

Amendment No. 1082

Assembly Amendment to Senate Bill No. 377 First Reprint	(BDR 53-1025)
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.

DP/WLK



Date: 6/1/2019

S.B. No. 377—Revises provisions relating to workers’ compensation.
(BDR 53-1025)



SENATE BILL NO. 377—SENATORS D. HARRIS
AND OHRENSCHALL

MARCH 20, 2019

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions relating to workers' compensation.
(BDR 53-1025)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 ~~fomitted-material~~ is material to be omitted.

AN ACT relating to industrial insurance; authorizing the use of money in the Fund for Workers' Compensation and Safety in the State Treasury to make certain payments; revising the authority of the Administrator of the Division of Industrial Relations of the Department of Business and Industry to make certain payments from the Uninsured Employers' Claim Account in the Fund for Workers' Compensation and Safety; establishing certain methods which must be used by the Administrator to determine the period of wages earned by an employee to calculate an average monthly wage; revising provisions providing for an annual increase in benefits for permanent total disability; authorizing assessments against certain employers to defray the costs of certain compensation for permanent total disability; repealing provisions authorizing annual payments to certain persons who are entitled to compensation for permanent total disability; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides for an annual increase in compensation in the amount of 2.3 percent to claimants or dependents thereof who are entitled to compensation for permanent total disability under industrial insurance for an industrial injury or disablement from an occupational disease that occurs on or after January 1, 2004. (NRS 616C.473) Existing law provides for a single annual payment to claimants and their dependents who are entitled to receive compensation for permanent total disability but are not entitled to the 2.3 percent annual increase in that compensation because the industrial injury or disablement occurred before January 1, 2004. (NRS 616C.453) Existing law provides that such annual payments are paid from the Uninsured Employers' Claim Account in the Fund for Workers' Compensation and Safety in the State Treasury, an account which is funded by assessments against insurers and certain employers who provide accident benefits for injured employees. (NRS 616A.430) Existing law sets forth the uses of money and securities in the Fund for Workers' Compensation and Safety. (NRS 616A.425) **Section 1** of this bill provides that money in the Fund may also be used to: (1) reimburse insurers and employers for payments of an annual increase in compensation for permanent total disability to claimants and dependents of

claimants who are entitled to such compensation due to an industrial injury or disablement which occurred before January 1, 2004, to the extent income realized on the investment of the assets in the Uninsured Employers' Claim Account in the Fund is sufficient to pay that compensation; and (2) pay the salary and other expenses of administering the payment of increased compensation to claimants and dependents of claimants who are entitled to compensation for permanent total disability caused by industrial injuries and disablements from occupational diseases that occurred before January 1, 2004.

Section 2.5 of this bill authorizes an insurer or employer who pays an annual increase in compensation for permanent total disability to a claimant or dependent who is entitled to such compensation due to an industrial injury or disablement which occurred before January 1, 2004, to obtain reimbursement from the Administrator of the Division of Industrial Relations of the Department of Business and Industry and establishes the procedure for obtaining such a reimbursement. Under **section 2.5**, reimbursements approved by the Administrator are required to be paid from the income realized on the investment of the assets in the Uninsured Employers' Claim Account in the Fund for Workers' Compensation and Safety in the State Treasury. If the income realized on the investment of the assets in that Account is insufficient to fund the annual increase in compensation, the remainder of the reimbursements are required to be paid from certain assessments levied on insurers and employers by the Administrator.

Existing law provides that the amount of compensation for certain industrial injuries or death is based, in part, on the average monthly wage of the injured or deceased employee. (NRS 616C.440, 616C.475, 616C.490, 616C.505) Existing law requires the Administrator of the Division of Industrial Relations of the Department of Business and Industry to provide by regulation for a method of determining average monthly wage. (NRS 616C.420) Section 2.8 of this bill incorporates in statute certain provisions from current regulations which contain methods for determining the period of wages earned by an employee that must be used to calculate the average monthly wage. (NAC 616C.435)

Section 3 of this bill provides for a 2.3 percent annual increase in compensation for permanent total disability to claimants and dependents of claimants who are entitled to such compensation due to an industrial injury or disablement which occurred before January 1, 2004, with compensation to be increased on January 1, 2020, and on January 1 each year thereafter.

Section 4 of this bill provides that assessments against employers who provide accident benefits for injured employees may be used to pay reimbursement to insurers for the cost of the annual increase in compensation payable to claimants and dependents of claimants who are entitled to such compensation due to an industrial injury or disablement which occurred before January 1, 2004, to the extent that income realized on the investment of the assets in the Uninsured Employers' Claim Account is insufficient to pay that reimbursement.

Section 5 of this bill repeals provisions which authorize a single annual payment to claimants and their dependents who are entitled to receive compensation for permanent total disability but are not entitled to the 2.3 percent annual increase in that compensation. **Section 2** of this bill eliminates the authority of the Administrator of the Division of Industrial Relations of the Department of Business and Industry to make the annual payments from the Uninsured Employers' Claim Account in the Fund for Workers' Compensation and Safety and, instead, authorizes the reimbursements authorized by **section 2.5** to be paid from the Account.

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

Section 1. NRS 616A.425 is hereby amended to read as follows:

616A.425 1. There is hereby established in the State Treasury the Fund for Workers' Compensation and Safety as an enterprise fund. All money received from assessments levied on insurers and employers by the Administrator pursuant to NRS 232.680 must be deposited in this Fund.

2. All assessments, penalties, bonds, securities and all other properties received, collected or acquired by the Division for functions supported in whole or in part from the Fund must be delivered to the custody of the State Treasurer for deposit to the credit of the Fund.

3. All money and securities in the Fund must be used to defray all costs and expenses of administering the program of workers' compensation, including the payment of:

(a) All salaries and other expenses in administering the Division of Industrial Relations, including the costs of the office and staff of the Administrator.

(b) All salaries and other expenses of administering NRS 616A.435 to 616A.460, inclusive, the offices of the Hearings Division of the Department of Administration and the programs of self-insurance and review of premium rates by the Commissioner.

(c) The salary and other expenses of a full-time employee of the Legislative Counsel Bureau whose principal duties are limited to conducting research and reviewing and evaluating data related to industrial insurance.

(d) All salaries and other expenses of the Fraud Control Unit for Industrial Insurance established pursuant to NRS 228.420.

(e) Claims against uninsured employers arising from compliance with NRS 616C.220 and 617.401.

(f) That portion of the salaries and other expenses of the Office for Consumer Health Assistance of the Department of Health and Human Services established pursuant to NRS 232.458 that is related to providing assistance to consumers and injured employees concerning workers' compensation.

(g) For claimants and dependents of claimants who are entitled to receive compensation for a permanent total disability caused by an industrial injury or a disablement that occurred before January 1, 2004:

(1) Reimbursement to insurers for the cost of the annual increase in the compensation pursuant to subsection 2 of NRS 616C.473; and

(2) The salary and other expenses of administering the payment of the annual increase in the compensation pursuant to subsection 2 of NRS 616C.473.

4. The State Treasurer may disburse money from the Fund only upon written order of the Controller.

5. The State Treasurer shall invest money of the Fund in the same manner and in the same securities in which the State Treasurer is authorized to invest state general funds which are in his or her custody. Income realized from the investment of the assets of the Fund must be credited to the Fund.

6. The Commissioner shall assign an actuary to review the establishment of assessment rates. The rates must be filed with the Commissioner 30 days before their effective date. Any insurer or employer who wishes to appeal the rate so filed must do so pursuant to NRS 679B.310.

7. If the Division refunds any part of an assessment, the Division shall include in that refund any interest earned by the Division from the refunded part of the assessment.

Sec. 2. NRS 616A.430 is hereby amended to read as follows:

616A.430 1. There is hereby established in the State Treasury the Uninsured Employers' Claim Account in the Fund for Workers' Compensation and Safety, which may be used only for the purpose of making payments in accordance with the provisions of NRS 616C.220 ~~[-616C.453]~~ and 617.401 ~~[]~~ *and subsection 2 of NRS 616C.473.* The Administrator shall administer the Account and shall credit any excess money toward the assessments of the insurers for the succeeding years.

2. All assessments, penalties, bonds, securities and all other properties received, collected or acquired by the Administrator for the Uninsured Employers' Claim Account must be delivered to the custody of the State Treasurer.

3. All money and securities in the Account must be held by the State Treasurer as custodian thereof to be used solely for workers' compensation.

4. The State Treasurer may disburse money from the Account only upon written order of the State Controller.

5. The State Treasurer shall invest money of the Account in the same manner and in the same securities in which the State Treasurer is authorized to invest money of the State General Fund. Income realized from the investment of the assets of the Account must be credited to the Account.

6. The Administrator shall assess each insurer, including each employer who provides accident benefits for injured employees pursuant to NRS 616C.265, an amount to be deposited in the Uninsured Employers' Claim Account. To establish the amount of the assessment, the Administrator shall determine the amount of money necessary to maintain an appropriate balance in the Account for each fiscal year and shall allocate a portion of that amount to be payable by private carriers, a portion to be payable by self-insured employers, a portion to be payable by associations of self-insured public or private employers and a portion to be payable by the employers who provide accident benefits pursuant to NRS 616C.265, based upon the expected annual expenditures for claims of each group of insurers. After allocating the amounts payable, the Administrator shall apply an assessment rate to the:

(a) Private carriers that reflects the relative hazard of the employments covered by the private carriers, results in an equitable distribution of costs among the private carriers and is based upon expected annual premiums to be received;

(b) Self-insured employers that results in an equitable distribution of costs among the self-insured employers and is based upon expected annual expenditures for claims;

(c) Associations of self-insured public or private employers that results in an equitable distribution of costs among the associations of self-insured public or private employers and is based upon expected annual expenditures for claims; and

(d) Employers who provide accident benefits pursuant to NRS 616C.265 that reflects the relative hazard of the employments covered by those employers, results in an equitable distribution of costs among the employers and is based upon expected annual expenditures for claims.

7. The Administrator shall adopt regulations for the establishment and administration of the assessment rates, payments and any penalties that the Administrator determines are necessary to carry out the provisions of this subsection. As used in this subsection, the term "group of insurers" includes the group of employers who provide accident benefits for injured employees pursuant to NRS 616C.265.

7. The Commissioner shall assign an actuary to review the establishment of assessment rates. The rates must be filed with the Commissioner 30 days before their effective date. Any insurer who wishes to appeal the rate so filed must do so pursuant to NRS 679B.310.

Sec. 2.5. Chapter 616C of NRS is hereby amended by adding thereto a new section to read as follows:

1. An insurer, including an employer who provides accident benefits for injured employees pursuant to NRS 616C.265, who pays an annual increase in compensation for a permanent total disability to a claimant or a dependent of a claimant pursuant to subsection 2 of NRS 616C.473 is entitled to be reimbursed

for the amount of that increase in accordance with this section if the insurer provides to the Administrator all of the following:

(a) The name of the claimant or dependent of a claimant to whom the insurer paid the increase in compensation.

(b) The claim number under which the compensation for a permanent total disability was paid to the claimant or dependent of a claimant.

(c) The date of the industrial injury or disablement from an occupational disease which resulted in the permanent total disability of the injured employee.

(d) The date on which the disability of the injured employee was determined or deemed to be total and permanent.

(e) The amount of the compensation for a permanent total disability to which the claimant or dependent of a claimant was entitled as of December 31, 2019.

(f) Proof of the insurer's payment of the increase in compensation for a permanent total disability.

(g) The amount of reimbursement requested by the insurer.

2. An insurer must provide the Administrator with the items required pursuant to subsection 1 not later than March 31 of each year to be eligible for reimbursement for payments of increases in compensation for permanent total disability which were made in the immediately preceding calendar year.

3. An insurer may not be reimbursed pursuant to this section unless the insurer's request for reimbursement is approved by the Administrator.

4. If the Administrator approves an insurer's request for reimbursement, the Administrator must withdraw from the Uninsured Employers' Claim Account established pursuant to NRS 616A.430 an amount of the income realized from the investment of the assets in that Account that is necessary to reimburse the insurer or employer for the cost of the increase in compensation paid to claimants and dependents pursuant to subsection 2 of NRS 616C.473. If the income realized from the investment of the assets in the Account is insufficient to pay such reimbursement, the Administrator must pay the remainder of the reimbursement from the assessments levied by the Administrator pursuant to NRS 232.680.

5. An insurer may elect to apply any approved reimbursement under this section towards any current or future assessment levied by the Administrator pursuant to NRS 232.680.

Sec. 2.8. NRS 616C.420 is hereby amended to read as follows:

616C.420 1. The Administrator shall provide by regulation for a method of determining average monthly wage.

2. The method established pursuant to subsection 1 must provide that:

(a) Except as otherwise provided in this subsection, a history of wages earned for a period of 12 weeks must be used to calculate an average monthly wage.

(b) If a 12-week period of wages earned is not representative of the average monthly wage of the injured employee, wages earned over a period of 1 year or the full period of employment, if it is less than 1 year, may be used. Wages earned over 1 year or the full period of employment, if it is less than 1 year, must be used if the average monthly wage would be increased.

(c) If an injured employee is a member of a labor organization and is regularly employed by referrals from the office of that organization, wages earned from all employers for a period of 1 year may be used. A period of 1 year using all the wages earned by the injured employee from all his or her employers must be used if the average monthly wage would be increased.

(d) If information concerning payroll is not available for a period of 12 weeks, wages earned may be averaged for the available period, but not for a period of less than 4 weeks.

(e) If information concerning payroll is unavailable for a period of at least 4 weeks, average wages earned must be projected using the rate of pay on the date of the injury or illness and the projected working schedule of the injured employee.

(f) If wages earned are based on piecework and a history of wages earned is unavailable for a period of at least 4 weeks, the wages earned must be determined as being equal to the average wages earned by other employees doing the same work.

(g) If these methods of determining a period of wages earned cannot be applied reasonably and fairly, an average monthly wage must be calculated by the insurer at 100 percent of:

(1) The sum which reasonably represents the average monthly wage of the injured employee, as defined in regulations adopted pursuant to this section, at the time the injury or illness occurs; or

(2) The amount determined using the hourly wage on the day the injury or illness occurs and the projected working schedule of the injured employee.

(h) The period used to calculate the average monthly wage must consist of consecutive days, ending on the date on which the injury or illness occurs, or the last day of the payroll period preceding the injury or illness if this period is representative of the average monthly wage.

↪ As used in this subsection, "wages earned" means wages earned from the employment in which the injury or illness occurs and in any concurrent employment.

Sec. 3. NRS 616C.473 is hereby amended to read as follows:

616C.473 1. If a claimant or a dependent of a claimant is entitled to receive compensation pursuant to chapters 616A to 617, inclusive, of NRS for a permanent total disability caused by an industrial injury or a disablement from an occupational disease that occurs on or after January 1, 2004, the claimant or dependent is entitled to an annual increase in that compensation in the amount of 2.3 percent. The compensation must be increased pursuant to this ~~section~~ subsection:

(a) On January 1 of the year immediately after the year in which the claimant or dependent becomes entitled to receive that compensation; and

(b) On January 1 of each successive year after the year specified in paragraph (a) in which the claimant or dependent is entitled to receive that compensation.

2. *If a claimant or a dependent of a claimant is entitled to receive compensation pursuant to chapters 616A to 617, inclusive, of NRS for a permanent total disability caused by an industrial injury or a disablement from an occupational disease that occurred before January 1, 2004, the claimant or dependent is entitled to an annual increase in that compensation in the amount of 2.3 percent. The compensation must be increased pursuant to this subsection:*

(a) On January 1, 2020; and

(b) On January 1 of each year thereafter.

3. Any increase in compensation provided pursuant to this section is in addition to any increase in compensation to which a claimant or a dependent of a claimant is otherwise entitled by law.

Sec. 4. NRS 232.680 is hereby amended to read as follows:

232.680 1. The cost of carrying out the provisions of NRS 232.550 to 232.700, inclusive, and of supporting the Division, a full-time employee of the Legislative Counsel Bureau and the Fraud Control Unit for Industrial Insurance established pursuant to NRS 228.420, and that portion of the cost of the Office for Consumer Health Assistance established pursuant to NRS 232.458 that is related to providing assistance to consumers and injured employees concerning workers' compensation, must be paid from assessments payable by each insurer, including

1 each employer who provides accident benefits for injured employees pursuant to
2 NRS 616C.265.

3 2. The Administrator shall assess each insurer, including each employer who
4 provides accident benefits for injured employees pursuant to NRS 616C.265. To
5 establish the amount of the assessment, the Administrator shall determine the
6 amount of money necessary for each of the expenses set forth in subsections 1 and
7 4 of this section and subsection 3 of NRS 616A.425 and determine the amount that
8 is payable by the private carriers, the self-insured employers, the associations of
9 self-insured public or private employers and the employers who provide accident
10 benefits pursuant to NRS 616C.265 for each of the programs. For the expenses
11 from which more than one group of insurers receives benefit, the Administrator
12 shall allocate a portion of the amount necessary for that expense to be payable by
13 each of the relevant group of insurers, based upon the expected annual expenditures
14 for claims of each group of insurers. After allocating the amounts payable among
15 each group of insurers for all the expenses from which each group receives benefit,
16 the Administrator shall apply an assessment rate to the:

17 (a) Private carriers that reflects the relative hazard of the employments covered
18 by the private carriers, results in an equitable distribution of costs among the private
19 carriers and is based upon expected annual premiums to be received;

20 (b) Self-insured employers that results in an equitable distribution of costs
21 among the self-insured employers and is based upon expected annual expenditures
22 for claims;

23 (c) Associations of self-insured public or private employers that results in an
24 equitable distribution of costs among the associations of self-insured public or
25 private employers and is based upon expected annual expenditures for claims; and

26 (d) Employers who provide accident benefits pursuant to NRS 616C.265 that
27 reflect the relative hazard of the employments covered by those employers, results
28 in an equitable distribution of costs among the employers and is based upon
29 expected annual expenditures for claims.

30 ➤ The Administrator shall adopt regulations that establish the formula for the
31 assessment and for the administration of payment, and any penalties that the
32 Administrator determines are necessary to carry out the provisions of this
33 subsection. The formula may use actual expenditures for claims. As used in this
34 subsection, the term "group of insurers" includes the group of employers who
35 provide accident benefits for injured employees pursuant to NRS 616C.265.

36 3. Federal grants may partially defray the costs of the Division.

37 4. Assessments made against insurers by the Division after the adoption of
38 regulations must be used to defray all costs and expenses of administering the
39 program of workers' compensation, including the payment of:

40 (a) All salaries and other expenses in administering the Division, including the
41 costs of the office and staff of the Administrator.

42 (b) All salaries and other expenses of administering NRS 616A.435 to
43 616A.460, inclusive, the offices of the Hearings Division of the Department of
44 Administration and the programs of self-insurance and review of premium rates by
45 the Commissioner of Insurance.

46 (c) The salary and other expenses of a full-time employee of the Legislative
47 Counsel Bureau whose principal duties are limited to conducting research and
48 reviewing and evaluating data related to industrial insurance.

49 (d) All salaries and other expenses of the Fraud Control Unit for Industrial
50 Insurance established pursuant to NRS 228.420.

51 (e) Claims against uninsured employers arising from compliance with NRS
52 616C.220 and 617.401.

(f) That portion of the salaries and other expenses of the Office for Consumer Health Assistance established pursuant to NRS 232.458 that is related to providing assistance to consumers and injured employees concerning workers' compensation.

~~[5. If the Division refunds any part of an assessment, the Division shall include in that refund any interest earned by the Division from the refunded part of the assessment.]~~

(g) For claimants and dependents of claimants who are entitled to receive compensation for a permanent total disability caused by an industrial injury or a disablement that occurred before January 1, 2004, reimbursement to insurers for the cost of the annual increase in the compensation pursuant to subsection 2 of NRS 616C.473.

Sec. 5. NRS 616C.453 is hereby repealed.

Sec. 5.5. The amendatory provisions of section 2.8 of this act apply prospectively with regard to any claim pursuant to chapters 616A to 616D, inclusive, or 617 of NRS which is open on or filed on or after July 1, 2019.

Sec. 6. This act becomes effective on July 1, 2019.

TEXT OF REPEALED SECTION

616C.453 Additional annual payment to certain claimants and dependents of claimants who are entitled to receive compensation for permanent total disability; adoption of regulations to determine amount of payment.

1. If a claimant or a dependent of a claimant is entitled to receive compensation pursuant to chapters 616A to 617, inclusive, of NRS for a permanent total disability and the claimant or dependent is not entitled to an annual increase in that compensation pursuant to NRS 616C.473, the claimant or dependent is entitled to an annual payment for that permanent total disability in an amount determined by the Administrator pursuant to subsection 3, but such annual payments may not exceed \$1,200 per claimant or dependent. Except as otherwise provided in subsection 5, the total payments made pursuant to this section may not exceed \$500,000 per year.

2. Each year, the Administrator shall withdraw from the Uninsured Employers' Claim Account established pursuant to NRS 616A.430 an amount of the income realized from the investment of the assets in the Account that is necessary to fund the payments calculated pursuant to subsection 3.

3. The Administrator shall adopt regulations establishing a method for the equitable distribution of the money withdrawn from the Account pursuant to subsection 2. The regulations must provide for payments that result in the largest proportional share of the money being paid to claimants and dependents who receive the lowest amount of compensation pursuant to chapters 616A to 617, inclusive, of NRS for the permanent total disability. The Administrator may adopt any other regulations that are necessary to carry out the provisions of this section.

4. Except as otherwise provided in subsection 5, the Administrator shall make the payment required by this section to each claimant and dependent of the claimant who is entitled to the payment not later than October 1 of each year. Any payment received by the claimant or dependent of the claimant pursuant to this section is in addition to any compensation to which the claimant or dependent of the claimant is otherwise entitled by law.

5. The Administrator may make a payment from the Account to a claimant or a dependent of a claimant that would have been payable in a prior year pursuant to subsection 3 if the Administrator determines that the claimant or dependent was entitled to the payment pursuant to subsection 1.