ADMINISTRATIVE PROCEDURES FOLLOWED BY THE NEVADA INDUSTRIAL COMMISSION AND ALTERNATIVE METHODS OF PROVIDING WORKMEN'S COMPENSATION COVERAGE

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LEGISLATIVE COMMISSION
OF THE
LEGISLATIVE COUNSEL BUREAU
STATE OF NEVADA

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Senate Concurrent Resolution No. 39—Committee on Commerce and Labor

FILE NUMBER 139

SENATE CONCURRENT RESOLUTION—Directing the legislative commission to study the administrative procedures followed by the Nevada industrial commission and alternative methods of providing workmen's compensation coverage.

WHEREAS, A diversity of proposals has been presented to the 59th session of the Nevada legislature concerning the administrative practices of the Nevada industrial commission and alternative methods of acquiring industrial and occupational disease coverage; and

WHEREAS, The subject matter is of such complexity and of such importance to employers and employees in this state as to warrant its study in depth; now, therefore, be it

Resolved by the Senate of the State of Nevada, the Assembly concurring, That the legislative commission is hereby directed to conduct a study of the administrative procedures of the Nevada industrial commission, including:

1. The manner in which claims for compensation are handled;
2. The time which elapses between the time a claim is submitted and compensation payments are made; and
3. The time which elapses following a hearing until a decision is rendered by the commission or the appeals officer,

and be it further

Resolved, That the commission study the feasibility and desirability of the following alternative methods of providing workmen's compensation coverage:

1. Through private insurance carriers;
2. Through self-insurance;
3. Through the Nevada industrial commission; or
4. Through any combination of the above methods,

and be it further

Resolved, That the legislative commission provide for contracts with independent, expert consultants to provide technical assistance to the commission; and be it further

Resolved, That the Nevada industrial commission furnish to the independent consultants, upon their request, any information which will assist them in accomplishing the objectives of this study; and be it further

Resolved, That the consultants be required to report their findings to the commission not later than July 1, 1978; and be it further

Resolved, That the commission submit a final report of the findings of the study and any recommended legislation to the 60th session of the Nevada legislature.

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REPORT OF THE LEGISLATIVE COMMISSION

To the Members of the 60th Session of the Nevada Legislature:

This report is submitted in compliance with Senate Concurrent Resolution No. 39 of the 59th session of the Nevada legislature which directed the legislative commission to study the procedures followed by the Nevada industrial commission and alternative methods of coverage.

The legislative commission appointed a subcommittee under the chairmanship of Assemblyman Joseph E. Dini, Jr., with Senator Keith Ashworth as vice chairman and Senator Joe Neal and Assemblyman James J. Banner, Robert R. Barengo, D. Roger Bremner, Lawrence E. Jacobsen, John E. Jeffery, Robert E. Price and Robert E. Robinson as members.

This report is transmitted to the members of the 60th session of the legislature for their consideration and for appropriate action.

Respectfully submitted,

Legislative Commission
Legislative Counsel Bureau
State of Nevada

Carson City, Nevada

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LEGISLATIVE COMMISSION

Assemblyman Donald R. Mello, Chairman
Assemblyman Paul W. May, Vice Chairman

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Assemblyman Eileen B. Brookman
Assemblyman Joseph E. Dini, Jr.
Assemblyman Lawrence E. Jacobsen
Assemblyman Robert E. Robinson

I. INTRODUCTION

The Legislative Commission's Subcommittee to study the Administrative Procedures followed by the Nevada Industrial Commission and Alternative Methods of Coverage was formed as a result of the diverse proposals before the 59th session of the Nevada legislature to permit private insurance carriers to write workmen's compensation insurance in this state and modify certain practices and procedures of the commission.

The subcommittee conducted hearings in Carson City, Reno and Las Vegas and a special delegation visited Salem, Oregon, to discuss the benefits and problems of a three-way system of coverage.

As a result of these hearings, the study done by representatives of the insurance companies, and a comparison of a three-way system with Nevada's exclusive state fund, several recommendations were developed which the subcommittee submits to the legislature as part of this report.

II. ADMINISTRATIVE PRACTICES

1. Complaints of Employees.

Employees were generally critical of the practices of the Nevada industrial commission regarding evaluation of their injury, delay in hearings, and approval of surgical procedures.

Employee representatives suggested an extension of coverage for heart conditions to all employees, an increase in benefits for those claimants, or their dependents, who suffered injury before 1973, lump sum awards, permanent partial disability coverage under the occupational disease provisions and freedom to change treating physicians without prior approval of the commission.

2. Complaints of Employers.

Employer complaints dealt with premium rates and the classification upon which these rates are predicated, the reserving practices of the commission, status of the claim of an injured employee and the subsequent injury fund.

Employers generally felt they would be better off under a three-way system of coverage featuring a state fund, self insurance and private insurance.

III. ALTERNATE METHODS OF COVERAGE

Representatives of the American Insurance Association, representing stock insurance companies, and the Alliance of American Insurers, representing mutual insurance companies, offered to

undertake a feasibility study, without charge, and serve as consultants for the provision of SCR 39 relating to alterantive methods of coverage.

The subcommittee accepted their proposal on the grounds that the representatives would be the best informed source, and such a study would provide the insurance companies with the necessary information to determine whether they could compete in the Nevada market. The report was submitted on May 10, 1978, and concluded that private insurance companies could compete in the state under certain conditions. (Appendix A.)

The subcommittee heard from representatives of the independent insurance agents of the state in support of permitting private carriers to write workmen's compensation insurance in Nevada. They argued that the increased premium costs would be offset by dividends and retrospective rate decreases to employers who maintained a low accident history, and that innovative selling techniques such as single policy packaging of all risks, and safety engineering to decrease accidents, would benefit the employers of this state. They also thought a monopolistic state fund was unresponsive to both employers and claimants and contrary to the free enterprise system.

IV. AGENCY PARTICIPATION

The Nevada industrial commission, the state industrial attorney and the state appeals officer were represented at the hearings and statements were made in their behalf.

The commission suggested that permitting private insurance companies to write workmen's compensation coverage would result in a general increase in rates to include the higher administrative costs of a profitmaking entity. These costs include commissions for agents, loss adjustment expenses, profits and taxes. Because of higher administrative expenses the minimum premium for coverage would increase and, according to the commission, place a heavier burden on the bulk of Nevada employers.

The commission further pointed out that it was developing and carrying out plans such as self-rating and retrospective rating which would provide more flexible coverage to the larger employers of the state.

The state industrial attorney and state appeals officer proposed that their offices each be budgeted independently from the commission to remove any stigma of commission control. In addition, further procedural changes were suggested to improve the hearing process.

V. COMPARISON OF OREGON SYSTEM

After receiving the report of the insurance associations recommending a competitive system, the commission furnished the subcommittee with data from the neighboring states of Oregon and Arizona which have comparable economies and had changed to a three-way system in recent years.

Oregon, which changed from an exclusive state fund in 1965, is experiencing some of the highest rates in the nation while paying benefits which appear to be only average in comparison to other states. Although competing with private carriers, the state insurance fund still writes most of the workmen's compensation insurance in Oregon.

Because of these facts, Oregon's system was examined by a delegation of the subcommittee and discussions were held with members of the state insurance fund (SAIF), the chairman of the workmen's compensation department, representatives of the insurance industry, employers and the legislature.

The discussions were helpful and provided insight into some of the hazards of a hastily conceived plan of reorganization of the delivery system for workmen's compensation as well as the benefits of a competitive spur provided by the three-way system.

VI. OPPOSITION TO FEDERAL LEGISLATION

The members of the subcommittee believe that proposed legislation before Congress entitled "National Workers' Compensation Act of 1978" (S3060), is unnecessary and does not provide a suitable alternative to administration of workmen's compensation by the states.

Therefore, the subcommittee records its oppostion to the measure.

VII. RECOMMENDATIONS

The subcommittee recognizes the need to provide the employers of this state with alternative methods of coverage but it is not of the opinion that the entry of private carriers into the field of workmen's compensation insurance at this time is in the best interest of all concerned.

The subcommittee was concerned about the true interest of private carriers in entering the field. It also questioned whether the market was sufficiently large to maintain itself in the event of an economic crisis, such as that which caused the exit of many medical malpractice insurers in recent years.

The state has experienced rapid economic growth and there is indication that this growth will continue. With such growth

a more lucrative insurance market exists as a result of more jobs and larger payrolls.

With this growth there is a corresponding need to restucture the industrial commission to accommodate the increased volume of claims and provide for the transition from an exclusive state fund to a system which permits private carriers to write workmen's compensation insurance should the need arise.

The specific recommendations and the proposed legislation respond to this need by:

1. Permitting certain employers to become self insured under the supervision of the commissioner of insurance.

2. Revising the hearing procedure.

3. Requiring a review of any proposed rate change by the insurance commissioner.

4. Ordering a compliance audit by the legislative auditor during the next interim between legislative sessions.

In addition to more flexible forms of coverage such as retrospective rating and self rating plans instituted by the commission, the following recommendations will benefit employers by:

1. Allowing a reduction from otherwise applicable rates of 5 percent for the employer who institutes an approved safety program.

2. Extending coverage under the subsequent injury fund to an employer if the employee misleads him as to a prior injury by denying the injury or failing to report it on a written application.

3. Requiring the commission to accept or deny a claim within 90 days after the first report of injury.

4. Providing for an area in which claim files may be inspected and copied.

5. Requiring a medical finding of physical compatibility with a proposed rehabilitation program.

6. Requiring the commission to employ account representatives to call on employers and review rates, claims and reserves.

Employee benefits and coverage are enlarged by:

1. Extending coverage for heart disease to all employees.

2. Providing compensation and benefits for a permanent partial disability as a result of an occupational disease.

3. Establishing a retroactive benefit fund to equalize the benefits for accidents occuring before July 1, 1973.

4. Permitting an employee to select a new treating physician one time without commission approval.

5. Allowing a lump sum payment of up to 25 percent for any disability in excess of 12 percent.

COMPETITION AND THE NEVADA WORKERS' COMPENSATION SYSTEM

A Report To The Legislative Commission's Subcommittee for the Study of the Procedures Followed by the Nevada Industrial Commission and Alternate Methods of Coverage (S.C.R. 39)

Submitted By:

William P. Molmen
American Insurance Association

Thomas F. Conneely
Alliance of American Insurers

May 10, 1978

I. PURPOSE:

In the 1977 session, the Nevada Legislature passed S.C.R. 39, authorizing a study of the administration of the Nevada Industrial Commission (NIC) and the feasibility and desirability of enacting legislation to provide for other sources of workers' compensation coverage for Nevada employers in the form of self-insurance or permitting private insurers to compete with a state fund. The resolution provided that the study would be assisted by an independent consultant with the presumed intent of permitting an impartial evaluation of the issues. Unfortunately, an inadequate sum was appropriated for such independent, expert assistance.

Because the insurance industry felt such a study was essential to enable it and the legislature to gain an accurate appraisal of the condition of the Nevada insurance system, an ad hoc committee of insurance companies and trade associations was formed for the sole purpose of assisting the subcommittee of the Legislative Commission in developing information to determine whether the Nevada workers' compensation market can sustain a healthy level of competition and to evaluate the effects of competition on both workers and employers. Much of the insurance industry study has focused on the operation of the NIC, particularly in the area of rate adequacy, the classification system and special rating plans. Other areas such as claims handling, safety and rehabilitation were considered. Information was also gathered on the Nevada market size, depth and general demographics.

The ad hoc committee is in no sense of the word an "independent" consultant. It is no secret that as an industry we firmly believe in and are dedicated to the principles of competition and free enterprise. Given that predilection we have attempted to conduct a fair study of the Nevada insurance system and will attempt in this report to focus on the differences between the current system and what it might be under a competitive system.

Because of the limited time and resources of the ad hoc committee's study, it is not meant to be conclusive or exhaustive. Some of the conclusions are based upon subjective, albeit trained and knowledgeable, observation. In some areas the subcommittee may wish to go deeper and in others the NIC may have a differing viewpoint. We, as an industry, offer our continuing cooperation.

The ad hoc committee wishes to extend its special thanks to John Reiser, Chairman of the NIC, and his staff for their excellent cooperation. They fulfilled our requests for pertinent information with promptness and courtesy in spite of the difficult and time consuming requirements of some of the tasks.

II. NEVADA INDUSTRIAL COMMISSION:

Although the ad hoc committee did not consider an analysis of the NIC's operation to be a goal of its study in and of itself, an evaluation of many NIC operations was necessary to the completion of our goal. Because the NIC did devote a substantial amount of time to our requests, the ad hoc committee felt some comment would be useful both to the legislature and the NIC.

A caveat must be inserted at this point which is germaine to the entire discussion of comparisons of the NIC or any individual state fund with the private sector. That caveat is that there is no such thing as the private insurance market. Private insurance is sold in other states by a multitude of companies. Each has a differing attitude toward its commitment to any given state, and each has a different philosophy as to what mix of services will best serve the insured employers and the injured employees while at the same time maintaining a healthy fiscal solvency and hopefully a dividend for its shareholders or public owners. In the area of rate making there are uniform ground rules which companies must follow, so a philosophical comparison is possible, though the net results for any given company are different from any other. In other areas, it is simply misleading to say "private insurance companies," as an entity, engage in any given practice. With that caveat an attempt will be made to comparatively analyze the operations of the NIC.

A. Rates, Reserves, and Classifications:

Of most importance to the committee is the adequacy of the rates in use in Nevada, the loss reserves set up by the NIC, and the system of classifications used by the NIC.

The initial step, after receipt of financial data from the NIC, was to request actuaries from the national rating organization, the National Council on Compensation Insurance (NCCI), to confer with the consulting actuaries from the NIC.

The general philosophy and methods of rate making were discussed and compared. A casualty actuary from a private insurance company subsequently met with NIC representatives to seek local impressions of rating, reserving, classification procedures, and individual risk rating plans.

With regard to rates and reserves, the procedures used appear sound, in theory at least, for an organization like the NIC. Unlike a private insurer, the NIC has no need to generate a profit to encourage investment and capital formation or to maintain an adequate surplus.

The assumptions and procedures used by the NIC, however, are not systematically reviewed or inspected by any agency of the public. In most other states the insurance commissioner must examine and approve rating and reserving procedures, classifications systems, and individual risk rating systems for workers' compensation.

The NIC classifications system, compared to that used by the NCCI in other states, lacks sophistication and has fewer payroll classifications. The basic structure is adequate, however, in light of the limited credibility of Nevada data due to the comparatively small amount of premium and loss experience per classification in the state. The classification system used should produce at least a rough equity based upon the varying risk of loss of each classification. The classification structure could be refined, however, without changing Nevada's overall rate level, by using NCCI national data.

The experience rating plan of the NIC also lacks sophistication compared to plans used in other states and other lines of insurance. Instead of balancing the premium reductions given some employers for good loss experience by the increases to employers for bad experience, the decreases average about 15 points more than the increases. Thus the entire rate is increased to all employers to compensate for the imbalance. Small risks which are not eligible for

experience rating pay this increased rate with no possibility of a premium credit for good loss experience. For eligible risks, the formula used leads to distortions by size and by classification. Medium size risks ($5,000 to $25,000 annual premium) and high hazard risks tend to get more credit, on the average, than large (over $75,000 premiums) or low hazard risks.

The NIC has indicated it is making changes which will reduce the credit off-balance to about 10 percent, an improvement, but still producing potential inequity between various sizes and classes of employers.

As previously mentioned, the ad hoc industry committee also considered the safety, claims, and vocational rehabilitation service provided by the NIC. The committee compared the NIC practices in a general way with those of private industry.

B. Safety:

In the area of safety it is difficult to segregate the pure insurance oriented loss control operation of the NIC from other functions such as the federally mandated OSHA program or the functions of the State Bureau of Mines. The Nevada OSHA program and the NIC loss prevention services use the same offices and are under the same overall management. Loss control efforts by insurers are and should be preventative in nature and geared to eliminating safety and health hazards through consultation and assistance rather than penalties and enforcement methods. Employers under the jurisdiction of the State Bureau of Mines are not provided any separate insurance oriented services. The NIC bases its criteria for furnishing loss control services primarily upon past frequency of losses and loss severity. In other words, the NIC safety program is generally response oriented. Private insurers find that to reach optimum effectiveness, they must also evaluate potential exposures, establish and conduct safety and training programs, consult with top management on the reasons for losses, and explain that these services are available.

The NIC has attempted to separate the loss control functions from the OSHA enforcement function. It has a separate loss control staff of 10 with four new employees joining the NIC this year. At the same time the NIC coordinates the function of Nevada OSHA enforcement personnel and OSHA consultants. According to federal rules, OSHA consultants must turn over the names of employers who do not correct serious violations to OSHA enforcement personnel. This intermingling of enforcement and consultation most likely dampens the enthusiasm of an employer to request consultative aid and could undermine the efforts of NIC loss control personnel to gain the employers' confidence. All the elements of the private insurance sector have worked to discourage any connection between insurance loss control and OSHA enforcement. The state of Nevada has created a situation which seriously intermingles the two functions.

The NIC loss control function is an expanding one and should be encouraged to grow further to fulfill a role independent of OSHA operations. In 1977 the NIC had ten loss control professionals servicing 70 million dollars of premium, or one for each 7 million dollars of premium. In 1978 the NIC has 14 professionals servicing approximately 80 million dollars in premium. An improvement to one safety professional for each 5.7 million dollars premium.

C. Claims Services:

Because of the dual role assumed by the NIC in claims management, the present NIC system is able to handle the work load. In 1977 the NIC had 14 teams, each theoretically consisting of a claims examiner, a rehabilitation counselor a registered nurse and a safety representative. These teams serviced 46,868 claims; on the average 3263 claims per team. While the workload per team is high, they can handle the load because in Nevada, the NIC is the insurer, the claims adjuster and the initial adjudicator of the fairness of the claims handling. Although the inherent equity of such a system is suspect, it is undoubtedly efficient.

D. Vocational Rehabilitation:

Vocational rehabilitation in Nevada primarily emphasizes reemployment of a disabled worker rather than developing new skills through retraining. This approach is cost efficient and has a positive effect on the worker. This type of approach depends for its success upon a continuing and healthy job market and the leverage the NIC has as the sole insurer of all employers in Nevada. Reemployment absent retraining limits subsequent job flexibility in the event the worker's new job is eliminated.

E. Litigation:

Nevada does not recognize as compensable injuries which cause a high level of litigation in other jurisdictions. Injuries such as heart disease and cumulative injuries to the back and nervous system create difficulty when attempting to assign causation. Resolution of these issues demands a great deal of time and resources which in Nevada can be directed to the workers who have compensable injuries.

Thus, the combination of fewer justiciable issues and the tight control the NIC has on claim management arising from its dual role in the initial appeals determination probably has a positive effect on reducing litigation and claim adjustment expense.

Unlike many other states, Nevada has no provision regulating lawyer's fees in workers' compensation cases. Claimant workers and lawyers strike their own bargain resulting in lawyers fees reported at 33 to 50 percent of the award. Providing a worker representation by a State Industrial Attorney should improve this situation somewhat.

III. IMPACT OF COMPETITION:

An effective competitive system would have significant impact upon Nevada employers, employees and, of course, the NIC. This section will evaluate that impact on the various parties to and functions of the Nevada workers' compensation system.

A. Employer Services:

Although most of the specific areas identified by this report as being affected by competition will, to some extent, have an impact on employers, some will have a more substantial effect than others.

Self-regulation: One obvious advantage of competition is choice. "Choice" enables employers to express their dissatisfaction or pleasure with an existing situation in a direct and most effective manner, by choosing another vendor of services or retaining one which is satisfactory. This is a self-regulating mechanism which compels insurers which wish to retain or attract business to offer better or unique services. Some private insurance carriers insure employers engaged in specialized fields. These insurers develop special expertise and programs to attract and serve these employers by carefully tailored programs, fitting individual operations.

No insurer can be all things to all insureds. A danger in the present Nevada system is that it forces the illusion that such can be the case.

Coordination of coverage: Workers' compensation coverage is only one form of insurance necessary to protect a business. Today, subject employers are forced to split their insurance needs between the NIC and private insurers. If private insurers could compete with the NIC, many employers would be able to secure "package" coverage and thereby benefit from:

- negotiating with only one source for insurance.

- coordination of loss control and prevention services as well as "pooling" loss experience to qualify for experience modification of premiums.

- Pooling premiums from other states so multi-state employers could be eligible for higher discounts on their total workers' compensation premium.

Professional, local representation: Employers in a competitive system would have at their service sales persons representing either one or many companies. The representatives have an economic incentive to compete on a service basis and thereby handle the employer's entire insurance market. They provide an employer with a local, accessible insurance representative who must be responsive to the insured's needs if he wishes to keep the employers good will and business. A 1969 Department of Labor study flatly declared, "the agents and sales representatives of private insurers provide a communications link to the insurer and an independent source of information that no exclusive fund and only a few competitive funds with salesmen can match."

Classification responsiveness: One common employer complaint has been that the NIC is unresponsive to employer's concerns that his business has been misclassified for workers' compensation premium purposes. As competition for business increases, insurers will identify as more desirable risks employers whose loss experience is significantly better than other employers in a given payroll classification. These employers may have special characteristics differentiating their operations from that of the others. As was mentioned in Section II, Nevada's classifications system is adequate to current needs, but lacks the sophistication of systems used in other competitive states. Competition will refine the current system and encourage formation of new payroll classifications.

Classifications review: A direct benefit to employers would be the formation of a more impartial system for determining classifications disputes. In other states, serviced by the National Council on Compensation Insurance (NCCI), a local classification and rating committee is in place and operating or subject to operation upon call by the NCCI. The Committees are made up of representatives of stock and mutual insurers, and any state fund. These committees provide for, among other things, classifications review. This is a system far superior to Nevada's current practice of having the appropriateness of an individual payroll classification both determined by, and in case of dispute, reviewed by the NIC.

Employers generally will benefit from the operation of the more sophisticated NCCI experience rating plan and the expanded data collection and interpretation functions of the NCCI.

B. Safety Services:

Private insurance companies place considerable emphasis on safety services because these services are one of the main competitive tools available to them. Many companies actually base their marketing approach on their ability to provide superlative safety services.

Specialized programs: Private companies individually set their own priorities and criteria for providing safety services to various types of employers. Depending upon the size and loss potential of an employer, insurers include an on-site safety evaluation as part of the underwriting analysis of a potential insured's operation. This permits insurers to design a safety program for the individual risk, make appropriate recommendations for improvement and initiate training programs in cooperation with the insured.

Many companies prefer to specialize in insuring specific types of employers. Thus, an employer may benefit from an effective program developed specifically for one industry

which would have been prohibitively expensive for the employer to develop in its own.

National resources: The financial incentive for effective loss prevention has inspired property and casualty insurance companies in the United States to employ thousands of full-time safety professionals. These are specialists in the fields of engineering, safety, and industrial hygiene--personnel qualified to isolate work hazards and to devise methods to eliminate them.

Nevada employers would also benefit from the multi-state resources of private insurers. Many insurers have highly trained specialists in industrial hygiene, occupational health and medicine, and construction on tap and available on a regional basis. Fully equipped in-house laboratories are also available to perform highly sophisticated tests of work place conditions, chemicals and production materials. These resources are simply not available to insurance mechanisms limited to a small premium volume in a single state.

Coordinated, multi-line services: As a further advantage to having a single company furnish workers' compensation coverage as well as other lines of insurance, the carrier's loss control engineer can make a broad survey that covers the various lines, not just the hazards commonly associated with employee injuries. For example, the engineer may detect a potential fire hazard that could cause a property loss and, simultaneously, cause an injury to the worker. Similarly, an unsafe practice on a construction site might result in injury, not only to the employees of the contractor guilty of the practice, but also to the employees of other contractors engaged at the work site. Faulty brakes on a truck might cause property damage and injury to others as well as to the driver of the truck.

Private insurance companies, through coordination, provide the best service for the least cost. And, since the private carrier can key its service schedule to the various lines of insurance, not just to compensation alone, the smaller employer can receive more frequent surveys.

A trusted partnership: With specific reference to Nevada, private companies recognize the need to act as a partner in encouraging employer safety. With private insurance, there would be no troublesome cross-tie between insurer loss prevention services and federal OSHA compliance checks. Employers would be more willing to call a private insurer for assistance in solving a potential safety problem with no fears, whether justified or not, that the insurer is carrying a "bigger stick."

C. Claims Management:

Claims management means a lot more than paying benefits to an eligible claimant in a reasonable period of time, though that is an important part of the whole. Claims management, along with safety, represents an important part of the expense dollar. Rather than attempting to keep the expense dollars artificially low, most carriers realize that well spent expense dollars will keep loss dollars lower.

Equity in the system: Presently the NIC determines the amount of benefits payable to an injured worker and acts as the first level of appeal for workers and employers who question the benefits awarded. The worker and the employer are therefore deprived of the greater objectivity that results when the adjudicatory agency has no ties to the entities that are responsible for paying the benefits. This is not to say that the NIC is ignoring equity in its present determination of these issues. It is to say that the appearance of objectivity is absent, and the potential for inequity exists. The legislative subcommittee has heard numerous complaints concerning perceived inequities in the system. These complaints reflect the frustration the parties to the system feel when the NIC serves as the judge, jury and defendant in any proceeding. Introduction of private insurers, with the resulting separation of the insurance function from the administrative and adjudicatory functions of the NIC, will vastly improve the equity of the claims management system.

Medical services and rehabilitation: Most insurers view expenditure of expense dollars for timely and quality medical care as being highly cost effective. The competitive environment of private insurance also dictates that those who offer superior services receive the greater returns on their investment. These pressures are not present in the case of an exclusive state fund in that loss dollars are simply passed on in the form of higher premiums. There is no standard against which performance by an exclusive state fund may be measured. Competition will create a healthy measure of cost effectiveness.

So too, with regard to rehabilitation, private carriers have long ago developed a dynamic philosophy with regard to vocational rehabilitation. Private carriers stress rehiring when it is in the best interest of the worker. But often, rehiring of a disabled worker without retaining only delays his inevitable removal from the work force. Retraining must be an important part of any vocational rehabilitation system.

Many companies maintain highly sophisticated rehabilitation departments and facilities; all avail themselves of the many private and public facilities throughout the country. Teaching amputees how to use artificial limbs, training the blind to resume their place in society, imparting new skills to the physically handicapped - these are considered essential services - services in which many insurers have been pioneers.

NIC representatives have stated that the NIC is reluctant to utilize out of state facilities for medical or rehabilitation care of injured workers. Private insurers, with their working knowledge of private care facilities in the neighboring states, will have more flexibility to adequately treat injured workers, regardless of local care facilities.

Promptness of payments: Any comparison of promptness of first payments for wage loss between states is difficult. In general, within a given state, private insurers compare favorably with state funds in getting lost time benefits to injured workers. In Oregon, unverified figures from the

Workmen's Compensation Board showed that for 1975, the latest available, first payments were made within 14 days of the first notice to the employer for all private carriers on the average of 79.98% of the time and for the State Accident Insurance Fund, 77.93% of the time. This is a case of private carriers giving SAIF a mark at which to aim.

In California, the scale is based upon the number of days from first disability (first day of time lost) to first payment. All cases are included. The average time is 16.4 days for all carriers with 28 private carriers scoring better than the state fund. No statistics were available to us to make any kind of comparison with the NIC experience in this area.

Based on criteria such as fair treatment of claimants and claims procedures, quality of medical care and rehabilitation, and timeliness of benefits payments, competition would better serve the parties to the Nevada workers' compensation system.

D. Cost:

Relative costs of different state systems are exceedingly difficult to compare. As difficult, is a before-the-fact determination of the cost effects of changing from an exclusive state fund system to one permitting private insurers.

Some costs will impact on the whole system, the NIC and private insurers alike. Others will affect only private insurers. First the additional costs will be ennumerated, and then the benefits to the system will be discussed.

Total system costs: Private insurers recommend that any state where they participate include an agency independent from the state fund to administer the system and to hear appeals by workers from actions of the state fund or private insurers. This recommendation has been adopted by every significant study of the workers' compensation system.

Although some of these costs are currently part of the budget of the NIC, complete separation of these functions is bound to cost an additional amount. By the same token, the federally sponsored OSHA program should be removed from the state fund to avoid employer distress and encourage NIC loss prevention activities.

The NIC is currently able to maintain a relatively low cost of claims administration partly because of its dual role in claims determination and appellate review. This advantage would be eliminated under a system utilizing an impartial, third party as an adjudicator.

Additional costs affecting both the state fund and private insurers could arise if the NIC elects to compete with private carriers on the level of services rendered. Improved loss prevention, claims management, and medical and rehabilitation services could, at least in the short run, force up expenses for the NIC. Private insurers would maintain their high level of services in Nevada. In fact, several insurers already have full services offices in Nevada which could easily and quickly be augmented to furnish additional workers' compensation services.

An additional cost to the system would be support of the operations of the NCCI in Nevada. It is essential for statistical gathering that all insurers in Nevada belong to and contribute statistics to the NCCI. This is critical in a state like Nevada with a low premium volume because such data is necessary to maximize the reliability of the data for rate making purposes. As mentioned earlier, in addition to recommending rates, the NCCI establishes classification and rating committees to review classification determinations, conduct payroll and classification audits, and help ensure that statistics are reported accurately and promptly.

The NIC currently retains actuarial assistance, so any new costs would be reduced by existing costs.

Private insurer costs: Some costs in addition to those already part of the Nevada system would be borne by entering private insurers. One of these costs would be in commissions and other acquisition costs. This cost item pays for the services performed by agents, brokers and company representatives outlined in the section on claims management.

To the extent the NIC does not increase its level of services in competition with private insurers these additional costs would, in the short run, at least, cause private insurers to experience additional costs.

Private insurers must include as part of the premium a provision for profit. As in any business, a moderate profit level is essential to attract capital or pay dividends to participating policyholders or stockholders. Profit is also essential to surplus growth. A healthy surplus level is required of insurers in order to provide a cushion against insolvency and insure payment of claims. Surplus growth is especially important in a growing state like Nevada, because ideally, for every additional premium dollar written, an additional 50¢ of surplus must be added. A factor of 2.5% of premium is included for profit and contingencies.

Rating deviations: The costs of all companies are not equal. Ideally, the Nevada rating law under competition should include a provision permitting a company which can demonstrate a lower expense factor to deviate on a uniform basis from the rate approved for workers' compensation by the insurance commissioner. This would permit the NIC or other carriers to charge a lower rate based on an absence of acquisition costs and commissions or a lower expense factor. Thus, employers could choose between services or cost under the proposed Nevada system.

Benefits to the system: A competitive system would have both direct and indirect beneficial effects on Nevada and its workers' compensation system. Nevada's economy would be further stimulated by new jobs and offices resulting from

private insurer participation in the system. Workers' compensation is a highly competitive field and Nevada would be an attractive area in which to expand for all types of businesses, not just insurers. In fact, the rate of growth in Nevada's premium has been 306.9% for the five year period from 1970 to 1975. Continuing this trend to 1982, industry premiums could exceed $245 million.

This is a high rate of growth which could strain the carrying capacity of the NIC. Services would need to grow apace. It is easily conceivable that the entrance of private insurers would be a necessity to allow Nevada employers full access to an appropriate market.

Private insurers would expect to pay, along with the NIC, a premium tax which, in addition to paying the costs of an independent administrative and appellate structure, would benefit the general fund.

The increased services offered by private insurers could bring down the amount of losses ultimately paid by the system. The low expense ratio cited by the NIC is simply another, more attractive, way of saying a high loss ratio. It is in everyone's best interest to pay more for services if it ultimately means fewer injuries with less resulting disability. This is particularly true in that workers will receive the same benefits regardless of the identity of the insurer. The worker will benefit from an equitably administered delivery system, prompt payments, and quality medical, rehabilitative and safety service.

IV. CONCLUSIONS:

Based on the findings of our study of the Nevada workers' compensation system, we find that Nevada would substantially benefit from a system which permitted private insurers to compete on an equal basis with a state fund in providing workers' compensation coverage to Nevada employees. We urge the subcommittee to support legislation to permit such competition and allow Nevada to join forty-four other states in the benefits which accrue from competition.

We further recommend that any such enabling legislation include the following provisions:

A. That a Nevada state insurance fund for workers' compensation insurance have no legislatively created competitive advantages over private insurance companies offering similar insurance;

B. That all insurance companies, and the Nevada state insurance fund be similarly regulated by the Nevada Insurance Commissioner's Office;

C. That the Nevada state insurance fund and any private insurers writing workers' compensation insurance in Nevada be members of a workers' compensation rating bureau and subject to all the rules, regulations, and classifications; and rates with permissible, uniform deviations;

D. That an independent state agency or agencies be established to administer the state workers' compensation system and handle appeals from determinations of the state fund and private insurers;

E. That the federal OSHA program and the state Bureau of Mines operation be separated from the state fund operation.

V. ACKNOWLEDGEMENTS:

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SUMMARY--Permits self-insurance of workmen's compensation risks; modifies administrative procedures. (BDR 53-117)
Fiscal Note: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: Yes.

AN ACT relating to industrial insurance; permitting self-insurance against liability for industrial accidents and occupational diseases; providing for administrative hearings and appeals; establishing a retroactive benefit account; providing for a review of proposed rate changes; and providing other matters properly relating thereto.

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

Section 1. Chapter 616 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 20, inclusive, of this act.

Sec. 2. "Self-insured employer" means any employer who possesses a certification from the commissioner of insurance that he has the financial capability to assume the responsibility for the payment of compensation under this chapter or chapter 617 of NRS.

Sec. 3. 1. An employer who is certified as a self-insured employer directly assumes the responsibility for providing compensation due his employees and their beneficiaries under chapter 616 of NRS.

2. A self-insured employer is not required to pay the contributions required of other employers by NRS 616.400.

3. The claims of employees and their beneficiaries resulting from injuries while in the employment of self-insured employers

must be handled in the manner provided by this chapter, and the self-insured employer is subject to the regulations of the commission with respect thereto.

4. The security deposited pursuant to section 4 of this act does not relieve that employer from responsibility for the administration of claims and payment of compensation under this chapter.

Sec. 4. 1. An employer may qualify as a self-insured employer by establishing to the satisfaction of the commissioner of insurance that the employer has sufficient financial resources to make certain the prompt payment of all compensation under this chapter or chapter 617 of NRS.

2. A self-insured employer must establish proof of financial ability by depositing in a depository designated by the commissioner of insurance, money, corporate or governmental securities or a surety bond written by any company admitted to transact surety business in this state. The money, securities or bond must be in an amount reasonably sufficient to insure payment of compensation but not less than the employer's normal expected annual liability on claims and in no event less than $500,000. In arriving at the amount of money, securities or bond required under this subsection, the commissioner of insurance may take into consideration the financial ability of the employer to pay compensation and his probable continuity of operation. The money, securities or bonds so deposited must be held by the commissioner of insurance to secure the payment of compensation for injuries or occupational diseases to employees of the

self-insured employer. The amount of security may be increased or decreased from time to time by the commissioner of insurance.

3. The commissioner of insurance may require the self-insured employer to submit evidence of excess insurance or reinsurance, written by an insurer authorized to do business in this state, to provide protection against a catastrophic loss.

Sec. 5. 1. In case of default on the part of a self-insured employer in payment of compensation under this chapter or chapter 617 of NRS, the commissioner of insurance may, on notice to the employer and any insurer or guarantor, use money or interest on securities, sell securities or institute legal proceedings on surety bonds deposited or filed with the commissioner to the extent necessary to make such payments. Prior to any default on the part of the employer, the employer is entitled to all interest and dividends on bonds or securities on deposit and to exercise all voting rights, stock options and other similar incidents of ownership thereof.

2. A company providing a surety bond under section 4 of this act may terminate liability on its surety bond by giving the commissioner of insurance and the employer 30 days' written notice. Such termination does not limit liability which was incurred under the surety bond prior to the termination. If the employer fails to requalify as a self-insured employer on or before the termination date, the employer's certification is withdrawn when the termination becomes effective.

Sec. 6. 1. Upon determining that an employer is qualified

as a self-insured employer, the commissioner of insurance shall issue a certification to that effect to the employer and the commission.

2. Certifications issued under this section remain in effect until withdrawn by the commissioner of insurance or canceled by the employer with the approval of the commissioner. Coverage for employers qualifying under section 3 of this act becomes effective on the date of certification or the date specified in the certificate if so specified.

Sec. 7. 1. The commissioner of insurance may withdraw the certification of a self-insured employer if:

(a) The deposit required pursuant to section 4 of this act is not sufficient and the employer fails to increase the deposit when ordered to do so by the commissioner of insurance;

(b) The employer intentionally or repeatedly induces claimants for compensation to fail to report accidental injuries or occupational diseases, persuades claimants to accept less than the compensation due or makes it necessary for claimants to resort to proceedings against the employer to secure compensation due; or

(c) The employer habitually fails to comply with regulations of the commission or commissioner of insurance regarding reports or other requirements necessary to carry out the purposes of this chapter.

2. Any employer whose certification as a self-insured employer is withdrawn must, on the effective date of the withdrawal, qualify as an employer pursuant to NRS 616.305.

Sec. 8. 1. Prior to the withdrawal of the certification of any self-insured employer, the commissioner of insurance shall give written notice to that employer by certified mail that his certification will be withdrawn 10 days after receipt of the notice unless, within that time, the employer corrects the conduct set forth in the notice as the reason for the withdrawal or submits a written request for a hearing to the commissioner of insurance.

2. If the employer requests a hearing:

(a) The commissioner of insurance shall set a date for a hearing within 20 days after receiving the appeal request, and shall give the employer at least 5 days' notice of the time and place of the hearing.

(b) A record of the hearing must be kept but it need not be transcribed unless requested by the employer with the cost of transcription to be charged to the employer.

(c) Within 5 days after the hearing, the commissioner of insurance shall either affirm or disaffirm the withdrawal and give the employer written notice thereof by certified mail. If withdrawal of certification is affirmed, the withdrawal becomes effective 5 days after the employer receives notice of the affirmance unless within that period of time the employer corrects the conduct which was ground for the withdrawal or petitions for judicial review of the affirmance.

3. If the withdrawal of certification is affirmed following judicial review, the withdrawal becomes effective 5 days after entry of the final decree of affirmance unless within that

period the employer corrects the conduct which was ground for withdrawal.

Sec. 9. 1. If for any reason the status of an employer as a self-insured employer is terminated, the security deposited under section 4 of this act must remain on deposit for a period of at least 62 months in such amount as necessary to secure the outstanding and contingent liability arising from accidental injuries or occupational diseases secured by such security, or to assure the payment of claims for aggravation and payment of claims under NRS 616.545 based on such accidental injuries or occupational diseases.

2. At the expiration of the 62-month period, or such other period as the commission and the commissioner of insurance deem proper, the commissioner of insurance may accept in lieu of any security so deposited a policy of paid-up insurance in a form approved by the commissioner of insurance.

Sec. 10. All self-insured employers must report to the commission monthly, or at such other intervals as the commission may require, all accidental injuries, occupational diseases, claim dispositions and payments made under the provisions of this chapter, chapter 617 of NRS or regulations adopted pursuant thereto.

Sec. 11. The commission may assess a self-insured employer for his pro rata share of the commission's expenses incurred in the administration of chapters 512 and 618 of NRS, NRS 616.2533 and 616.542.

Sec. 12. 1. Any person subject to the jurisdiction of the

commission pursuant to this chapter or chapter 617 of NRS may request a hearing before the commission by filing a notice of request for hearing within 30 days after the event of which the person is complaining.

2. Within 3 days after the receipt of the notice of request for hearing the commission must cause the matter to be set for hearing before a hearing officer and give notice as provided for in subsection 4.

3. The commission on its own motion may set any matter for hearing before a hearing officer upon giving notice as provided for in subsection 4.

4. Written notice of any hearing must be served upon or mailed to the employee and his designated representative, if any, and the employer and his designated representative, if any, at least 5 days before the matter is set to be heard.

5. The limitation of time for requesting a hearing may be waived by the commission upon a showing of good cause.

Sec. 13. 1. A hearing must be informal and a record need not be made. The rules of evidence do not apply but the hearing officer may exclude or limit testimony which is immaterial or irrelevant to the proceedings.

2. Upon conclusion of the hearing the hearing officer must make a written finding of facts and render a decision within 7 days.

3. A copy of the findings of fact and the decision must be served upon or mailed to each party and his designated representative, if any, and filed with the commission.

4. A decision of the hearing officer is binding on all parties and becomes effective when the provisions of subsection 3 are complied with.

Sec. 14. A hearing requested by an employer or employee may not be canceled, continued or adjourned except by mutual agreement. A hearing scheduled by the commission may be canceled, continued or adjourned unless the employee or employer objects.

Sec. 15. 1. The commission may review the decision of the hearing officer upon motion of a commissioner.

2. A decision is not subject to review after an appeal has been filed unless more than 15 days remain before the matter is set for its first hearing before the appeals officer.

3. The commission may consider any relevant fact in its review and may request written statements from any person. Any party may submit any written statement in support of his position.

4. The commission may affirm the decision of the hearing officer without comment or reverse or modify the decision upon making and filing a written statement of its reasons for modifying or reversing the decision.

5. Notice of the review and any finding or decision must be served upon or mailed to each party to the original hearing and his designated representative, if any.

6. If there is an appeal pending and the commission fails to act within 10 days before a scheduled hearing on the appeal, the decision of the hearing officer shall be deemed affirmed

by the commission.

Sec. 16. 1. Any aggrieved party may appeal a decision of the hearing officer or a review of the commission which modifies or reverses a decision of the hearing officer by filing a notice of appeal with the appeals officer within 90 days after the decision or review is filed.

2. Within 3 days after a notice of appeal is filed the appeals officer must set the matter for hearing within 30 days.

3. Each party to the original hearing and his designated representative, if any, must be given at least 7 days' notice of the hearing.

Sec. 17. 1. The hearing before the appeals officer must be recorded and the rules of evidence apply.

2. Any relevant matter raised at the hearing before the appeals officer must be heard on its merits and new evidence may be introduced on any subject before the appeals officer.

3. The record must be transcribed and a transcript filed within 30 days after the hearing.

4. The appeals officer shall render a decision within 15 days after the transcript is filed.

5. The appeals officer may affirm, reverse or modify the decision of the hearing officer or of the commission and issue any necessary and proper order to effectuate his decision.

6. An order of the appeals officer is enforcible upon application to the district court.

Sec. 18. 1. The commission must provide access to the

files of claims in its Carson City and Las Vegas offices.

2. A file is available for inspection during regular business hours by the employee or his designated agent and the employer and his designated agent.

3. Upon request, the commission must make copies of anything in the file and may charge a reasonable fee for this service.

4. Until a claim is closed the file must be kept in the office nearest to the place when the injury occurred.

Sec. 19. 1. An employer who initiates and carries out a safety program may apply for a reduction of 5 percent in his otherwise applicable rate.

2. The commission upon application must determine whether the program meets the minimum standards of any national organization which promulgates safety standards for that particular class of employers or which have general application to him.

3. If the commission is satisfied that the employer is adhering to the standards, it must approve the reduction.

4. The commission may review the performance of the employer to insure that the program is achieving results and that accidents are being prevented.

5. If the commission determines that the safety program is ineffectual, it may suggest changes or upon notice and after hearing suspend the reduction.

Sec. 20. 1. There is established a retroactive benefit account within the state insurance fund.

2. The retroactive benefit account must be used to supplement the compensation and benefits of any employee or his dependents

payable as a result of an injury or death which occurred before July 1, 1973.

3. Every employer subject to the provisions of this chapter or chapter 617 of NRS must contribute the sum of 5 cents per day for each day an employee works.

4. Every employee covered by the provisions of this chapter and chapter 617 of NRS must contribute the sum of 5 cents per day for each day the employee works.

5. Contributions of employees must be withheld from their wages and reported and paid to the retroactive benefit account along with the employer's contributions.

6. The commission shall administer the fund and schedule the payment of compensation and benefits.

7. When there is sufficient surplus and income in the fund to provide a 10-percent increase in compensation and benefits to each person described in subsection 2 there must be a distribution from the fund.

8. Distributions as provided for in subsection 7 must continue in increments of 10 percent until the compensation and benefits paid are equal to those paid for an accident which occurred on or after July 1, 1973.

Sec. 21. NRS 616.135 is hereby amended to read as follows:

616.135 1. One of the commissioners shall be representative of employers and shall be selected by the governor for appointment from the individuals whose names are submitted to him by employer associations representing employers who pay substantial premiums to the Nevada industrial commission [.] or who have qualified as self-insured employers.

2. The annual salary of the commissioner representative of employers shall be in an amount determined pursuant to the provisions of NRS 284.182.

[3. The present commissioner whose term expires on June 23, 1955, is hereby determined to be the representative of employers. The successor of the commissioner representative of employers shall be deemed to represent employers.]

Sec. 22. NRS 616.185 is hereby amended to read as follows:

616.185 1. The commission may employ a secretary, actuary, accountants, examiners, experts, clerks, stenographers, and other assistants, and fix their compensation.

2. The commission shall employ a safety inspector, and fix his compensation.

3. The commission shall employ and fix the compensation of representatives to make periodic reviews of rates, losses, reserves and classifications with employers.

4. Employments and compensation [shall] must be first approved by the governor and compensation [shall] must be paid out of the state treasury.

[4.] 5. Actuaries, accountants, inspectors, examiners, experts, clerks, stenographers, and other assistants are entitled to receive from the state treasury their actual and necessary expenses while traveling on the business of the commission. Expenses [shall] must be itemized and sworn to by the person who incurred the expense and allowed by the commission.

Sec. 23. NRS 616.222 is hereby amended to read as follows:

616.222 1. To aid in getting injured workmen back to work

or to assist in lessening or removing any resulting handicap, the commission may [take such measures and make such expenditures from the state insurance fund as it may deem necessary or expedient to accomplish such purpose,] order counseling, training or rehabilitation services for the injured worker regardless of the date on which such workman first became entitled to compensation.

2. Before ordering rehabilitation services for an injured worker there must first be a finding by a physician that the proposed rehabilitation program is compatible with the injured worker's age, sex and physical condition.

3. Any workman eligible for compensation other than accident benefits [will] may not be paid those benefits if he refuses counseling, training or other rehabilitation services [offered to him] ordered by the commission.

Sec. 24. NRS 616.2533 is hereby amended to read as follows:

616.2533 1. The state industrial attorney shall establish an office in Carson City, Nevada, and an office in Las Vegas, Nevada.

2. The state industrial attorney shall prepare and submit a budget for the maintenance and operation of his office in the same manner as other state agencies.

3. All salaries and other expenses of administering NRS 616.253 to 616.2539, inclusive, [shall] must be paid from the state insurance fund [as other claims against the state are paid.] , within the limit of the legislative appropriation for this purpose.

Sec. 25. NRS 616.305 is hereby amended to read as follows:

616.305 1. Where the employer, as provided by this chapter, has given notice of an election to accept the terms of this chapter, and the employee has not given notice of an election to reject the terms of this chapter, the employer shall provide and secure, and the employee shall accept, compensation in the manner provided by this chapter for all personal injuries sustained arising out of and in the course of the employment.

2. Every employer electing to be governed by the provisions of this chapter, before becoming entitled to the benefits of this chapter [in the providing and securing of compensation to the employees thereunder, shall, on or before July 1, 1947, and thereafter during the period of his election to be governed by the provisions of this chapter, pay to the commission all premiums in the manner provided in this chapter. During the period of his election to be governed by the provisions of this chapter he shall] must comply with all conditions and provisions [thereof.] of this chapter during the period of his election.

3. Failure on the part of any employer to pay all the premiums or to maintain a certificate of self-insurance in force as required by the provisions of this chapter [shall operate] operates as a rejection of the terms of this chapter. In the event of any rejection of this chapter, or the terms hereof, such rejecting employer shall post a notice of rejection of the terms of the chapter upon his premises in a conspicuous place. The employer at all times shall maintain the notice or notices so provided for the information of his employees.

Sec. 26. NRS 616.320 is hereby amended to read as follows:

616.320 An employer having come under this chapter [and as herein provided,] who thereafter elects to reject the terms, conditions and provisions of this chapter [, shall not be] is not relieved from the payment of premiums to the commission prior to the time his notice of rejection becomes effective [.] if any are due. The premiums may be recovered in an action at law . [as provided in this chapter.]

Sec. 27. NRS 616.342 is hereby amended to read as follows:

616.342 1. The commission may appoint physicians who have demonstrated special competence and interest in industrial health to treat injured employees under this chapter. Physicians so appointed shall be known as a panel of physicians, and every employer shall maintain a list of those panel physicians who are reasonably accessible to his employees.

2. An injured employee may choose his treating physician from the panel of physicians. If the injured employee is not satisfied with the first physician he so chooses, he may make an alternative choice of physician from the [panel,] panel if the choice is made within 45 days after his injury, any further change is subject to the approval of the commission.

3. Except when emergency medical care is required, the commission or any self-insured employer is not responsible for any charges for medical treatment or other accident benefits furnished or ordered by any physician or other person selected by the employee in disregard of the provisions of this section or

for any compensation for any aggravation of the employee's injury attributable to improper treatments by such physician or other person.

4. The commission may, from time to time, order necessary changes in a panel of physicians, and may suspend or remove any physician from a panel of physicians . [, under such rules and regulations as it may adopt in order to carry out this section.]

Sec. 28. NRS 616.380 is hereby amended to read as follows:

616.380 1. In addition to the authority given the commission to determine and fix premium rates of employers as provided in NRS 616.395 to 616.405, inclusive, the commission:

(a) Shall apply that form of rating system which, in its judgment, is best calculated to merit or rate individually the risk more equitably, predicated upon the basis of the employer's individual experience;

(b) Shall adopt equitable [rules and] regulations controlling the same, which [rules and] regulations, however, [shall] must conserve to each risk the basic principles of [workmen's compensation] industrial insurance; and

(c) May subscribe to a rating service of any rating organization for casualty, fidelity and surety insurance rating.

2. The rating system or any rating by a rating organization pursuant to this section is subject to the limitation that the amount of any increase or reduction of premium rate or additional charge or rebate of premium contributions [shall be in the discretion of the commission.] must be approved by the commissioner of insurance.

3. The rating system provided by this section is subject to the further limitation that no increase or reduction of premium rate or additional charge or rebate of premium contributions [shall] may become effective for 60 days after [adoption by the commission. Upon the adoption of any] approval by the commissioner of insurance. Upon the submission of any proposed increase or reduction of premium rate or additional charge or rebate of premium contributions provided by this section the commission [shall] must give written notice thereof to the employer affected by such rate change, charge or rebate . [and grant the employer, if requested by him, a hearing before the commission prior to the effective date of such rate change, charge or rebate.] The commissioner of insurance must hold public hearings on the proposed change. At such hearing consideration [shall] must be given to the objections as made by the parties appearing, and all matters in dispute [shall] must be resolved after such hearing by the [commission] commissioner of insurance in a manner which will not unjustly affect the objecting party. The objective to be accomplished [by the commission shall be] is to prescribe and collect only such premiums as may be necessary to pay the obligations created by this chapter, administrative expenses, and to carry such reasonable reserves as may be prescribed by law or may be deemed necessary to meet such contingencies as may be reasonably expected.

4. Subsections 2 and 3 of this section [shall] do not apply to rating plans made by voluntary agreement between the commission and employer which increases or reduces premium contributions

for [employers. Such] the employer. The voluntary rating plans may be retrospective in nature. A voluntary rating plan must be in writing and signed by both the commission and the employer.

Sec. 29. NRS 616.390 is hereby amended to read as follows:

616.390 [Employers] Except for self-insured employers, all employers becoming contributors to the state insurance fund or the accident benefit fund, pursuant to the provisions of NRS 616.315, [shall] must be placed in a separate class, the premium rates of which [shall] must be sufficient to provide an adequate fund for the payment of the proportionate administrative expense and compensation on account of injuries and death of employees of this class.

Sec. 30. NRS 616.395 is hereby amended to read as follows:

616.395 1. [Every] Except for a self-insured employer, every employer within, and those electing to be governed by, the provisions of this chapter, with the exception of the state, counties, municipal corporations, cities, and school districts, shall [, on or before July 1, 1947, and thereafter, as required by the commission,] pay to the [commission, for a] state insurance fund, premiums in the form of an advance deposit as shall be fixed by order of the commission. All premium rates now in effect [shall] must be continued in full force until changed [by order of the commission.] as provided by law.

2. Every employer within or electing to be governed by the provisions of this chapter who enters into business or resumes operations [after July 1, 1947,] shall, before commencing or resuming operations, [as the case may be,] notify the commission of such fact, accompanying such notification with an estimate of

his monthly payroll, and [shall make payment of] pay the premium on such payroll for the first 2 months of operations.

3. The commission may accept as a substitute for payment of premiums either a bond or pledge of assets. The amount and sufficiency of security required, other than cash, shall be determined by the commission but [shall] must not be of a value less than the amount of cash required by this section.

4. The commission shall accept as a substitute for cash payment of premiums as required in this section a savings certificate or a time deposit certificate issued by a bank or savings and loan association in Nevada, which [certificate shall indicate] indicates an amount at least equal to, but [shall] must not be required to be more than, the next integral multiple of $100 above the cash which would otherwise be required by this section and [shall] must state that such amount is unavailable for withdrawal except by direct and sole order of the commission. Interest earned on the deposit accrues to the account of the employer and not the commission.

Sec. 31. NRS 616.400 is hereby amended to read as follows:

616.400 1. [Every] Except for a self-insured employer, every employer within, and those electing to be governed by, the provisions of this chapter, shall, on or before the 25th day of each month, furnish the commission with a true and accurate payroll showing:

(a) The total amount paid to employees for services performed during the month; and

(b) A segregation of employment in accordance with the requirements of the commission,

flush together with the premium due thereon.

2. In determining the total amount paid to employees by each employer for services performed during a year, the maximum amount paid by each employer to any one employee during the year shall be deemed to be $24,000.

3. Any employer by agreement in writing with the commission may arrange for the payment of premiums in advance for a period of more than 60 days.

4. Failure on the part of any such employer to comply with the provisions of this section and NRS 616.395 [shall operate] operates as a rejection of this chapter, effective at the expiration of the period covered by his estimate.

5. If an audit of the accounts or actual payroll of such employer shows the actual premium earned [to have exceeded] exceeds the estimated advance premium paid, the commission may require the payment of a sum sufficient to cover such deficit, together with such amount as in its judgment [would constitute] constitutes an adequate advance premium for the period covered by the estimate.

6. The commission shall [diligently proceed, by use of registered or certified mail or by other suitable means, to] notify any employer [and his representative] or his representative by certified mail of any failure on his part to comply with the foregoing provisions; but such notice or its omission [shall in no way] does not modify or waive the requirements or effective rejection of this chapter as otherwise provided in this chapter.

Sec. 32. NRS 616.405 is hereby amended to read as follows:

616.405 1. [As] Except for a self-insured employer, as soon as possible after the expiration of each quarter year, [it is the duty of] every state office, department, board, commission, bureau, agency or institution, operating by authority of law, and the auditor or comptroller of each county, and the clerk of each municipal corporation, city, and school district, [to] shall furnish the commission with a true and accurate payroll of the state office, department, board, commission, bureau, agency or institution, and county, metropolitan police department, municipal corporation, city, or school district, [or contractor or subcontractor under the state office, department, board, commission, bureau, agency, institution, county, municipal corporation, city, or school district,] showing:

(a) The aggregate number of shifts worked during the preceding quarter.

(b) The total amount paid to employees for services performed during the quarter.

(c) A segregation of employment in accordance with the requirements of the commission.

2. [It shall be the duty of each] Each of the state offices, departments, boards, commissions, bureaus, agencies and institutions [to] shall submit claims for the amount of premiums due to the commission; and [it shall be the duty of] each of the auditors, comptrollers and clerks [to] shall make up and submit to the respective governing boards of each county, metropolitan police department, municipal corporation, city, and school

district, for approval, claims for the amount of premiums due the commission . [; and the state offices, departments, boards, commissions, bureaus, agencies, institutions, county auditor or comptroller, city clerk, or clerk of school district shall deduct the amount of the claims for such premiums concerning the payrolls of their respective contractors or subcontractors, as provided for herein, from any settlement with any contractor or subcontractor.]

Sec. 33. NRS 616.427 is hereby amended to read as follows:

616.427 1. If an employee covered [by the Nevada industrial commission] by the provisions of this chapter who has a permanent physical impairment from any cause or origin incurs a subsequent disability by injury arising out of and in the course of his employment resulting in compensation liability for disability that is substantially greater by reason of the combined effects of the preexisting impairment and the subsequent injury than that which would have resulted from the subsequent injury alone, the commission shall [pay] order compensation provided by this chapter paid from the subsequent injury account on behalf of the employers and shall [establish rules and] adopt regulations for allocating such compensation costs between the employers involved and the subsequent injury account.

2. If the subsequent injury of such an employee [shall result] results in the death of the employee and it [shall be] is determined that the death would not have occurred except for such preexisting permanent physical impairment, the commission shall [pay] order the compensation prescribed by this chapter

paid from the subsequent injury account on behalf of the employers and shall [establish rules and] adopt regulations for allocating such compensation costs between the employers involved and the subsequent injury account.

3. As used in this section, "permanent physical impairment" means any permanent condition, whether congenital or due to injury or disease, of such seriousness as to constitute a hindrance or obstacle to obtaining employment or to be obtaining reemployment if the employee should be unemployed. For the purposes of this section, no condition [shall] may be considered a "permanent physical impairment" unless it would support a rating of permanent impairment of 12 percent or more of the whole man if evaluated according to the latest edition of the American Medical Association Guides to the Evaluation of Permanent Impairment.

4. In order to qualify under this section for credit against the subsequent injury account, the employer must establish by written records that the employer had knowledge of the "permanent physical impairment" at the time that the employee was hired , [or] at the time the employee was retained in employment after the employer acquired such knowledge [.] or that the employee failed to report or denied the impairment on any written application which formed the basis of the employment.

5. An employer shall notify the commission of any possible claim against the subsequent injury account as soon as practicable, but in no event later than 100 weeks after the injury or death.

Sec. 34. NRS 616.490 is hereby amended to read as follows:

616.490 1. If the provisions of this chapter relative to compensation for injuries to or death of [workmen] employees become invalid because of any adjudication, or [be] are repealed, the period intervening between the occurrence of an injury or death, not previously compensated for under this chapter by lump sum payment or completed monthly payments, and such repeal or the rendition of the final adjudication of the validity shall not be computed as a part of the time limited by law for the commencement of any action relating to such injury or death [; provided, that such action be] if the action is commenced within 1 year after such repeal or adjudication.

2. In any such action any sum paid out of the state insurance fund or by a self-insured employer by reason of injury to [a workman] an employee by whom, or by whose dependents, the action is prosecuted, shall be taken into account [or disposed of as follows: If the defendant employer shall have paid without delinquency into the state insurance fund the premiums provided for by NRS 616.395, 616.400 and 616.405, or furnished accident benefits pursuant to NRS 616.415, any such sums shall be] and credited upon the recovery as payment . [thereon, otherwise the sum shall not be so credited.]

Sec. 35. NRS 616.500 is hereby amended to read as follows:

616.500 1. Notice of the injury for which compensation is payable under this chapter [shall] must be given to the commission or the self-insured employer as soon as practicable, but within 30 days after the happening of the accident.

2. In case of death of the employee resulting from such injury, notice [shall] must be given [to the commission] as soon as practicable, but within 60 days after death.

3. The notice [shall:] must:

(a) Be in writing; [and]

(b) Contain the name and address of the injured employee; [and]

(c) State in ordinary language the time, place, nature and cause of the injury; and

(d) Be signed by the injured employee or by a person in his behalf, or in case of death, by one or more of his dependents or by a person on their behalf.

4. No proceeding under this chapter for compensation for an injury [shall] may be maintained unless the injured employee, or someone on his behalf, files with the commission or self-insured employer a claim for compensation with respect to the injury within 90 days after the happening of the accident, or, in the case of death, within 1 year after death.

5. The notice required by this section [shall] must be served [upon the commission either] by delivery [to and leaving with it] of a copy of the notice, or by mailing [to it by registered or] by certified mail a copy thereof in a sealed postpaid envelope addressed to the commission at its office in Carson City, Nevada. Such mailing [shall constitute] constitutes complete service.

6. Failure to give notice or to file a claim for compensation within the time limit specified in this section [shall be] is a

bar to any claim for compensation under this chapter, but such failure may be excused by the commission on one or more of the following grounds:

(a) That notice for some sufficient reason could not have been made.

(b) That failure to give notice will not result in an unwarrantable charge against the state insurance fund.

(c) That failure to give notice was due to the employee's or beneficiary's mistake or ignorance of fact or of law, or of his physical or mental inability, or to fraud, misrepresentation or deceit.

7. The commission or the self-insured employer must either accept or deny responsibility for compensation under this chapter or chapter 617 of NRS within 90 days after the notice provided for in this section is received.

Sec. 36. NRS 616.505 is hereby amended to read as follows:

616.505 Where death results from injury, the parties entitled to compensation under this chapter, or someone in their behalf, [shall] must make application for [the same] compensation to the commission [.] or the self-insured employer. The application must be accompanied [with:] by:

1. Proof of death; [and]

2. Proof of relationship showing the parties to be entitled to compensation under this chapter; [and]

3. Certificates of the attending physician, if any; and

4. Such other proof as required by the [rules] regulations of the commission.

Sec. 37. NRS 616.530 is hereby amended to read as follows:

616.530 1. If an employee who has been hired or is regularly employed in this state receives personal injury by accident arising out of and in the course of such employment outside this state, and he, or his personal or legal representatives, dependents or next of kin [shall] commence any action or proceeding in any other state to recover any damages or compensation on account of such injury or death from such employer, the act of commencing such action or proceeding [shall constitute] constitutes an irrevocable waiver of any and all compensation on account of such injury or death to which persons would otherwise have been entitled according to the laws of this state.

2. If any such injured employee, his personal or legal representatives, dependents or next of kin [shall] recover a final judgment against such employer for damages arising out of such injury or death in any court of competent jurisdiction in any other state, the compensation which would otherwise have been payable under the laws of this state, up to the full amount thereof, but less any sums theretofore actually paid for or on account of such injury or death, [shall] must be applied in satisfaction of such judgment as [hereinafter provided in paragraphs (a), (b) and (c).] follows:

(a) Upon receipt of an authenticated copy of such final judgment and writ of execution or other process issued in aid thereof, the commission shall forthwith determine the total amount of compensation which would have been payable under the

laws of this state had claim therefor been made to the commission. In the case of compensation payable in installments, the commission shall convert [the same] it into a lump sum amount by such system of computation as the commission [may deem] deems proper.

(b) The commission shall thereupon [cause] order to be paid in full or partial satisfaction of such judgment a sum not to exceed the total amount of compensation computed as [hereinabove] provided in this section or the amount of the judgment, whichever is the lesser.

(c) [If] Except for a self-insured employer, if the judgment is satisfied fully by the employer prior to any payment by the commission pursuant to paragraph (b), the amount payable thereunder [shall] must be paid to the employer.

Sec. 38. NRS 616.535 is hereby amended to read as follows:

616.535 1. Any employee entitled to receive compensation under this chapter is required, if requested by [an appeals officer or] the commission [,] or ordered by a hearing officer, to submit himself for medical examination at a time and from time to time at a place reasonably convenient for the employee, and as may be provided by the regulations of the commission.

2. The request or order for the examination [shall] must fix a time and place therefor, due regard being had to the convenience of the employee, his physical condition and ability to attend at the time and place fixed.

3. The employee is entitled to have a physician, provided and paid for by him, present at any such examination.

4. If the employee refuses to submit to any such examination

or obstructs it, his right to compensation [shall be] is suspended until the examination has taken place, and no compensation is payable during or for account of such period.

5. Any physician who makes or is present at any such examination may be required to testify as to the result thereof.

Sec. 39. NRS 616.542 is hereby amended to read as follows:

616.542 1. The governor shall appoint two appeals officers to conduct hearings in contested claims for compensation under this chapter and chapter 617 of NRS. Each appeals officer shall hold office for a term of 4 years from the date of his appointment and until his successor is appointed and has qualified. Each appeals officer is entitled to receive an annual salary in an amount provided by law for employees in the unclassified service of the state.

2. The appeals officers shall jointly prepare and submit a budget for the maintenance and operation of their office in the same manner as other state agencies. All salaries and other expenses of their office must be paid from the state insurance fund, within the limit of the legislative appropriation for this purpose.

3. Each appeals officer [shall] must be an attorney who has been licensed to practice law before all the courts of this state for a period of at least 2 years. An appeals officer shall not engage in the private practice of law.

[3.] 4. If an appeals officer determines that he has a personal interest or a conflict of interest, directly or indirectly, in any case which is before him, he shall disqualify

himself from hearing such case and the governor may appoint a special appeals officer who is vested with the same powers as the regular appeals officer would possess. The special appeals officer shall be paid at an hourly rate, based upon the appeals officer's salary.

[4. An appeals officer shall render his final decision on a contested claim within 120 days after the hearing.]

5. The decision of an appeals officer is the final administrative determination of a claim under this chapter or chapter 617 of NRS, and the whole record consists of all evidence taken at the hearing before the appeals officer and any findings of fact and conclusions of law based thereon.

Sec. 40. NRS 616.550 is hereby amended to read as follows:

616.550 Compensation payable under this chapter, whether determined or due, or not, [shall] is not, prior to the issuance and delivery of the [warrant thereof, be] check, assignable, [shall be] is exempt from attachment, garnishment and execution, and [shall] does not pass to any other person by operation of law; but in any case of the death of an injured employee covered by this chapter from causes independent from the injury for which compensation is payable, any compensation due such employee which was awarded or accrued but for which [the warrant or warrants were] a check was not issued or delivered at the date of death of such employee [shall be] is payable to his dependents as defined in NRS 616.615.

Sec. 41. NRS 616.560 is hereby amended to read as follows:

616.560 1. When an employee coming under the provisions of

this chapter receives an injury for which compensation is payable under this chapter and which injury was caused under circumstances creating a legal liability in some person, other than the employer or a person in the same employ, to pay damages in respect thereof:

(a) The injured employee, or in case of death, his dependents, may take proceedings against that person to recover damages, but the amount of the compensation to which the injured employee or his dependents are entitled under this chapter, including any future compensation under this chapter, [shall] must be reduced by the amount of the damages recovered, notwithstanding any act or omission of the employer or a person in the same employ which was a direct or proximate cause of the employee's injury.

(b) If the injured employee, or in case of death his dependents, receive compensation under this chapter, the commission or the self-insured employer has a right of action against the person so liable to pay damages and is subrogated to the rights of the injured employee or of his dependents to recover therefor. In any action or proceedings taken by the commission or the self-insured employer under this section evidence of the amount of compensation, accident benefits and other expenditures which the commission or the self-insured employer has paid or become obligated to pay by reason of the injury or death of the employee is admissible. If in such action or proceedings the commission or the self-insured employer recovers more than the amounts it has paid or become obligated to pay as compensation, [it shall

pay] the excess must be paid to the injured employee or his dependents.

(c) The injured employee, or in case of death his dependents, shall first notify the commission or the self-insured employer in writing of any action or proceedings, pursuant to this section, to be taken by the employee or his dependents.

2. In any case where the commission or the self-insured employer is subrogated to the rights of the injured employee or of his dependents as provided in subsection 1, the commission or the employer has a lien upon the total proceeds of any recovery from some person other than the employer, whether the proceeds of such recovery are by way of judgment, settlement or otherwise. The injured employee, or in the case of his death his dependents, are not entitled to double recovery for the same injury, notwithstanding any act or omission of the employer or a person in the same employ which was a direct or proximate cause of the employee's injury.

3. The lien provided for under subsection 2 includes the total compensation expenditure incurred by the commission or the self-insured employer for the injured employee and his dependents.

4. Within 15 days of the date of recovery by way of actual receipt of the proceeds of the judgment, settlement or otherwise, the injured employee or his representative shall notify the commission or the self-insured employer of such recovery and pay to the commission or employer the amount due under this section together with an itemized statement showing the distribution of the total recovery.

5. In any trial of an action by the injured employee, or in the case of his death by his dependents, against a person other than the employer or a person in the same employ, the jury shall receive proof of the amount of all payments made or to be made by the commission. The court shall instruct the jury substantially as follows:

(a) "Payment of workmen's compensation benefits by the Nevada industrial commission is based upon the fact that a compensable industrial accident occurred, and does not depend upon blame or fault. If the plaintiff does not obtain a judgment in his favor in this case, he is not required to repay his employer or the Nevada industrial commission any amount paid to him or paid on his behalf by his employer or by the Nevada industrial commission"; and

(b) "If you decide that the plaintiff is entitled to judgment against the defendant, you shall find his damages in accordance with the court's instructions on damages and return your verdict in the plaintiff's favor in the amount so found without deducting the amount of any compensation benefits paid to or for the plaintiff. The law provides a means by which [the Nevada industrial commission] <u>any compensation benefits</u> will be repaid from your award."

Sec. 42. NRS 616.565 is hereby amended to read as follows:

616.565 1. No compensation under this chapter [shall] <u>may</u> be allowed for an injury:

(a) Caused by the employee's willful intention to injure himself.

(b) Caused by the employee's willful intention to injure another.

(c) Sustained by the employee while intoxicated.

2. No compensation [shall be] is payable for the death, disability or treatment of an employee if his death be caused by, or insofar as his disability may be aggravated, caused or continued by, an unreasonable refusal or neglect to submit to or to follow any competent and reasonable surgical treatment or medical aid.

3. If any employee [shall persist] persists in insanitary or injurious practices which tend to either imperil or retard his recovery, or [shall refuse] refuses to submit to such medical or surgical treatment as is reasonably essential to promote his recovery [, the commission may, in its discretion, reduce or suspend] the compensation of any such injured employee [.] may be reduced or suspended.

Sec. 43. NRS 616.583 is hereby amended to read as follows:

616.583 Any employee receiving permanent total disability benefits shall report annually on the anniversary date of the award to the commission all of his earnings for the prior 12-month period. In the event the employee fails to make such a report to the commission within 30 days following the anniversary date, the commission shall notify the employer and the employee that such reports have not been received and the commission may then [suspend] order any further payments suspended until such report of earnings is filed with the commission.

Sec. 44. NRS 616.605 is hereby amended to read as follows:

616.605 1. Every employee, in the employ of an employer within the provisions of this chapter, who is injured by an accident arising out of and in the course of employment is entitled to receive the compensation provided in this section for permanent partial disability. As used in this section "disability" and "impairment of the whole man" are equivalent terms.

2. The percentage of disability [shall] must be determined [by the commission. The determination shall be made] by a physician designated by the commission, or board of physicians, in accordance with the current American Medical Association publication, "Guides to the Evaluation of Permanent Impairment."

3. No factors other than the degree of physical impairment of the whole man may be considered in calculating the entitlement to permanent partial disability compensation.

4. Each 1 percent of impairment of the whole man [shall] must be compensated by monthly payment of 0.5 percent of the claimant's average monthly wage. Compensation [shall] must commence on the date of the injury or the day following termination of temporary disability compensation, if any, whichever is later, and [shall] must continue on a monthly basis for 5 years or until the 65th birthday of the claimant, whichever is later.

(a) [The commission may pay compensation benefits] Compensation benefits may be paid annually to claimants with less than a 25 percent permanent partial disability.

(b) [The commission may advance up to 1 year's permanent partial disability benefits to an injured workman who demonstrates

a dire financial need that is not met by the ordinary monthly benefit. Monthly permanent partial disability benefits will not begin until the total advance is offset.

(c)] A permanent partial disability award may be paid in a lump sum under the following conditions:

(1) A claimant injured on or after July 1, 1973, who incurs a disability that does not exceed 12 percent may elect to receive his compensation in a lump sum.

(2) A claimant injured on or after July 1, 1973, who incurs a disability that exceeds 12 percent [may, upon] may:

(I) Upon demonstration of a need which is substantiated by a comprehensive evaluation of possible rehabilitation, be authorized by the commission to receive his compensation in a lump sum [.] ; or

(II) Elect to receive up to 25 percent of his compensation in a lump sum without a demonstration of need.

(3) The spouse, or in the absence of a spouse, any dependent child of a deceased claimant injured on or after July 1, 1973, who is not entitled to compensation in accordance with NRS 616.615 is entitled to a lump sum equal to the present value of the deceased claimant's undisbursed permanent partial disability award.

[(d)] (c) The commission shall adopt regulations concerning the manner in which a comprehensive evaluation of possible rehabilitation will be conducted and defining the factors to be considered in the evaluation required to substantiate the need for a lump sum settlement.

[(e)] (d) Any lump sum payment which has been paid on a claim incurred on or after July 1, 1973, [shall] must be supplemented if necessary to conform to the provisions of this section.

[(f)] (e) The total lump sum payment for disablement [shall] must not be less than one-half the product of the average monthly wage multiplied by the percentage of disability.

5. The commission shall review any lump sum payment made by a self-insured employer and may order the payment of lump sum benefits under the provisions of this section to any employee of a self-insured employer upon application of the employee or his beneficiary.

6. The lump sum payable [shall] must be equal to the present value of the compensation awarded, less any advance payment or lump sum previously paid. The present value [shall be] is calculated using monthly payments in the amounts prescribed in subsection 4 and actuarial annuity tables adopted by the commission. The tables [shall] must be reviewed annually by a consulting actuary.

[6. (a)] 7. An employee receiving : [permanent]

(a) Permanent total disability compensation is not entitled to permanent partial disability compensation during the period when he is receiving permanent total disability compensation.

[(b) An employee receiving temporary] (b) Temporary total disability compensation is not entitled to permanent partial disability compensation during the period of temporary total disability.

[(c) An employee receiving temporary] (c) Temporary partial

disability compensation is not entitled to permanent partial disability compensation during the period of temporary partial disability.

[7.] 8. Where there is a previous disability, as the loss of one eye, one hand, one foot, or any other previous permanent disability, the percentage of disability for a subsequent injury [shall] must be determined by computing the percentage of the entire disability and deducting therefrom the percentage of the previous disability as it existed at the time of the subsequent injury.

[8.] 9. The commission may adopt a schedule for rating permanent disabilities and reasonable and proper [rules] regulations to carry out the provisions of this section.

[9.] 10. The increase in compensation and benefits effected by the amendment of this section is not retroactive for accidents which were incurred before July 1, 1973.

[10.] 11. This section does not entitle any person to double payments on account of death of a workman and a continuation of payments for a permanent partial disability, or to a greater sum in the aggregate than if the injury had been fatal.

Sec. 45. NRS 616.615 is hereby amended to read as follows:

616.615 If an injury by accident arising out of and in the course of employment causes the death of an employee in the employ of an employer, within the provisions of this chapter, the compensation shall be known as a death benefit, and [shall be] is payable in the amount to and for the benefit of the following:

1. Burial expenses. In addition to the compensation payable under this chapter, burial expenses not to exceed $1,200. When the remains of the deceased employee and the person accompanying the remains are to be transported to a mortuary or mortuaries, the charge of transportation [shall] must be borne by the commission [, subject to its approval, provided, such transportation shall not be] or the self-insured employer if the transportation is not beyond the continental limits of the United States.

2. Widow. To the widow, 66 2/3 percent of the average monthly wage. This compensation [shall] must be paid until her death or remarriage, with 2 years' compensation in one sum upon remarriage.

3. Widower. To the widower, 66 2/3 percent of the average monthly wage. This compensation [shall] must be paid until his death or remarriage, with 2 years' compensation in one sum upon remarriage.

4. Children who survive a widow or widower.

(a) In case of the subsequent death of the surviving spouse any surviving child or children of the deceased employee [shall] must share equally the compensation theretofore paid to the surviving spouse but not in excess thereof, and [the same shall be] it is payable until the youngest reaches the age of 18 years.

(b) If the children have a guardian, the compensation on account of such children may be paid to the guardian.

(c) Except as provided in subparagraphs (1) and (2), the entitlement of any child to receive his proportionate share of

compensation under this section [shall cease] ceases when he dies, marries or reaches the age of 18 years. A child is entitled to compensation under this section if he is:

(1) Over 18 years and incapable of self-support, until such time as he becomes capable of self-support; or

(2) Over 18 years and enrolled as a full-time student in an accredited vocational or educational institution, until he reaches the age of 22 years.

(d) Upon the remarriage of a widow or widower with children, the widow or widower [shall] must be paid 2 years' compensation in one lump sum and further benefits shall cease. Following the remarriage by the widow or widower with children, each child [shall] must be paid 15 percent of the average monthly wage, up to a maximum family benefit of 66 2/3 percent of the average monthly wage.

5. Surviving children but no surviving spouse. If there is a surviving child or children of the deceased employee under the age of 18 years, but no surviving spouse, then each child is entitled to his proportionate share of 66 2/3 percent of the average monthly wage for his support until he reaches the age of 18 years or, if enrolled full-time in an accredited vocational or educational institution, until he reaches the age of 22 years.

6. Dependent parents, brothers and sisters. If there is no surviving spouse or child under the age of 18 years, there [shall] must be paid:

(a) To a parent, if wholly dependent for support upon the

deceased employee at the time of injury causing his death, 33 1/3 percent of the average monthly wage.

(b) To both parents, if wholly dependent for support upon the deceased employee at the time of injury causing his death, 66 2/3 percent of the average monthly wage.

(c) To each brother or sister until he or she reaches the age of 18 years, if wholly dependent for support upon the deceased employee at the time of injury causing his death, his proportionate share of 66 2/3 percent of the average monthly wage.

(d) The aggregate compensation payable pursuant to paragraphs (a), (b) and (c) [of subsection 6] shall in no case exceed 66 2/3 percent of the average monthly wage.

7. Questions of total or partial dependency.

(a) In all other cases, a question of total or partial dependency [shall] must be determined in accordance with the facts as the facts may be at the time of the injury.

(b) If the deceased employee leaves dependents only partially dependent upon his earnings for support at the time of the injury causing his death, the monthly compensation to be paid [shall] must be equal to the same proportion of the monthly payments for the benefit of persons totally dependent as the amount contributed by the deceased employee to such partial dependents bears to the average monthly wage of the deceased employee at the time of the injury resulting in his death.

(c) The duration of compensation to partial dependents [shall be fixed by the commission] must be fixed in accordance

with the facts shown, but [in no case shall] may not exceed compensation for 100 months.

8. Apportionment of death benefit between dependents. Compensation to the widow or widower [shall] must be for the use and benefit of the widow or widower, and of the dependent children, and the commission may, from time to time, apportion such compensation between them in such a way as it deems best for the interest of all dependents.

9. Nonresident alien dependents. If a dependent to whom a death benefit is to be paid is an alien not residing in the United States, the compensation [shall] must be only 50 percent of the amount or amounts specified in this section.

10. Funeral expenses of dependent dying before expiration of award. In case of the death of any dependent specified in this section before the expiration of the time named in the award, funeral expenses not to exceed $1,200 [shall] must be paid.

Sec. 46. Chapter 617 of NRS is hereby amended by adding thereto the provisions set forth as sections 47 and 48 of this act.

Sec. 47. 1. An employer who is certified as a self-insured employer directly assumes the responsibility for providing compensation due his employees and their beneficiaries under this chapter.

2. A self-insured employer is not required to pay the contributions required of other employers by NRS 617.310.

3. The claims of employees and their beneficiaries resulting from occupational diseases while in the employment of self-

insured employers must be handled in the manner provided by this chapter, and the self-insured employer is subject to the regulations of the commission with respect thereto.

4. The security deposited pursuant to section 4 of this act does not relieve the employer from responsibility for the administration of claims and payment of compensation under this chapter.

5. A self-insured employer qualifying under the provisions of this chapter must comply with the provisions of section 4 of this act.

Sec. 48. 1. Except as provided in subsection 2, diseases of the heart resulting in either temporary or permanent disability or death shall be deemed occupational diseases and are compensable under the provisions of this chapter if:

(a) The disease is diagnosed as arteriosclerosis; and

(b) A causal relationship can be shown by competent evidence that the disability or death arose out of and in the course of the employment of the employee.

2. The amount of compensation which an employee with a pre-existing heart disease may receive is limited to benefits for:

(a) Disability and death which occurred as a result of the current employment of the employee; and

(b) Treatment of a disability which is related to the employment and is not treatment of the preexisting heart disease.

Sec. 49. NRS 617.310 is hereby amended to read as follows:

617.310 1. [After July 1, 1947, every] Except for a self-insured employer, every employer within the provisions of this

chapter and every employer electing to be governed by the provisions of this chapter, before becoming entitled to the benefits [hereof] of this chapter in the providing and securing of compensation to his employees, shall pay to the commission, for the occupational diseases fund and the medical benefits fund, in the manner and at the times prescribed for the payment of premiums in chapter 616 of NRS, premiums in [such] amounts [as shall be] fixed [and determined] by the commission for the occupation or employment of such employer according to the classification, rules and rates made and promulgated by the commission.

2. The commission shall fix [and determine] the classifications of employment and the rules and rates regulating and prescribing premiums in regard thereto.

Sec. 50. NRS 617.330 is hereby amended to read as follows:

617.330 In all cases of occupational disease or death resulting from occupational disease, except as otherwise provided in this chapter, a proceeding before the commission on a claim for compensation [shall be] is forever barred, unless, within 90 days after the employee has knowledge of the disability, or within 1 year after death occurred, a claim therefor is filed with the commission.

Sec. 51. NRS 617.350 is hereby amended to read as follows:

617.350 1. All applications and claims for compensation [shall:] must:

(a) Be made in writing.

(b) Contain the names and addresses of the employee and his employer.

(c) State in ordinary language the facts and circumstances surrounding the disablement or disability claimed to have resulted from any of the occupational diseases defined in this chapter and the nature thereof.

(d) Be signed by the employee or a person in his behalf, or in case of the employee's death by one or more of his dependents or by a person in their behalf.

2. The application or claim required by this section [shall] must be served upon the commission [either] or a self-insured employer by:

(a) Delivery to and leaving with it a copy of the application or claim; or

(b) Mailing to [it by registered or] the commission or to the self-insured employer by certified mail a copy thereof . [in a sealed postpaid envelope addressed to the commission at Carson City, Nevada.] Such mailing [shall constitute] constitutes complete service.

3. An application or claim having been served as provided in this section, the employee or his dependents, as the case may be, upon request, shall furnish to the commission or the self-insured employer all facts and information in regard to the occupational disease for which compensation is claimed.

Sec. 52. NRS 617.360 is hereby amended to read as follows:

617.360 1. The application or claim provided for in NRS 617.350 [shall] must be supported by a physician's certificate setting forth a full and complete report of the occupational disease for which compensation is claimed.

2. Every physician or surgeon who attends an employee within the provisions of this chapter, subject to the [rules and] regulations in chapter 616 of NRS, [is required to] shall file such certificate with the commission [.] or with the self-insured employer.

Sec. 53. NRS 617.390 is hereby amended to read as follows:

617.390 1. Compensation [shall] must not be awarded on account of both injury and disease.

2. If an employee claims to be suffering from both an occupational disease and an injury, the commission shall determine which is causing the disability and [shall pay compensation therefor from the proper fund] order payment of compensation in accordance with the provisions of chapter 616 of NRS.

Sec. 54. NRS 617.410 is hereby amended to read as follows:

617.410 Compensation for disability sustained on account of occupational disease by an employee, or the dependents of such employee as defined in this chapter, [shall] must be paid from the occupational diseases fund [.] or if the employee is employed by a self-insured employer, then by the employer.

Sec. 55. NRS 617.430 is hereby amended to read as follows:

617.430 1. Every employee who is disabled or dies because of an occupational disease [, as defined in this chapter,] arising out of and in the course of employment in the State of Nevada, or the dependents, as that term is defined in chapter 616 of NRS, of an employee whose death is caused by an occupational disease, [shall, on and after July 1, 1947, be] are entitled to the compensation provided by chapter 616 for temporary

disability, permanent [total] disability, or death, as the facts may warrant, subject to the modifications mentioned in this chapter.

2. In cases of tenosynovitis, prepatellar bursitis, and infection or inflammation of the skin, no person [shall be] is entitled to such compensation unless for 90 days next preceding the contraction of such occupational disease the employee has been:

(a) A resident of the State of Nevada; or

(b) Employed by a self-insured employer or an employer contributing to the occupational diseases fund of Nevada for the benefit of such employee.

Sec. 56. NRS 617.460 is hereby amended to read as follows:

617.460 1. Silicosis [shall be considered] is an occupational disease and [shall be] is compensable as such when contracted by an employee and when arising out of and in the course of the employment.

2. Claims for compensation on account of silicosis [shall be] are forever barred unless application [shall have been] is made to the commission or to the self-insured employer within 1 year after temporary or total disability or within 6 months after death.

3. Nothing in this chapter entitles an employee or his dependents to compensation, medical, hospital and nursing expenses or payment of funeral expenses for disability or death due to silicosis in the event of the failure or omission on the part of the employee truthfully to state, when seeking employment,

the place, duration and nature of previous employment in answer to an inquiry made by the employer.

4. No compensation [shall] may be paid in case of silicosis unless, during the 10 years immediately preceding the disablement or death, the injured employee [shall have] has been exposed to harmful quantities of silicon dioxide dust for a total period of not less than 3 years in employment in Nevada covered by the Nevada industrial commission [.] or a self-insured employer.

5. Compensation on account of silicosis is payable only in the event of temporary total disability, permanent total disability, or death, in accordance with the provisions of chapter 616 of NRS. Except as provided in NRS 616.615, the commission shall not allow the conversion of the compensation benefits provided for in this section into a lump-sum payment. Payment of benefits and compensation is limited to the claimant and his dependents.

6. Any claimant who has been disabled by silicosis prior to July 1, 1973, or his dependents, upon receiving the maximum sum payable, $14,250, [and such supplemental amounts as authorized in NRS 617.465 to 617.469, inclusive,] to which they are entitled [shall] must be terminated from all compensation payments by the commission, but [shall] is entitled to continue to receive the same amount of compensation from the silicosis and disabled pension fund.

Sec. 57. NRS 443.165 is hereby amended to read as follows:

443.165 1. Each person who is eligible for the benefits provided for in NRS 443.145 to 443.165, inclusive, [shall be]

is entitled to receive benefits under the special silicosis program in an amount equal to the compensation paid to persons eligible for compensation under the provisions of NRS 617.460.

2. The Nevada industrial commission and any self-insured employer shall cooperate with the health division of the department of human resources for the purpose of determining the amount of benefits to which persons found eligible by the state board of health are entitled, and shall make available to the state board of health all records which may be of use to the board in determining eligibility.

Sec. 58. NRS 617.457, 617.465, 617.466, 617.467, 617.468 and 617.469 are hereby repealed.

Sec. 59. 1. The legislative auditor shall conduct an audit of the Nevada industrial commission during the interim between the 60th and the 61st sessions of the Nevada legislature to determine compliance with the law. The legislative auditor must report his findings and any recommendations to the 61st session of the Nevada legislature.

2. The Nevada industrial commission may assess each self-insured employer for his prorated share of the cost of this audit.