

Amendment No. 242

Senate Amendment to Senate Bill No. 274	(BDR 53-946)
Proposed by: Senate 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.



SENATE BILL NO. 274—SENATOR DALY

MARCH 14, 2023

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions relating to industrial insurance. (BDR 53-946)

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 industrial insurance; ~~authorizing a claimant to bring a civil action against an insurer or third-party administrator for certain violations of the Nevada Industrial Insurance Act or the Nevada Occupational Diseases Act;~~ requiring the Administrator of the Division of Industrial Relations of the Department of Business and Industry to post certain information on the Internet website of the Division; increasing the amount of certain penalties for certain violations of the Nevada Industrial Insurance Act or the Nevada Occupational Diseases Act; revising provisions relating to the imposition and payment of benefit penalties; revising certain requirements for certain investigations conducted by the Administrator; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law establishes the Nevada Industrial Insurance Act and the Nevada Occupational Diseases Act, which provide for the payment of compensation to employees who are injured or disabled as the result of an occupational injury or occupational disease. (Chapters 616A-616D and 617 of NRS) ~~Existing law provides that administrative fines are the exclusive remedy for a violation of the Nevada Industrial Insurance Act or the Nevada Occupational Diseases Act committed by an insurer or a third-party administrator. (NRS 616D.030) Section 1 of this bill authorizes a claimant who has been aggrieved by a violation of the Nevada Industrial Insurance Act or the Nevada Occupational Diseases Act to bring a civil action for actual damages against an insurer or third-party administrator who committed the violation if the violation involved: (1) the refusal to pay or unreasonably delayed payment to the claimant of compensation or other relief found to be due the claimant; and (2) negligence or bad faith on the part of the insurer or third-party administrator.~~

Existing law requires the Administrator of the Division of Industrial Relations of the Department of Business and Industry under certain circumstances to order an insurer, organization for managed care, health care provider, third-party administrator, employer or professional employer organization to pay a claimant a benefit penalty in an amount not less than \$5,000 and not greater than \$50,000 for refusing to process a claim for compensation, refusing to pay or unreasonably delaying payment to a claimant of compensation or other relief found to be due or committing certain other violations of the Nevada Industrial Insurance Act or the Nevada Occupational Diseases Act. (NRS 616D.120) **Section 2** of this bill increases the amount of that benefit penalty to not less than ~~[\$15,000]~~ **\$17,000** and not

greater than ~~[\$200,000.]~~ \$120,000. Section 2 also extends from 10 days to 15 days the time in which a benefit penalty must be paid to a claimant after the Administrator determines the amount of the benefit penalty. Section 1.5 of this bill requires the Administrator to publish, maintain and make available to the public on the Internet website of the Division certain information relating to benefit penalties imposed by the Administrator.

Existing law sets forth procedures by which a person may contest a decision of the Administrator to impose or refuse to impose a benefit penalty. (NRS 616D.140) Section 4 of this bill extends the time in which a person may appeal from the failure of the Administrator to respond to a notice of appeal from 100 days after the date on which the notice of appeal was mailed to the Administrator to 120 days after that date. Section 4 also: (1) requires a party who unsuccessfully appeals the imposition of a benefit penalty to pay a claimant double the amount of the benefit penalty initially imposed; (2) establishes certain requirements for when a benefit penalty must be paid; and (3) authorizes the Commissioner of Insurance to suspend a certification issued to an insurer, organization for managed care, health care provider, third-party administrator, employer or professional employer organization under certain circumstances.

Existing law requires the Administrator, upon receipt of a complaint or if the Administrator has reason to believe that certain provisions of the Nevada Industrial Insurance Act have been violated, to cause an investigation to be conducted and render a determination concerning those violations. (NRS 616D.130) Section 3 of this bill broadens the circumstances under which the Administrator is required to cause an investigation to be conducted and requires the Administrator to: (1) provide the Commissioner and the suspected violator with a copy of the complaint or an explanation of the reason why the Administrator believes a violation has occurred and a copy of the determination rendered on the matter; and (2) include with the Administrator's determination any settlement agreement relating to the violation. Section 3 also revises the time in which the Administrator must complete certain actions pursuant to the investigation.

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

Section 1. ~~[NRS 616D.030 is hereby amended to read as follows:]~~

~~616D.030 1. [No] Except as otherwise provided in subsection 3, no cause of action may be brought or maintained against an insurer or a third-party administrator who violates any provision of this chapter or chapter 616A, 616B, 616C or 617 of NRS.~~

~~2. [The] Except as otherwise provided in subsection 3, the administrative fines provided for in NRS 616B.318 and 616D.120 are the exclusive remedies for any violation of this chapter or chapter 616A, 616B, 616C or 617 of NRS committed by an insurer or a third-party administrator.~~

~~3. A claimant aggrieved by a violation of this chapter or chapter 616A, 616B, 616C or 617 of NRS committed by an insurer or third-party administrator may bring a civil action in a court of competent jurisdiction to seek actual damages and reasonable attorney's fees and costs from the insurer or third-party administrator who committed the violation if the violation involved:~~

~~(a) The refusal to pay or the unreasonably delayed payment to the claimant of compensation or other relief found to be due the claimant by a hearing officer, appeals officer, court of competent jurisdiction, written settlement agreement, written stipulation or the Division when carrying out its duties pursuant to chapters 616A to 617, inclusive, of NRS; and~~

~~(b) Negligence or bad faith on the part of the insurer or third-party administrator.] (Deleted by amendment.)~~

1 **Sec. 1.5. Chapter 616D of NRS is hereby amended by adding thereto a**
2 **new section to read as follows:**

3 **1. If the Administrator orders an insurer, organization for managed care,**
4 **health care provider, third-party administrator, employer or professional**
5 **employer organization to pay a benefit penalty pursuant to NRS 616D.120, the**
6 **Administrator shall post on the Internet website of the Division:**

7 **(a) The full legal name of the insurer, organization for managed care, health**
8 **care provider, third-party administrator, employer or professional employer**
9 **organization;**

10 **(b) The amount of the benefit penalty imposed; and**

11 **(c) A brief description of the violation for which the benefit penalty was**
12 **imposed.**

13 **2. The information required by subsection 1 must:**

14 **(a) Be published not more than 30 days after the date on which the time for**
15 **taking an appeal on the order to impose the benefit penalty has elapsed or the**
16 **date on which all appeals regarding the order have been exhausted, whichever is**
17 **later.**

18 **(b) Remain posted on the Internet website of the Division for not less than 5**
19 **years after the date on which it is initially posted.**

20 **3. The Administrator shall establish and maintain on the Internet website of**
21 **the Division a database which:**

22 **(a) Contains the information required by subsection 1;**

23 **(b) Is publicly accessible;**

24 **(c) Is searchable; and**

25 **(d) Is updated regularly.**

26 **Sec. 2. NRS 616D.120 is hereby amended to read as follows:**

27 616D.120 1. Except as otherwise provided in this section, if the
28 Administrator determines that an insurer, organization for managed care, health
29 care provider, third-party administrator, employer or professional employer
30 organization has:

31 (a) Induced a claimant to fail to report an accidental injury or occupational
32 disease;

33 (b) Without justification, persuaded a claimant to:

34 (1) Settle for an amount which is less than reasonable;

35 (2) Settle for an amount which is less than reasonable while a hearing or an
36 appeal is pending; or

37 (3) Accept less than the compensation found to be due the claimant by a
38 hearing officer, appeals officer, court of competent jurisdiction, written settlement
39 agreement, written stipulation or the Division when carrying out its duties pursuant
40 to chapters 616A to 617, inclusive, of NRS;

41 (c) Refused to pay or unreasonably delayed payment to a claimant of
42 compensation or other relief found to be due the claimant by a hearing officer,
43 appeals officer, court of competent jurisdiction, written settlement agreement,
44 written stipulation or the Division when carrying out its duties pursuant to chapters
45 616A to 616D, inclusive, or chapter 617 of NRS, if the refusal or delay occurs:

46 (1) Later than 10 days after the date of the settlement agreement or
47 stipulation;

48 (2) Later than 30 days after the date of the decision of a court, hearing
49 officer, appeals officer or the Division, unless a stay has been granted; or

50 (3) Later than 10 days after a stay of the decision of a court, hearing
51 officer, appeals officer or the Division has been lifted;

52 (d) Refused to process a claim for compensation pursuant to chapters 616A to
53 616D, inclusive, or chapter 617 of NRS;

(e) Made it necessary for a claimant to initiate proceedings pursuant to chapters 616A to 616D, inclusive, or chapter 617 of NRS for compensation or other relief found to be due the claimant by a hearing officer, appeals officer, court of competent jurisdiction, written settlement agreement, written stipulation or the Division when carrying out its duties pursuant to chapters 616A to 616D, inclusive, or chapter 617 of NRS;

(f) Failed to comply with the Division's regulations covering the payment of an assessment relating to the funding of costs of administration of chapters 616A to 617, inclusive, of NRS;

(g) Failed to provide or unreasonably delayed payment to an injured employee or reimbursement to an insurer pursuant to NRS 616C.165;

(h) Engaged in a pattern of untimely payments to injured employees; or

(i) Intentionally failed to comply with any provision of, or regulation adopted pursuant to, this chapter or chapter 616A, 616B, 616C or 617 of NRS,
↳ the Administrator shall impose an administrative fine of \$1,500 for each initial violation, or a fine of \$15,000 for a second or subsequent violation.

2. Except as otherwise provided in chapters 616A to 616D, inclusive, or chapter 617 of NRS, if the Administrator determines that an insurer, organization for managed care, health care provider, third-party administrator, employer or professional employer organization has failed to comply with any provision of this chapter or chapter 616A, 616B, 616C or 617 of NRS, or any regulation adopted pursuant thereto, the Administrator may take any of the following actions:

(a) Issue a notice of correction for:

(1) A minor violation, as defined by regulations adopted by the Division; or

(2) A violation involving the payment of compensation in an amount which is greater than that required by any provision of this chapter or chapter 616A, 616B, 616C or 617 of NRS, or any regulation adopted pursuant thereto.

↳ The notice of correction must set forth with particularity the violation committed and the manner in which the violation may be corrected. The provisions of this section do not authorize the Administrator to modify or negate in any manner a determination or any portion of a determination made by a hearing officer, appeals officer or court of competent jurisdiction or a provision contained in a written settlement agreement or written stipulation.

(b) Impose an administrative fine for:

(1) A second or subsequent violation for which a notice of correction has been issued pursuant to paragraph (a); or

(2) Any other violation of this chapter or chapter 616A, 616B, 616C or 617 of NRS, or any regulation adopted pursuant thereto, for which a notice of correction may not be issued pursuant to paragraph (a).

↳ The fine imposed must not be greater than \$375 for an initial violation, or more than \$3,000 for any second or subsequent violation.

(c) Order a plan of corrective action to be submitted to the Administrator within 30 days after the date of the order.

3. If the Administrator determines that a violation of any of the provisions of paragraphs (a) to (e), inclusive, (h) or (i) of subsection 1 has occurred, the Administrator shall order the insurer, organization for managed care, health care provider, third-party administrator, employer or professional employer organization to pay to the claimant a benefit penalty:

(a) Except as otherwise provided in paragraph (b), in an amount that is not less than ~~[\$5,000; \$15,000]~~ \$17,000 and not greater than ~~[\$50,000; \$200,000;]~~ \$120,000; or

(b) Of \$3,000 if the violation involves a late payment of compensation or other relief to a claimant in an amount which is less than \$500 or which is not more than 14 days late.

4. To determine the amount of the benefit penalty, the Administrator shall consider the degree of physical harm suffered by the injured employee or the dependents of the injured employee as a result of the violation of paragraph (a), (b), (c), (d), (e), (h) or (i) of subsection 1, the amount of compensation found to be due the claimant and the number of fines and benefit penalties, other than a benefit penalty described in paragraph (b) of subsection 3, previously imposed against the insurer, organization for managed care, health care provider, third-party administrator, employer or professional employer organization pursuant to this section. The Administrator shall also consider the degree of economic harm suffered by the injured employee or the dependents of the injured employee as a result of the violation of paragraph (a), (b), (c), (d), (e), (h) or (i) of subsection 1. Except as otherwise provided in this section, the benefit penalty is for the benefit of the claimant and must be paid directly to the claimant within ~~140~~ 15 days after the date of the Administrator's determination. If the claimant is the injured employee and the claimant dies before the benefit penalty is paid to him or her, the benefit penalty must be paid to the estate of the claimant. Proof of the payment of the benefit penalty must be submitted to the Administrator within ~~140~~ 15 days after the date of the Administrator's determination unless an appeal is filed pursuant to NRS 616D.140. Any compensation to which the claimant may otherwise be entitled pursuant to chapters 616A to 616D, inclusive, or chapter 617 of NRS must not be reduced by the amount of any benefit penalty received pursuant to this subsection. To determine the amount of the benefit penalty in cases of multiple violations occurring within a certain period of time, the Administrator shall adopt regulations which take into consideration:

(a) The number of violations within a certain number of years for which a benefit penalty was imposed; and

(b) The number of claims handled by the insurer, organization for managed care, health care provider, third-party administrator, employer or professional employer organization in relation to the number of benefit penalties previously imposed within the period of time prescribed pursuant to paragraph (a).

5. In addition to any fine or benefit penalty imposed pursuant to this section, the Administrator may assess against an insurer who violates any regulation concerning the reporting of claims expenditures or premiums received that are used to calculate an assessment an administrative penalty of up to twice the amount of any underpaid assessment.

6. If:

(a) The Administrator determines that a person has violated any of the provisions of NRS 616D.200, 616D.220, 616D.240, 616D.300, 616D.310 or 616D.350 to 616D.440, inclusive; and

(b) The Fraud Control Unit for Industrial Insurance of the Office of the Attorney General established pursuant to NRS 228.420 notifies the Administrator that the Unit will not prosecute the person for that violation,

the Administrator shall impose an administrative fine of not more than \$15,000.

7. Two or more fines of \$1,000 or more imposed in 1 year for acts enumerated in subsection 1 must be considered by the Commissioner as evidence for the withdrawal of:

(a) A certificate to act as a self-insured employer.

(b) A certificate to act as an association of self-insured public or private employers.

(c) A certificate of registration as a third-party administrator.

8. The Commissioner may, without complying with the provisions of NRS 616B.327 or 616B.431, withdraw the certification of a self-insured employer, association of self-insured public or private employers or third-party administrator if, after a hearing, it is shown that the self-insured employer, association of self-insured public or private employers or third-party administrator violated any provision of subsection 1.

9. If the Administrator determines that a vocational rehabilitation counselor has violated the provisions of NRS 616C.543, the Administrator may impose an administrative fine on the vocational rehabilitation counselor of not more than \$250 for a first violation, \$500 for a second violation and \$1,000 for a third or subsequent violation.

10. The Administrator may make a claim against the bond required pursuant to NRS 683A.0857 for the payment of any administrative fine or benefit penalty imposed for a violation of the provisions of this section.

Sec. 3. NRS 616D.130 is hereby amended to read as follows:

616D.130 1. Upon receipt of a complaint for a violation of subsection 1, 2 or 3 of NRS 616D.120, or if the Administrator has reason to believe that such a violation has occurred, the Administrator shall ~~cause~~ :

(a) Promptly provide a copy of the complaint, or an explanation of the reason the Administrator believes that a violation has occurred to:

(1) The Commissioner; and

(2) The insurer, organization for managed care, health care provider, third-party administrator, employer or professional employer organization that allegedly committed the violation; and

(b) Cause to be conducted an investigation of the alleged violation. ~~{Except as otherwise provided in subsection 2, the}~~

2. The Administrator shall ~~{, within}~~ :

(a) Within 30 days after ~~{initiating the}~~ receipt of a complaint, initiate an investigation ~~{,}~~

~~{(a) Render}~~ :

(b) Within 60 days after the date on which the investigation is initiated, complete the investigation; and

(c) Within 30 days after the investigation is completed, render a determination ~~{,}~~ and deliver a copy of the determination to:

(1) The Commissioner; and

(2) The insurer, organization for managed care, health care provider, third-party administrator, employer or professional employer organization that was the subject of the investigation.

3. The determination rendered pursuant to subsection 2 must include the Administrator's findings of fact, ~~any settlement agreement on the matter~~ and, if the Administrator determines that a violation has occurred, one or more of the following:

~~{(1)}~~ (a) The amount of any fine required to be paid pursuant to NRS 616D.120.

~~{(2)}~~ (b) The amount of any benefit penalty required to be paid to a claimant pursuant to NRS 616D.120.

~~{(3)}~~ (c) A plan of corrective action to be taken by the insurer, organization for managed care, health care provider, third-party administrator or employer, including the manner and time within which the violation must be corrected.

~~{(4)}~~ (d) A requirement that notice of the violation be given to the appropriate agency that regulates the activities of the violator.

~~1 (b) Notify the Commissioner if the Administrator determines that a violation
2 was committed by a self-insured employer, association of self-insured public or
3 private employers or third-party administrator.~~

~~4 2. Upon receipt of a complaint for any violation of paragraph (a), (b), (c) or
5 (d) of subsection 1 of NRS 616D.120, or if the Administrator has reason to believe
6 that such a violation has occurred, the Administrator shall complete the
7 investigation required by subsection 1 within 60 days and, within 30 days after the
8 completion of the investigation, render a determination and notify the
9 Commissioner if the Administrator determines that a violation was committed by a
10 self-insured employer, association of self-insured public or private employers or
11 third-party administrator.~~

~~12 3. 4. If, based upon the Administrator's findings of fact, the Administrator
13 determines that a violation has not occurred, the Administrator shall issue a
14 determination to that effect.~~

Sec. 4. NRS 616D.140 is hereby amended to read as follows:

616D.140 1. If a person wishes to contest a decision of the Administrator to impose or refuse to impose a benefit penalty pursuant to NRS 616D.120, the person must file a notice of appeal with an appeals officer in accordance with this section. The notice of appeal must set forth the reasons the proposed benefit penalty should or should not be imposed.

2. A person who is aggrieved by:

(a) A written determination of the Administrator; or

(b) The failure of the Administrator to respond within 90 days to a written request mailed to the Administrator by the person who is aggrieved,
may appeal from the determination or failure to respond by filing a request for a hearing before an appeals officer. The request must be filed within 30 days after the date on which the notice of the Administrator's determination was mailed by the Administrator or within ~~100~~ 120 days after the date on which the unanswered written request was mailed to the Administrator, as applicable. The failure of the Administrator to respond to a written request for a determination within 90 days after receipt of the request shall be deemed by the appeals officer to be a denial of the request.

3. If a notice of appeal is not filed as required by this section, the imposition of or refusal to impose the benefit penalty shall be deemed a final order and is not subject to review by any court or agency.

4. A hearing held pursuant to this section must be conducted by the appeals officer as a hearing de novo. The appeals officer shall render a written decision on the appeal. Except as otherwise provided in this section, the provisions of NRS 616C.345 to 616C.385, inclusive, apply to an appeal filed pursuant to this section.

5. A benefit penalty imposed pursuant to NRS 616D.120 must be paid to the claimant on whose behalf it is imposed. If such a payment is not made within the period required by NRS 616D.120, the benefit penalty may be recovered in a civil action brought by the Administrator on behalf of the claimant in a court of competent jurisdiction in the county in which the claimant resides, in which the violation occurred or in which the person who is required to pay the benefit penalty has his or her principal place of business.

6. Any party aggrieved by a decision issued pursuant to this section by an appeals officer may appeal the decision directly to the district court.

7. If an appeals officer or district court renders a decision upholding the imposition of a benefit penalty, the insurer, organization for managed care, health care provider, third-party administrator, employer or professional employer organization upon which the benefit penalty is imposed must, not later than 15 days after the date on which the decision is rendered, pay to the claimant

1 the benefit penalty in an amount equal to twice the amount of the benefit penalty
2 initially imposed.

3 8. If a claimant enters into a settlement agreement with an insurer,
4 organization for managed care, health care provider, third-party administrator,
5 employer or professional employer organization concerning the amount of a
6 benefit penalty owed to the claimant, the insurer, organization for managed care,
7 health care provider, third-party administrator, employer or professional
8 employer organization shall pay directly to the claimant the amount agreed upon
9 in the settlement agreement not later than 15 days after the date on which the
10 settlement agreement is made.

11 9. If an insurer, organization for managed care, health care provider, third-
12 party administrator, employer or professional employer organization fails to pay
13 a benefit penalty to a claimant within the time limits imposed by this section or
14 subsection 4 of NRS 616D.120, the Commissioner may suspend, pending an
15 investigation or any other disciplinary action, any certificate issued by the
16 Commissioner to the insurer, organization for managed care, health care
17 provider, third-party administrator, employer or professional employer
18 organization, as applicable.

19 Sec. 5. The amendatory provisions of sections 1 to 4, inclusive, of this act
20 apply only with respect to claims which are filed on or after January 1, 2024.

21 Sec. 6. 1. This section becomes effective upon passage and approval.

22 2. Sections 1 to 4, inclusive, of this act become effective:

23 (a) Upon passage and approval for the purpose of adopting any
24 regulations and performing any other preparatory administrative tasks that
25 are necessary to carry out the provisions of this act; and

26 (b) On January 1, 2024, for all other purposes.