follows:

616B.027 1. Every insurer *and third-party administrator* shall:

(a) Provide ~~an office~~ in this State : ~~operated by the insurer or its third-party administrator in which;~~

(1) A complete file of ~~each~~ a claim ~~is accessible;~~ *filed by the employee or the representative of the employee*, in accordance with the provisions of NRS 616B.021 ~~it~~, *upon request of the employee or his or her representative; and*

(2) Persons authorized to act for the insurer and, if necessary, licensed pursuant to chapter 683A of NRS, *including, without limitation, persons authorized pursuant to section 1 of this act, who* may receive information related to a claim and provide the services to an employer and his or her employees required by chapters 616A to 617, inclusive, of NRS. ~~it; and~~

~~(3) An employee or his or her employer, upon request, is provided with information related to a claim filed by the employee or a copy or other reproduction of the information from the file for that claim, in accordance with the provisions of NRS 616B.021;~~

(b) Provide statewide toll-free telephone service ~~to the office maintained pursuant to paragraph (a)~~ or accept collect calls from injured employees.

2. Each private carrier shall provide:

- (a) Adequate services to its insured employers in controlling losses; and
- (b) Adequate information on the prevention of industrial accidents and occupational diseases.

Sec. 4. NRS 616B.500 is hereby amended to read as follows:

616B.500 1. An insurer may enter into a contract to have his or her plan of insurance administered by a third-party administrator.

2. An insurer shall not enter into a contract with any person for the administration of any part of the plan of insurance unless that person ~~maintains an office in this State and~~ has a certificate issued by the Commissioner pursuant to NRS 683A.08524.

Sec. 5. NRS 616B.503 is hereby amended to read as follows:

616B.503 1. A person shall not act as a third-party administrator for an insurer without a certificate issued by the Commissioner pursuant to NRS 683A.08524.

2. A person who acts as a third-party administrator pursuant to chapters 616A to 616D, inclusive, or chapter 617 of NRS shall:

(a) Administer from one or more offices ~~located in this State~~ all of the claims arising under each plan of insurance that the person administers and maintain in those offices all of the records concerning those claims;

(b) Administer each plan of insurance directly, without subcontracting with another third-party administrator; and

(c) Upon the termination of the person's contract with an insurer, transfer forthwith to a certified third-party administrator chosen by the insurer all of the records in the person's possession concerning claims arising under the plan of insurance.

3. The Commissioner may, under exceptional circumstances, waive the requirements of subsection 2.

Sec. 6. NRS 683A.325 is hereby amended to read as follows:

683A.325 1. Except as otherwise provided in NRS 683A.3687 ~~H~~ **or 691D.220**, a producer of insurance who is appointed as an agent may pay a commission or compensation for or on account of the selling, soliciting, procuring or negotiating of insurance in this State only to a licensed and appointed producer of insurance of the insurer with whom insurance was placed or to a licensed producer acting as a broker.

2. A licensee shall not accept any commission or compensation to which the licensee is not entitled pursuant to the provisions of this title.

Sec. 7. NRS 685A.075 is hereby amended to read as follows:

685A.075 1. A nonprofit organization of surplus lines brokers may be formed to:

(a) Facilitate and encourage compliance by its members with the laws of this State and the rules and regulations of the Commissioner concerning surplus lines insurance;

(b) Provide a means for the review of all surplus lines coverage written in this State;

(c) Communicate with organizations of admitted insurers with respect to the proper use of the surplus lines market;

(d) Receive and disseminate to brokers information relative to surplus lines coverages; and

(e) Charge members a filing fee, approved by the Commissioner, for the review of surplus lines coverages.

2. Every such organization shall exercise its powers through a board of directors and shall file with the Commissioner:

(a) A copy of its constitution, articles of agreement or association or certificate of incorporation;

(b) A copy of its bylaws, rules and regulations governing its activities;

(c) A copy of its plan of operations established and approved by the Commissioner;

(d) A current list of its members;

(e) The name and address of a resident of this State upon whom notices or orders of the Commissioner or processes issued at the direction of the Commissioner may be served; and

(f) An agreement that the Commissioner may examine the organization in accordance with the provisions of this section.

3. The Commissioner shall make an examination of the affairs, transactions, accounts, records and assets of such an organization and any of its members as often as the Commissioner deems necessary for the protection of the interests of the people of this State, but no less frequently than once every 3 years. The officers, managers, agents and employees of such an organization may be examined at any time, under oath, and shall provide to the Commissioner all books, records, accounts, documents or agreements governing its method of operation. The Commissioner shall furnish two copies of the examination report to the organization examined and shall notify the organization that it may, within 20 days thereof, request a hearing on the report or on any facts or recommendations set forth therein. If the Commissioner finds such an organization or any member thereof to be in violation of this chapter, the Commissioner may, in addition to any administrative fine or penalty imposed pursuant to this Code, issue an order requiring the discontinuance of such violations. *In lieu of an examination conducted pursuant to this subsection, the Commissioner may accept the report of an independent audit of such an organization if the Commissioner deems that an independent audit is in the best interest of the residents of this State.*

4. The board of directors of such an organization must consist of not fewer than five persons. The members of the board must be appointed by the Commissioner and serve at the pleasure of the Commissioner.

5. A broker must be a member of such an organization as a condition of continued licensure under this chapter.

Sec. 8. NRS 685A.155 is hereby amended to read as follows:

685A.155 A broker *who places any insurance coverage with an authorized insurer pursuant to subsection 3 of NRS 685A.060* may charge a fee for procuring surplus lines coverage. Except as otherwise provided by agreement between the insurer and broker, the fee must not exceed 20 percent of the premium charged, after deduction of any other commissions, fees and charges payable to the broker.

Sec. 9. NRS 685A.175 is hereby amended to read as follows:

685A.175 1. A broker who has written coverage for which this State is the insured's home state shall pay, by the date described in subsection 2, the tax for each calendar quarter as directed by the Commissioner and shall file as directed by the Commissioner a copy of a quarterly report which includes an accounting of:

(a) The aggregate gross premiums for the quarter;

(b) The aggregate of the return premiums received; *and*

(c) The amount of tax remitted to the Commissioner. *}; and*

~~—(d) The distribution of the exposures of insureds by state in accordance with the requirements of any multi-state agreement entered into by the Commissioner pursuant to NRS 685A.185.;~~

➔ The report must be on a form approved by the Commissioner.

2. The tax filings and payments required by subsection 1 must be submitted by:

- 1 (a) February 15 for the calendar quarter ending the preceding December 31.
2 (b) May 15 for the calendar quarter ending the preceding March 31.
3 (c) August 15 for the calendar quarter ending the preceding June 30.
4 (d) November 15 for the calendar quarter ending the preceding September 30.

5 **Sec. 10.** NRS 685A.180 is hereby amended to read as follows:

6 685A.180 1. ~~{Except as otherwise provided in subsection 6, on}~~ **On** or
7 before the date described in subsection 2 of NRS 685A.175 for each quarter, each
8 broker shall pay as directed by the Commissioner a tax on surplus lines coverages
9 for which this State is the insured's home state written by the broker in
10 unauthorized insurers during the preceding calendar quarter at the same rate of tax
11 as imposed by law on the premiums of similar coverages written by authorized
12 insurers, in addition to any fees imposed pursuant to NRS 685A.075.

13 2. ~~{Except as otherwise provided in subsection 6, on}~~ **On** or before the date
14 described in subsection 2 of NRS 685A.175 for each quarter, each insured for
15 which this State is the home state shall pay as directed by the Commissioner a tax
16 on independently procured insurance written for the insured by an unauthorized
17 insurer during the preceding calendar quarter at the same rate of tax as imposed by
18 law on the premiums of similar coverages written by authorized insurers, in
19 addition to any fees imposed pursuant to NRS 685A.075.

20 3. For the purposes of this section, the "premium" on surplus lines coverages
21 includes:

22 (a) The gross amount charged by the insurer for the insurance, less any return
23 premium;

24 (b) Any fee allowed by NRS 685A.155;

25 (c) Any policy fee;

26 (d) Any membership fee;

27 (e) Any inspection fee; and

28 (f) Any other fees or assessments charged by the insurer as consideration for
29 the insurance.

30 ➤ Premium does not include any additional amount charged for state or federal tax,
31 or for executing or completing affidavits or reports of coverage.

32 4. All taxes collected as directed by the Commissioner pursuant to this section
33 ~~{and not intended for disbursement to other states by a clearinghouse established~~
34 ~~through any multi-state agreement entered into by the Commissioner pursuant to~~
35 ~~NRS 685A.185}~~ must be promptly deposited with the State Treasurer ~~{}~~ to the
36 credit of the State General Fund.

37 5. A broker who receives a credit for tax paid shall refund to each insured the
38 amount of the credit attributable to the insured when the insurer pays a return
39 premium or within 30 days, whichever is earlier.

40 ~~{6. If the Commissioner has entered into a multi-state agreement pursuant to~~
41 ~~NRS 685A.185, the Commissioner may require that each broker who has written~~
42 ~~surplus line coverages for multi-state risks for which this State is the insured's~~
43 ~~home state and each insured for which this State is the home state who has obtained~~
44 ~~independently procured insurance for multi-state risks pay a premium tax:~~

45 ~~—(a) For the portion of the premium allocated to Nevada, at the tax rate~~
46 ~~applicable to nonadmitted insurance pursuant to this chapter;~~

47 ~~—(b) For the portion of the premium allocated to any other state that also~~
48 ~~participates in the multi-state agreement, at the tax rate applicable to nonadmitted~~
49 ~~insurance as established by that state; and~~

50 ~~—(c) For the portion of the premium allocated to any other state that does not~~
51 ~~participate in the multi-state agreement, at the tax rate applicable to nonadmitted~~
52 ~~insurance pursuant to this chapter. The tax for this portion of the premium must be~~

~~deposited with the State Treasurer, to the credit of the State General Fund, after it is processed by the clearinghouse established through the multi-state agreement.]~~

Sec. 11. NRS 686A.230 is hereby amended to read as follows:

686A.230 1. A person shall not willfully collect any sum as a premium or charge for insurance which is not then provided or is not in due course to be provided, subject to acceptance of the risk by the insurer, by an insurance policy issued by an insurer as authorized by this Code.

2. Except as otherwise provided in subsection 3, a person shall not willfully collect as a premium or charge for insurance any sum in excess of the premium or charge applicable to the insurance and as specified in the policy, in accordance with the applicable classifications and rates as filed with and approved by the Commissioner. In cases where classifications, premiums or rates are not required by this Code to be so filed and approved, the premiums and charges must not be in excess of those specified in the policy and as fixed by the insurer. This subsection does not prohibit:

(a) The charging and collection by surplus lines brokers licensed under chapter 685A of NRS of the amount permitted by chapter 685A of NRS and regulations adopted by the Commissioner.

(b) The charging and collection by a life insurer of amounts actually to be expended for the medical examination of any applicant for life insurance or for reinstatement of a life insurance policy.

3. The Commissioner may adopt regulations to allow the charging and collection of a fee by an insurance broker, consultant or financial planner:

(a) In lieu of any other charge or commission for solicitation, negotiation or procurement of a policy of insurance which covers commercial or business risks;

(b) For consultation or any related advice on the insuring of commercial or business risks which does not result in the procurement of a policy of insurance; and

(c) For consultation or related advice on the purchase of *individual or group* life or health insurance or an *individual or group* annuity, whether or not it results in the purchase of a policy of insurance or annuity. In such a case, the fee must be set forth in a written contract signed by the client before the consultation begins.

4. An agent or broker who provides consultation or related advice pursuant to this section shall do so pursuant to a written contract specifying the compensation the agent or broker will receive. The compensation may be in addition to or in lieu of a commission and is not a premium as defined in NRS 679A.115.

Sec. 12. NRS 691D.220 is hereby amended to read as follows:

691D.220 1. Notwithstanding any other provision of law, an employee or authorized representative of a vendor that holds a license as a producer of insurance in portable electronics insurance issued by the Commissioner pursuant to NRS 683A.261 or 683A.271 may, without a license issued by the Commissioner, sell or offer coverage under a policy of portable electronics insurance at any location at which the vendor does business if:

(a) The employee or authorized representative of the vendor sells or offers coverage under a policy of portable electronics insurance only on behalf of, and under the supervision of, the vendor; and

(b) Before the employee or authorized representative of the vendor sells or offers coverage under a policy of portable electronics insurance, he or she completes a program of training provided by the vendor pursuant to NRS 691D.300.

2. An employee or authorized representative of a vendor who sells or offers coverage under a policy of portable electronics insurance pursuant to this section

shall not advertise, represent or otherwise hold himself or herself out as a licensed producer of insurance unless the person is licensed as a producer of insurance.

3. ~~An employee or authorized representative of a vendor who ~~sells or~~~~
~~offers to a customer coverage under a policy of portable electronics insurance~~
~~pursuant to this section and enrolls the customer under the policy may receive~~
~~from ~~that~~ the vendor compensation ~~related~~ that is:~~

~~(a) Incidental to the overall compensation received by the employee or~~
~~authorized representative of the vendor; and~~

~~(b) Relating to the ~~selling or~~ offering of the coverage and the enrolling of~~
~~the customer under ~~for~~ the policy of portable electronics insurance.~~

Sec. 13. NRS 685A.185 is hereby repealed.

Sec. 14. This act becomes effective on July 1, 2017.

TEXT OF REPEALED SECTION

685A.185 Multi-state agreement to collect premium tax on multi-state risks.

1. The Commissioner may, with the approval of the State Board of Examiners, on behalf of the State enter into a multi-state agreement to preserve the ability of this State to collect premium tax on multi-state risks.

2. If, within 18 months after the Commissioner enters into a multi-state agreement pursuant to subsection 1, the Commissioner conducts a hearing pursuant to the provisions of chapter 233B of NRS concerning participation in the multi-state agreement, the Commissioner shall submit to the State Board of Examiners and to the Director of the Legislative Counsel Bureau for transmittal to the Legislature a report concerning the findings of the Commissioner pursuant to the hearing.

3. The State Board of Examiners shall review and may accept the findings of the Commissioner. If the Commissioner finds and the State Board of Examiners accepts that because of the effect of the multi-state agreement on the gross receipt of premiums collected in this State:

(a) It is in the best interest of the State to continue to participate in the multi-state agreement, the State Board of Examiners may approve the State's continued participation in the multi-state agreement.

(b) It is not in the best interest of the State to continue to participate in the multi-state agreement, the State Board of Examiners may approve the State's withdrawal from the multi-state agreement.