

ASSEMBLY BILL NO. 138—ASSEMBLYMEN SPRINKLE, CARRILLO, FLORES, MONROE-MORENO, FRIERSON; ASSEFA, BACKUS, BENITEZ-THOMPSON, BILBRAY-AXELROD, COHEN, DALY, DURAN, FUMO, GORELOW, MARTINEZ, MILLER, MUNK, NEAL, NGUYEN, PETERS, SWANK AND YEAGER

FEBRUARY 14, 2019

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions governing workers' compensation. (BDR 53-708)

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

~

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

AN ACT relating to workers' compensation; requiring a claim for compensation under industrial insurance to be decided under a liberal construction in favor of the injured employee; revising provisions governing the duty of certain insurers to accept or deny claims for compensation; revising the standard for determining whether an injured employee is entitled to compensation; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires that a claim by an injured employee for compensation under industrial insurance be decided on its merit and not according to the principle of common law that requires statutes governing workers' compensation to be liberally construed because they are remedial in nature. (NRS 616A.010) **Section 1** of this bill requires such a claim to be decided under a liberal construction of those statutes in favor of the injured employee or his or her dependents.

Existing law provides that an injured employee or his or her dependents are not entitled to receive compensation under industrial insurance unless the employee or dependents establish by a preponderance of the evidence that the injury arose out of and in the course of employment. (NRS 616C.150) **Section 3** of this bill provides that the injured employee or dependents are entitled to receive such compensation unless the employer establishes by clear and convincing evidence that the injury did not arise out of and in the course of employment.

Existing law establishes the duty of an insurer to accept or deny a claim for compensation. (NRS 616C.065) **Section 2** of this bill provides that, for the purposes of making a determination whether to accept a claim for compensation, an



* A B 1 3 8 *

employee's injury shall be deemed to have arisen out of and in the course of employment unless there is clear and convincing evidence to the contrary or except under circumstances where certain statutory provisions establish other standards of proof. **Section 2** also provides that if an employer, self-insured employer, self-insured group or third-party administrator denies a claim and the claimant ultimately prevails after a requested hearing, the Administrator of the Division of Industrial Relations of the Department of Business and Industry shall impose a daily benefit penalty on the employer, self-insured employer, self-insured group or third-party administrator.

Section 4 of this bill provides that the amendatory provisions of this bill apply to all open claims for compensation, regardless of the date on which the claim was filed.

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

Section 1. NRS 616A.010 is hereby amended to read as follows:

616A.010 The Legislature hereby determines and declares that:

1. The provisions of chapters 616A to 617, inclusive, of NRS must be interpreted and construed to ensure the quick and efficient payment of compensation to employees who are injured or disabled at a reasonable cost to the employers who are subject to the provisions of those chapters;

2. A claim for compensation filed pursuant to the provisions of chapters 616A to 616D, inclusive, or chapter 617 of NRS must be decided on its merit and ~~not~~ according to the principle of common law that requires statutes governing workers' compensation to be liberally construed *in favor of an employee who is injured or disabled or the dependents of the employee* because ~~they~~ those statutes are remedial in nature; and

3. ~~The~~ *Except as otherwise provided in subsection 2, the* provisions of chapters 616A to 617, inclusive, of NRS are based on a renunciation of the rights and defenses of employers and employees recognized at common law. ~~;~~ and

~~4. For the accomplishment of these purposes, the provisions of chapters 616A to 617, inclusive, of NRS must not be interpreted or construed broadly or liberally in favor of an employee who is injured or disabled or the dependents of the employee, or in such a manner as to favor the rights and interests of an employer over the rights and interests of an employee who is injured or disabled or his or her dependents.]~~

Sec. 2. NRS 616C.065 is hereby amended to read as follows:

616C.065 1. Except as otherwise provided in NRS 616C.136, within 30 days after the insurer has been notified of an industrial accident, every insurer shall:



(a) Accept a claim for compensation, notify the claimant or the person acting on behalf of the claimant that the claim has been accepted and commence payment of the claim; or

(b) Deny the claim and notify the claimant or the person acting on behalf of the claimant and the Administrator that the claim has been denied.

2. *For the purposes of making a determination whether to accept a claim for compensation in accordance with paragraph (a) of subsection 1, an employee's injury shall be deemed to have arisen out of and in the course of employment unless there is clear and convincing evidence to the contrary, except as otherwise provided in NRS 616A.185, 616A.265, 616B.636, 616C.180, 617.358, 617.440, 617.453, 617.455, 617.457, 617.481, 617.485 and 617.487.*

3. If an insurer is ordered by the Administrator, a hearing officer, an appeals officer, a district court, the Court of Appeals or the Supreme Court of Nevada to make a new determination, including, without limitation, a new determination regarding the acceptance or denial of a claim for compensation, the insurer shall make the new determination within 30 days after the date on which the insurer has been ordered to do so.

~~[3.]~~ 4. Payments made by an insurer pursuant to this section are not an admission of liability for the claim or any portion of the claim.

~~[4.]~~ 5. Except as otherwise provided in this subsection, if an insurer unreasonably delays or refuses to pay the claim within 30 days after the insurer has been notified of an industrial accident, the insurer shall pay upon order of the Administrator an additional amount equal to three times the amount specified in the order as refused or unreasonably delayed. This payment is for the benefit of the claimant and must be paid to the claimant with the compensation assessed pursuant to chapters 616A to 617, inclusive, of NRS. The provisions of this section do not apply to the payment of a bill for accident benefits that is governed by the provisions of NRS 616C.136.

~~[5.]~~ 6. *Except as otherwise provided in this subsection, if:*

(a) *An employer, self-insured employer, self-insured group or third-party administrator denies a claim;*

(b) *A hearing before a hearing officer is requested pursuant to NRS 616C.315 and held pursuant to NRS 616C.330; and*

(c) *The claimant ultimately prevails,*

➡ the Administrator shall order the employer, self-insured employer, self-insured group or third-party administrator, as applicable, to pay to the claimant a benefit penalty of not less than \$100 for each day, and not more than \$200 for each day, from the



date on which a request for a hearing is filed until the date on which the claim is adjudicated to a final decision. Such benefit penalty is payable in addition to any benefits or payments to which the claimant is entitled under the claim and any fines or penalties imposed by the Administrator pursuant to NRS 616D.120.

7. The insurer shall notify the claimant or the person acting on behalf of the claimant that a claim has been accepted or denied pursuant to subsection 1 or ~~2~~ 3 by:

(a) Mailing its written determination to the claimant or the person acting on behalf of the claimant; and

(b) If the claim has been denied, in whole or in part, obtaining a certificate of mailing.

~~6~~ 8. The failure of the insurer to obtain a certificate of mailing as required by paragraph (b) of subsection ~~5~~ 7 shall be deemed to be a failure of the insurer to mail the written determination of the denial of a claim as required by this section.

~~7~~ 9. The failure of the insurer to indicate the acceptance or denial of a claim for a part of the body or condition does not constitute a denial or acceptance thereof.

~~8~~ 10. Upon request, the insurer shall provide a copy of the certificate of mailing, if any, to the claimant or the person acting on behalf of the claimant.

~~9~~ 11. For the purposes of this section, the insurer shall mail the written determination to:

(a) The mailing address of the claimant or the person acting on behalf of the claimant that is provided on the form prescribed by the Administrator for filing the claim; or

(b) Another mailing address if the claimant or the person acting on behalf of the claimant provides to the insurer written notice of another mailing address.

~~10~~ 12. As used in this section, "certificate of mailing" means a receipt that provides evidence of the date on which the insurer presented its written determination to the United States Postal Service for mailing.

Sec. 3. NRS 616C.150 is hereby amended to read as follows:

616C.150 1. An injured employee or the dependents of the injured employee , *as applicable*, are ~~not~~ entitled to receive compensation pursuant to the provisions of chapters 616A to 616D, inclusive, of NRS unless the *employer of the injured* employee ~~for the dependents establish~~ *establishes* by ~~a preponderance of the clear and convincing~~ evidence that the employee's injury ~~arose~~ *did not arise* out of and in the course of his or her employment.

2. For the purposes of chapters 616A to 616D, inclusive, of NRS, if the employee files a notice of an injury pursuant to NRS 616C.015 after his or her employment has been terminated for any



1 reason, there is a rebuttable presumption that the injury did not arise
2 out of and in the course of his or her employment.

3 **Sec. 4.** The amendatory provisions of this act apply to all open
4 claims for compensation pursuant to the provisions of chapters
5 616A to 616D, inclusive, or 617 of NRS, regardless of the date on
6 which a claim was filed.

7 **Sec. 5.** This act becomes effective upon passage and approval.

