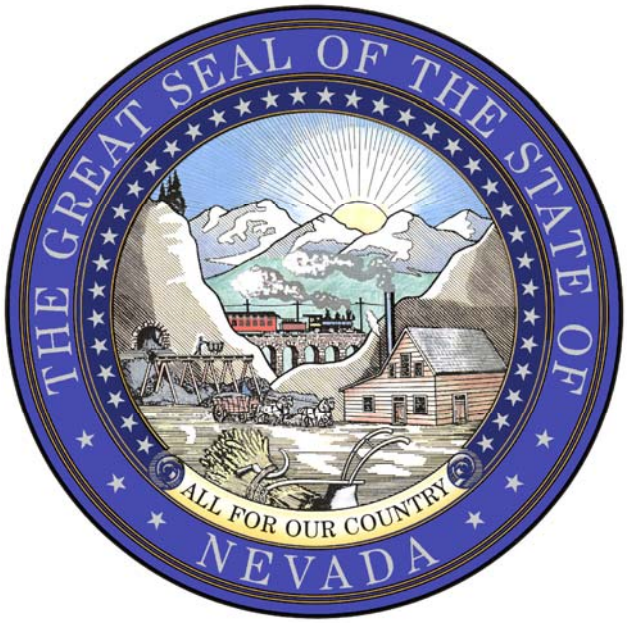
# *Legislative Committee on Workers' Compensation*




*Legislative Counsel Bureau*

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# STUDY OF THE LEGISLATIVE COMMITTEE ON WORKERS' COMPENSATION

BULLETIN NO. 99-14

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SUMMARY OF RECOMMENDATIONS

## LEGISLATIVE COMMITTEE ON WORKERS' COMPENSATION (NRS 218.5375)

This summary presents the recommendations approved by the Legislative Committee on Workers' Compensation. The Committee submits these proposals to the 70th Session of the Nevada Legislature.

## THREE-WAY WORKERS' COMPENSATION INSURANCE

1. **Enact legislation to expand the types of employer groups who can pool and allow private carriers to offer fully insured workers' compensation coverage to employer pools or groups. (S.B. 38/BDR 53–379)**

2. **Amend *Nevada Revised Statutes* (NRS) 616A.485 to provide that the books, records, and payrolls of an employer insured by a private carrier must be open to inspection by the private carrier providing workers' compensation insurance to that employer. Pursuant to NRS 616A.485, the Employers Insurance Company of Nevada (EICON) and the Division of Industrial Relations (DIR) currently have access to the books, records, and payroll of the employers. (S.B. 38/BDR 53–379)**

3. **Amend NRS 616B.460 to change the requirement for an insurer to notify DIR of changes in the insurance status of employers from the current 24 hours to 15 days. (S.B. 38/BDR 53–379)**

4. **Amend NRS 686B.1779 to clarify that the effective date of the competitive rating schedule is July 1, 2003, and not July 1, 1999. (BDR 57–381)**

5. **Amend subsection 6 of NRS 616B.012 to state the Administrator of DIR shall provide lists containing the names and addresses of employers or any other records he maintains (or the division is required by law to maintain) and the total wages paid by each employer to the Department of Taxation, upon request, for its use in verifying returns for the business tax. The Administrator may charge a reasonable fee to cover any related administrative expenses. (S.B. 54/BDR 53–694)**

6. **For the information system being developed for three-way insurance, enact legislation to allow DIR to collect only basic claims information from associations of self-insured employers, EICON, private carriers, and self-insured employers. Specify that in carrying out its general responsibilities and regulatory activities,**

DIR may at a maximum collect only that information which is currently collected by DIR or EICON. The frequency of the requirement to report this information must be the same for associations of self-insured employers, EICON, private carriers, and self-insured employers. (S.B. 53/BDR 53–696)

7. Amend subsection 1(b) of NRS 616C.175 by deleting the phrase "which aggravates, precipitates or accelerates his preexisting condition," and changing the term "primary cause" to "preponderant cause." Also amend subsection 2(b) of NRS 617.366 by changing the term "primary cause" to "preponderant cause." (S.B. 95/BDR 53–386)

## REGULATION OF EMPLOYERS INSURANCE COMPANY OF NEVADA AND PRIVATE CARRIERS UNDER THREE-WAY INSURANCE

Application of Certain Provisions of the *Insurance Code*

8. Make the following provisions of NRS specifically applicable to EICON (S.B. 95/BDR 53–396):

   a. Provisions of Chapter 686A of NRS regarding fair trade practices;

   b. NRS 616B.472 which provides that the Commissioner of Insurance may suspend the authority of an insurer to provide industrial insurance;

   c. Provisions of Chapter 683A of NRS which require the use of licensed insurance agents to market and sell workers' compensation insurance; and

   d. NRS 679B.158 for the portion of the assessment which supports investigations and examinations to investigate fraud and ensure compliance with the fair trade practices act.

9. Specify that Chapter 686A of *Nevada Revised Statutes* is the exclusive jurisdiction of the Commissioner of Insurance, except to the extent it may affect DIR's responsibility to regulate the payment of workers' compensation benefits to claimants. Clarify that the authority of DIR in the area of claims practices specifically relates to the responsibility of insurers to pay benefits to injured workers. (S.B. 43/BDR 53–396)

Confidentiality of Information

10. Amend NRS regarding the confidentiality of information of EICON (S.B. 37/BDR 53-382):

    a. Make applicable to EICON the portions of Title 57 of NRS (the *Insurance Code*) relating to the confidentiality of information so that EICON and private carriers are subject to the same standards of confidentiality under three-way insurance; and

    b. Enact legislation requiring EICON to open its records to the same extent as any other insurer. An exception would be provided to make information available to the Legislature.

Exemption from Certain Provisions of the *Insurance Code*

11. Specifically exempt all insurers who provide workers' compensation, including EICON, from NRS 680A.140 which requires an insurer to deposit cash or securities in order to be authorized to transact insurance in Nevada. This exemption would specifically relate to the provision of workers' compensation insurance and not other lines of insurance. (S.B. 43/BDR 53-396)

12. Specifically exempt EICON from the following provisions of Title 57 of NRS (S.B. 43/BDR 53-396):

    a. NRS 680A.060 stating that an insurer must have a certificate of authority to transact insurance in Nevada;

    b. Subsection 1(a) of NRS 680A.180 and subsection 1(c) of NRS 680B.010 requiring an insurer to pay an annual continuation fee;

    c. Subsection 1 of NRS 680A.250 stating that an insurer must appoint the Commissioner as its attorney to receive service of legal process before the Commissioner may authorize that insurer to transact insurance in Nevada; and

    d. NRS 692C.260 and NRS 692C.270 requiring each insurer which is a member of an insurance holding company system to register with the Commissioner.

Exemption of EICON from the State Personnel Act

13. Enact legislation to exempt EICON from the State Personnel Act effective no later than July 1, 1999. Employees of EICON would have the option to remain in the State Personnel System or to select to become subject to a new comprehensive personnel system developed by EICON. (S.B. 37/BDR 53–382)

Ability of EICON to Offer Other Lines of Insurance

14. Clarify NRS to allow EICON to form alliances with private carriers for the purpose of marketing other lines of insurance, so long as EICON does not take on the financial liability for any line of insurance other than workers' compensation. (S.B. 37/BDR 53–382)

Review of EICON Claims by the Commissioner of Insurance and the Legislature

15. Amend subsection 2(a) of NRS 616B.083 to require EICON to report to the Commissioner of Insurance its financial statement and results of operations for the account for current claims in accordance with those accounting principles that are prescribed by the Commissioner and applied to other insurers providing coverage for workers' compensation and report to the Commissioner its financial statement and results of operations for the account for current claims and the account for extended claims in accordance with generally accepted accounting principles in a fiscal year basis. (S.B. 37/BDR 53–382)

16. Enact legislation to require EICON to report annually to the Legislative Committee on Workers' Compensation on the status of the $650 million account for extended claims. Require that the report include the financial status of the account, the payments made for claims against the account, investment income, and projections of the adequacy of the account to cover claims incurred prior to July 1, 1995. (S.B. 37/BDR 53–382)

Board of Directors

17. Enact legislation to create a board of directors for EICON, structured as follows (S.B. 93/BDR 53–393):

    a. Employers Insurance Company of Nevada shall be under the direct supervision of a board of directors composed of nine members, each of which shall be a policyholder or an employee of a policyholder of EICON. The members of the board may not hold legislative or judicial positions in government. The board of directors shall consist of three members appointed by the Majority Leader of the Senate in consultation with the Minority Leader

of the Senate, three members appointed by the Speaker of the Assembly in consultation with the Minority Leader of the Assembly, and three members appointed by the Governor.

b. Board members shall serve for a term of four years and shall not be permitted to serve for more than two successive terms of appointment, except in the first year of the enactment of this law in which case one member from each class of appointments shall serve for two years and one member shall serve for six years. The original terms of appointment should be staggered with no board member serving less than two years. After the stagger is accomplished, no term should be for less than four years.

c. The term of each regular appointment shall commence on July 1 of the appointment year and expire on June 30 following four years of service.

d. Vacancies on the board amongst members appointed by the Legislature shall be filled by the Legislative Commission. Such appointments shall be for the remaining term of the vacancies, thereby preserving the staggered terms of the board members.

e. Service as a member of the board appointed by the Legislative Commission shall not be considered a term of appointment for the purposes of the limitation of two terms.

f. The board shall meet at least quarterly.

g. The duties of the board shall be those prescribed in Chapters 616A through 616D, inclusive, and 617 of NRS. The board may adopt rules and procedures, not inconsistent with the law, as required for the conduct of its business. Any regulations adopted by the board shall be in compliance with Chapter 233B of NRS.

h. Board members shall be compensated by EICON for meetings at a rate of not less than $80 per meeting day plus travel and per diem expenses. The board may set a rate of compensation for its members greater than $80 per meeting day.

i. The board shall elect a chairman from amongst its members. The chairman shall serve for a term of one year and shall not be permitted to serve more than two successive one-year terms. The chairman shall be responsible for the conducting and scheduling of all meetings.

18. **If a board is established, amend NRS 616B.062 regarding the appointment and function of the manager of EICON to read as follows (S.B. 93/BDR 53–393):**

    a. **The board shall appoint a manager to be in charge of the operation of the system;**

    b. **The manager is the chief executive officer of the system and is responsible in consultation with the board for all duties of the system; and**

    c. **The manager shall serve at the pleasure of the board.**

19. **If a board is established, amend NRS 616B.065 regarding the selection and classification of assistant managers of EICON to read as follows (S.B. 93—BDR 53–393):**

    a. **The manager shall select assistant managers whose appointments are effective upon the confirmation by the board of directors. Assistant managers are in the unclassified service of the state and are entitled to receive annual salaries fixed by the board.**

    b. **The assistant managers shall serve at the pleasure of the manager, subject to the review of the board.**

OWNER-CONTROLLED INSURANCE PROGRAMS (OCIPs)

20. **Appoint a voluntary working group to develop specific recommendations to the Committee regarding the regulation of OCIPs. The working group would consider several topics, including the coverage, operations, and regulation of OCIPs. The working group would report back to the Committee by September 30, 1998, and would include at a minimum representatives of the Associated General Contractors, the insurance industry, insurance agents, labor, and the Commissioner of Insurance.**

21. **Amend NRS 686A.200 and NRS 686A. 220 to allow private carriers to write OCIP and contractor-controlled insurance program (CCIP) coverage. (S.B. 133/BDR 53–384)**

22. **Enact a provision in NRS to require that a contract for an OCIP or CCIP to include the following specific requirements (S.B. 133/BDR 53–384):**

    a. **The project site must include all operations in the course or scope of the OCIP project, including all related off-site operations;**

b. A description of the on-site safety program shall be required. The owner, general contractor, or insurer must develop and implement a safety program that includes: minimum safety standards; safety meetings; safety training; site inspections; advising subcontractors on special hazards; and investigation of serious injuries. Any and all sites covered by wrap-up coverage must have a qualified safety and claims administrator on-site at all times when construction work is underway. The safety and claims administrator must not be assigned to a particular subcontractor or be, in any way, under the control or oversight of a subcontractor;

c. The owner, construction manager, general contractor, and all subcontractors working on the project must be listed as named insureds (A named insured is specified as the insured in an insurance policy. A business added to a policy, other than the named insured, is considered an additional insured.);

d. The owner or general contractor must be designated as responsible for loss control and claims handling programs, the designated claims administrator of the owner or general contractor shall be responsible for filing the C-1 and C-3 forms, coordinating direction of the injured worker to the appropriate clinic, handling all issues regarding the claim that can be managed at the worksite;

e. Penalties for failing to comply with the safety plan and claims procedures;

f. Duration, terms, and conditions of coverage;

g. Insurance for completed operations and project coverages for a minimum of three years, except for residential projects which would be required to have five years of completed operations and project coverages;

h. A provision specifying that if work activity that has been performed on the site of the project covered by the wrap-up is moved in a manner that requires workers dedicated to the construction of the project covered by wrap-up insurance to work off the site of the project, the subcontractor will keep track of the payroll for those dedicated workers while they perform work off-site. The subcontractor will be reimbursed by the owner for the workers' compensation costs for those dedicated workers moved off-site;

i. A provision specifying that workers dedicated to work on the project covered by the wrap-up who, by the nature of their job, must work off-site (e.g. delivery drivers, fabricators, etc.) will be the responsibility of the subcontractor. The subcontractor will be responsible for all safety, claims

**administration, and loss history as long as the insurance costs initially included in the bid are reimbursed by the owner;**

j. **A provision specifying that all employees who will work only on the site of the project covered by the wrap-up will be the responsibility of the owner. All safety, claims administration, and lost history issues will be the responsibility of the owner of the site;**

k. **The individual or entity responsible for each section of the contract shall be identified; and**

l. **The names and qualifications of persons responsible for safety oversight on the project.**

23. **Prohibit the withholding of periodic payments to subcontractors or members enrolled in an OCIP or CCIP by the owner or general contractor if the subcontractor does not sign the C-3 form. (S.B. 133/BDR 53–384)**

24. **Enact a "file and approve" provision in NRS that would require a contract for an OCIP or CCIP to be filed with the Division of Insurance 60 days prior to the start of the project. The Commissioner of Insurance would have 60 days after submission of the materials to review and approve or disapprove the contract. If no action is taken by the Commissioner within 60 days, the contract would be considered approved. (S.B. 133/BDR 53–384)**

25. **Amend NRS to specifically allow the following entities to participate in or sponsor OCIP or CCIP agreements: (1) private companies, including firms undertaking to construct a project(s) in Nevada; (2) public bodies; and (3) utilities. (S.B. 133/BDR 53–384)**

26. **Clarify in NRS that the insurer for the OCIP or CCIP is liable for all workers' compensation claims related to injuries that arise in the course of employment on the project which are covered by the OCIP or CCIP contract, including future claims filed after the completion of the project. Provide in NRS that a subcontractor or enrolled member of the OCIP or CCIP may not be made liable for payment of claims, including claims filed after the completion of the project, related to the OCIP. An enrolled member is a company that is covered under the OCIP or CCIP agreement under the definition of enrolled member. This provision would apply for the time period of the OCIP or CCIP agreement and after the completion of the project, including situations in which the insurer and/or owner of the project are no longer present or conducting business in the State of Nevada. (S.B. 133/BDR 53–384)**

27. **Amend NRS to include the following educational requirements and notification requirements related to an OCIP or CCIP (S.B. 133/BDR 53–384):**

    a. **The owner or general contractor must clearly notify subcontractors if a project is a proposed OCIP or CCIP. This notification must be made in the document that requests bids in advance of the bid. The purpose of this notification is to allow subcontractors to bid the project with and without insurance costs, as well as with bid fees relating to the costs of loss control and claims administration.**

    b. **The pre-bid conference must at a minimum include the following information: (1) the general concept of an OCIP or CCIP; (2) the requirement for contractors to carry separate workers' compensation coverage for work not performed on the "project site"; (3) the basic safety plan; and (4) claims administration procedures.**

28. **Enact a provision in NRS to specify that a designated on-site safety official has to meet the appropriate qualifications in NRS 618.710 or have three to five years of on-the-job experience. (S.B. 133/BDR 53–384)**

29. **Enact a provision in NRS to require that no designated safety administrator can be qualified for more then one site covered by wrap-up coverage at a time. (S.B. 133/BDR 53–384)**

## BENEFITS AND ADMINISTRATION OF THE WORKERS' COMPENSATION SYSTEM

### Automatic Closure of Claims

30. **Amend NRS 616C.235 to require insurers to notify, by letter, certain claimants of the circumstances under which a claim may be closed automatically (this is in addition to any forms currently used which may notify claimants of the provisions of NRS 616C.235). (S.B. 38/BDR 53–379)**

### PPD Rating Evaluations

31. **Amend subsection 4 of NRS 616C.490 regarding rating evaluations for permanent partial disability (PPD) to clarify that PPD ratings must be done using objective medical findings only. Specify that impairments cannot be rated based solely on subjective pain. (S.B. 95/BDR 53–386)**

Benefits

32. Amend NRS 616C.505 to remove the provision which limits payment for the transport of the body of a deceased employee beyond the continental limits of the United States. (S.B. 95/BDR 53–386)

Hearings and Appeals Process

33. Amend subsection 2 of NRS 616C.340 to clarify that an appeals officer must have not only been licensed to practice in Nevada for two years, but must have experience in workers' compensation claims and proceedings. Each appeals officer must be an attorney who has been licensed to practice law before all the courts of this state and have actively practiced law in actions related to claims for compensation for at least two years. (S.B. 55/BDR 53–387)

34. Amend NRS to require the chief of the Hearings Division to adopt regulations governing the conduct of hearing officers and appeals officers that will include the standards set forth in the *Nevada Code of Judicial Conduct*. (S.B. 55/BDR 53–387)

35. Amend NRS to require that the performance of appeals officers be evaluated based on pertinent information including the criteria of timeliness and consistency. The Department of Administration shall compile the number of hearings on the merits each appeals officer conducts on a monthly basis throughout the appeals officer's term of office. The Department of Administration shall compile on a yearly basis the number of appeals filed with the district court and the Supreme Court from the decisions of each appeals officer during the appeals officer's term of office. The Department shall also compile the number of decisions for each appeals officer that are upheld and reversed at the district court and Supreme Court levels during the appeals officer's term of office. Cases that are pending at the time the data is compiled shall be noted as such. (S.B. 55—BDR 53–387)

36. Enact legislation to make the following changes to the hearings and appeals process (S.B. 55/BDR 53–387):

    a. Clarify that the responsibility of the Senior Appeals Officer over Appeals Officers includes the review and measurement of performance against standards, review of decisions for consistency and precedents, and responsibility for training.

    b. Hearing officers and appeals officers must write their own decisions and may not solicit or use draft decisions or proposed decisions received from parties to a case.

c. **Include a provision in Chapter 616C of NRS that allows any party aggrieved by a decision of an appeals officer pursuant to NRS 616C.360 to appeal to a three-member panel of appeals officers within 15 days after the decision is rendered. The panel shall be appointed by the Senior Appeals Officer. The matter shall be set for hearing before the panel within 45 days of the receipt of the notice of appeal. The appeals officer who renders the original decision shall not serve on the panel. The panel's review shall be limited to whether there was substantial evidence to support the original appeals officer's decision. The panel shall render its decision within 30 days. Any party aggrieved by a decision of the panel may appeal to the district court pursuant to NRS 616C.370.**

<u>Subsequent Injury Funds</u>

37. **Repeal the provisions of NRS related to all subsequent injury funds as of July 1, 1999. (S.B. 42/BDR 53–389)**

## QUALIFICATIONS OF ASSOCIATIONS OF SELF-INSURED EMPLOYERS

38. **Amend NRS 616B.386 to provide that an association of self-insured public or private employers that meets the criteria listed below may adopt internal policies that specify what type of documentation a proposed new member must submit to the association and the Commissioner of Insurance to demonstrate its financial solvency. Such an association must have (S.B. 44/BDR 53–934):**

    a. **Been certified by the Commissioner of Insurance for at least three consecutive years;**

    b. **A combined tangible net worth of all the members of the association of at least $5 million; and**

    c. **At least 15 members.**

39. **Amend NRS 616B.386 to provide that an association of self-insured public or private employers that meets the criteria listed below may adopt internal policies setting the tangible net worth and manual premium for each proposed new member. Such an association must have (S.B. 44/BDR 53–934):**

   a. **Been certified by the Commissioner of Insurance for at least three consecutive years;**

   b. **A combined tangible net worth of all the members of the association of at least $5 million;**

   c. **At least 15 members; and**

   d. **Not had an informal meeting arranged for it by the Commissioner of Insurance pursuant to subsection 1 of NRS 616B.431 due to an issue of the association's solvency or an alleged violation of law within the previous 18 months or, if such a meeting has been arranged by the Commissioner within the last 18 months, there must have been a satisfactory resolution of the concerns which made the meeting necessary, as evidenced by a letter from the Commissioner.**

## COVERAGE FOR HEART AND LUNG DISEASE FOR RETIRED POLICE OFFICERS AND FIREFIGHTERS

40. **Amend NRS to limit the compensation for heart and lung disease of firefighters and police officers that occurs after the employees have retired or are no longer working as firefighters or police officers (S.B. 132/BDR 53–925):**

   a. **Amend NRS 617.455 and NRS 617.457 to provide that the presumption in subsection 1 of each section applies to disabling heart or lung disease diagnosed after the termination of the person's employment if the diagnosis occurs within a period which begins with the last date the employee actually worked in the qualifying capacity and extends for a period calculated by multiplying four months by the number of full years of his employment. For example, an employee with 30 years of service would have continued eligibility for compensation of heart and lung disease for 120 months (10 years) after the employee retires. Nevada law currently provides that diseases of the heart and lung of certain persons who have been employed as firefighters or police officers are presumed to arise out of and in the course of employment.**

b. **Amend subsection 6 NRS 617.455 and subsection 6 of 617.457 to add the following provision. These subsections currently state that failure to correct predisposing conditions which lead to heart or lung disease as ordered by a physician in the annual examination excludes the employee from benefits if the correction is within the ability of the employee.**

> ***Such annual physical examinations shall be required during the periods of extended eligibility provided in section 1. Failure to comply with the requirements for physical examinations shall result in the suspension of eligibility for the benefits provided by this section.***

c. **Amend NRS 617.455 and NRS 617.457 to provide that if a person is entitled to benefits under subsection 1 or 2, the firefighter or police officer shall not be entitled to temporary total disability benefits pursuant to NRS 616C.475. This provision would only apply to cases in which the person is retired or otherwise separated, voluntarily or otherwise, from employment or volunteer status as a police officer or firefighter before the claim is opened.**

d. **Amend NRS 617.455 and NRS 617.457 to provide that the last injurious exposure rule must be used to determine the insurer responsible for payment of benefits to the police officer or fireman who has retired or otherwise separated from employment as a police officer or fireman. The last injurious exposure rule imposes liability on the insurer of the employer that last exposed a person to conditions that could have caused the occupational disease.**

e. **Provide that a retired police officer or firefighter who meets the requirements of subsection 1 of NRS 617.455 or subsection 1 of 617.457 but who is receiving retirement benefits at the time he is diagnosed with heart or lung disease would not be eligible for disability compensation (because his average monthly wage when retired is zero); such retired police officer or firefighter would still be eligible for medical benefits. Provide that a police officer or firefighter who meets the requirements of subsection 1 of NRS 617.455 or subsection 1 of 617.457, who is no longer working for the police department or fire department, but who is not receiving retirement benefits is eligible for disability compensation, as well as medical benefits. Specify that the average monthly wage for such a police officer or firefighter be taken from the last 12 weeks of employment with the police department or fire department who last exposed him to heart or lung disease. Specify that a police officer or firefighter who meets the requirements of subsection 1 of NRS 617.455 or subsection 1 of 617.457, who is eligible for retirement benefits but who has not yet elected to receive retirement benefits, is eligible for disability benefits, as well as medical benefits, but that if he later wants to elect to take his**

retirement benefits, he must choose between retirement benefits and disability benefits; he would remain eligible for medical benefits.

## COVERAGE FOR CORRECTIONAL OFFICERS WHO ARE EXPOSED TO CONTAGIOUS DISEASE

41. Amend NRS to cover correctional officers who are exposed to contagious disease (S.B. 132/BDR 53–925):

    a. Amend subsection 2 of NRS 616A.035, which defines the term "accident benefits," to include medical benefits as defined by NRS 617.130, and preventive care. Preventive treatment administered as a precaution to an employee who is exposed to a contagious disease while providing medical services, including emergency medical care, in the course and scope of his employment, and preventive treatment administered as a precaution to an employee of the Department of Prisons (DOP) or the Mental Hygiene and Mental Retardation Division (MH/MR) of the Department of Human Resources at facilities for mentally disordered offenders.

    b. Add a new subsection 4 to NRS 616A.035 to specify that "preventive treatment" includes tests to determine if an employee has contracted the disease to which he was exposed.

    c. Amend subsection 2 of NRS 616A.265, which provides what does and does not constitute an "injury by accident arising out of and in the course of employment."

    d. Create a new section in Chapter 616C concerning an employee of the DOP who qualifies as a police officer pursuant to subsection 7 of NRS 617.135 or an employee of MH/MR who qualifies as a police officer pursuant to subsection 9 of NRS 617.135 who is exposed to a contagious disease when battered by an offender or when responding to a physical altercation between offenders at an institution or facility of the DOP or MH/MR in the course and scope of his employment and the battery or employee's response to the altercation is documented by the creation and maintenance of a report by DOP or MH/MR. If after retiring the employee develops a contagious disease, the employee's entitlement to workers' compensation would be limited to a certain period of time determined by the following formula (also adopted by the Committee on Workers' Compensation for determining retired firemen and police officers' entitlement to workers' compensation): after the diagnosis occurs within a period which begins with the last date the employee

actually worked in the qualifying capacity and extends for a period calculated by multiplying four months by the number of full years of his employment.

## PERMANENT TOTAL DISABILITY

42. Amend NRS 616C.435 by adding a new subsection to include the following concept (S.B. 95/BDR 53–386):

> Except as provided in subsection 1, in no case may an insurer make a determination that an injured employee is permanently and totally disabled unless a physician has indicated in writing to the insurer that the preponderant cause of the injured employee's inability to effectively compete in the labor market is an industrial injury or an occupational disease.

## SUBROGATION OF INSURER TO RIGHTS OF INJURED EMPLOYEES

43. Amend NRS 616C.215 to provide that if the insurer has not intervened and the parties cannot otherwise agree, any recovery obtained by an injured employee from a third party must be distributed according to the following formula: Attorney's fees and costs are to be paid first pursuant to the agreement between the injured worker and his attorney. From the remaining amount, the injured worker is guaranteed one-third, and the insurer receives the remaining amount or the amount of lien, whichever is less. Any amount remaining beyond the amount of the insurer's lien goes to the injured worker in addition to his guaranteed one-third share. (S.B. 94/BDR 53–1076)

44. Revise provisions in NRS concerning notification to the insurer of action taken by an injured worker against a third party, and require full disclosure to the injured worker of anticipated settlement costs by the injured worker's attorney. (S.B. 64/BDR 53–1077)

## WORKERS' COMPENSATION FRAUD

45. Amend NRS 616D.300 to add a reference to Chapter 617. In addition, enact a provision in NRS to specify that the penalty for an injured worker falsely certifying that he has been continually disabled for the 14 days prior to the date of the check extends to injured workers receiving benefits pursuant to Chapter 617 of NRS. The new provision shall state (S.B. 95/BDR 53–386):

**Every check issued by an insurer for workers' compensation benefits shall include the following restrictive endorsement:**

> ***By signing this check for temporary disability, permanent total disability or rehabilitation maintenance benefits, I hereby certify under penalty of perjury that I have been continuously disabled and unable to work in any occupation for the 14 days prior to the date of this check. I understand that any false statement to obtain benefits is a crime, punishable by up to a category D felony pursuant to NRS 616D.300.***

**Once such a check is issued, endorsed, and/or negotiated, it creates a rebuttable presumption that the named claimant received, endorsed, and/or negotiated the check.**

## APPLICABILITY OF CHAPTER 617 OF NRS

46. **Amend provisions of Chapters 616A to 616D, inclusive, of NRS and other provisions of NRS to ensure that references to Chapter 617 ("Occupational Diseases") are included in all appropriate provisions. The addition of references to Chapter 617 would be made to clarify existing provisions, and only where it appears to be the original intent of the provision. Such references should not create a substantive change or expansion of a provision. (S.B. 92—BDR 53–1078)**

# REPORT TO THE 70TH SESSION OF THE NEVADA LEGISLATURE BY THE LEGISLATIVE COMMITTEE ON WORKERS' COMPENSATION

## I. INTRODUCTION

The 68th Session of the Nevada Legislature created a Legislative Committee on Workers' Compensation with the enactment of Senate Bill 458 (Sections 119 through 123 of Chapter 587, *Statutes of Nevada 1995,* at pages 2162-2164).[1] This legislation, as amended by Assembly Bill 609 (Section 61 of Chapter 410, *Statutes of Nevada 1997*, at page 1449) provides that the Committee:

1. May review issues related to workers' compensation.

2. May study the desirability of establishing a preferred employee program which provides exemptions from the payment of premiums and other financial incentives for employers who provide suitable employment for injured employees and any other program for returning injured employees to work.

3. May review the manner used by the Division of Industrial Relations of the Department of Business and Industry to rate physical impairments of injured employees.

4. Shall, to ensure the solvency of the State Industrial Insurance System (SIIS):

   a. Review and study the financial condition of SIIS; and

   b. Determine the extent of any apparent insolvency of the system.

5. May conduct investigations and hold hearings in connection with carrying out its duties pursuant to this section.

6. May direct the Legislative Counsel Bureau to assist in its research, investigations, hearings and reviews.

Eight legislators were appointed as members of the committee. Four members were appointed by the Senate Majority Floor Leader in consultation with the Minority Floor Leader of the Senate from members of the Senate Committee on Commerce and Labor. Four members were appointed by the Speaker of the Assembly from the Assembly Committee on Labor and Management. The committee members selected their chairman and vice chairman from among their members.

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[1]Sections 119-123 of S.B. 458 are codified as Sections 218.5375 through 218.5378 of *Nevada Revised Statutes*. See Appendix A.

During the 1997-1998 interim, the following legislators served on the Legislative Committee on Workers' Compensation:

Senator Ann O'Connell, Chair
Assemblyman Lynn C. Hettrick, Vice Chair
Senator Kathy Augustine
Senator Raymond C. Shaffer
Senator Randolph J. Townsend
Assemblywoman Saundra Krenzer
Assemblyman Dennis Nolan
Assemblyman David R. Parks

In December 1998, Senator Dean A. Rhoads and Assemblyman David E. Goldwater were appointed to replace former Senator Kathy Augustine and former Assemblywoman Saundra Krenzer, respectively.[2]

Legislative Counsel Bureau (LCB) staff services for the Committee were provided by Crystal M. Lesbo, Senior Research Analyst, Research Division; Vance A. Hughey, Principal Research Analyst, Research Division; Scott Young, Principal Research Analyst, Research Division; Melissa Stafford Jones, Senior Research Analyst, Research Division; Jan K. Needham, Principal Deputy Legislative Counsel, Legal Division; Kim Marsh Guinasso, Principal Deputy Legislative Counsel, Legal Division; Sue S. Matuska, Deputy Legislative Counsel, Legal Division; Susan Furlong-Reil, Senior Research Secretary, and Terrie Williams, Research Secretary, Research Division.

Beginning in September 1997 and concluding in November 1998, the Committee held ten meetings to obtain expert and public testimony. Following are the dates of each meeting of the Committee:

- September 24, 1997;
- November 18, 1997;
- February 20, 1998;
- April 7, 1998;
- May 28, 1998;
- June 24, 1998;
- August 10, 1998;
- September 30, 1998;
- October 28, 1998; and
- November 30, 1998

[2]During the 1998 General Election, Kathy Augustine ran for and was elected State Controller. Saundra Krenzer chose not to re-run for State Assembly.

All of the meetings were held in Las Vegas. All meetings, except the November 30, 1998, meeting, were video conferenced to Carson City.

During the course of this study, the Committee reviewed existing laws and implementation of the workers' compensation legislation enacted by the 1997 Legislature. It received comments and recommendations from employers, injured employees, medical providers, vocational rehabilitation specialists, claimants' attorneys, third-party administrators, State agency executives, local government officials, and representatives of various self-insured employers, business groups, and labor organizations.

At its work session, the Committee adopted 46 recommendations on the following topics:

- Three-way workers' compensation insurance;
- Regulation of the Employers Insurance Company of Nevada and private carriers under three-way insurance;
- Owner-controlled insurance programs;
- Benefits and administration;
- Qualifications of associations of self-insured employers;
- Coverage for heart and lung disease for retired police officers and firefighters;
- Coverage for correctional officers who are exposed to contagious disease;
- Permanent total disability; and
- Subrogation of insurer to rights of injured employees.

In this document, the Committee has attempted to present its findings and recommendations in a concise form. A great amount of information was gathered during the course of this study, and much of it was provided in exhibits that became a part of the minutes of the Committee's meetings. All supporting documents and minutes are on file with the LCB Research Library. This report also contains background information on Nevada's workers' compensation program and outlines recent legislation.

The Committee wishes to thank the many individuals who contributed to this study through their correspondence or testimony at the public hearings. The Committee members also recognize the cooperation and assistance provided by the staffs of the Hearings Division, Department of Administration; the Workers' Compensation Fraud Unit, Office of the Attorney General; Division of Industrial Relations; the Division of Insurance; the Nevada Attorney for Injured Workers; and EICON.

## II. OVERVIEW OF WORKERS' COMPENSATION

Following is historical and other background information on the development of workers' compensation in the United States and Nevada. Included is a summary of major legislative reforms enacted in the 1995 and 1997 Legislative Sessions.

### A. Background Information

Workers' compensation insurance is specialized insurance purchased by employers to provide medical care, disability compensation (indemnity) payments, and rehabilitation services for workers who are injured on the job or who contract occupational diseases in the course of their employment. Workers' compensation was the first social insurance system in the United States. It developed as a consequence of the high rate of industrial accidents in the 19th and early 20th centuries.

Under common law, 19th century employers were required to provide a reasonably safe place for their employees to work. If an injury occurred, however, and the employer did not voluntarily pay compensation, then the employee had to take his case to court. The litigation which arose out of this situation proved to be an unsatisfactory means of caring for injured workers. Uncertainty of outcome and the costs associated with the delay in compensating injured workers under a common law system were instrumental in the formation of the workers' compensation system.

Even if the employee could afford legal assistance, the employer had several defenses that made it difficult for the employee to collect damages. The employer might plead contributory negligence, suggesting that the employee was at fault to some degree. The employer might attempt to prove that the real fault was lodged with a fellow worker—the so-called fellow-servant doctrine. An employer also might apply what is called the "doctrine of assumption of risk." Under this doctrine, the employee was assumed to have had knowledge that he was engaged in a dangerous occupation and, therefore, if he still chose to work in that occupation, he had to assume the known risks of being injured.

American policymakers looked to Europe where the idea of workers' compensation had originated in Germany in the 1800s and later was adopted in France, Great Britain, and other countries. Under a workers' compensation insurance program, the right to bring legal action against an employer on the grounds of negligence was exchanged for a system whereby benefits were paid for all injuries arising out of and in the course of employment. The costs of the work-related injuries were allocated to the employer, not because of any presumption that he was to blame for every individual injury, but because the inherent hazards of employment were considered to be a cost of production.

This "no-fault" approach to insuring employers soon became popular throughout the United States. Between 1911 and 1920, all but six states passed universal workers' compensation statutes. Eventually, the remaining states also enacted such laws.

## B. Workers' Compensation in Nevada

Nevada was one of the first states to enact a compulsory workers' compensation law. The original Industrial Insurance Act was adopted in 1913, and a complete revision was drafted in 1947. The State's industrial insurance laws have been amended during every regular legislative session since 1913.

Recent legislative sessions have brought major changes to the statutes relating to workers' compensation. During the 1979 Session, self-insurance was authorized for qualified employers. The self-insurance option became effective on January 1, 1980. Prior to that time, the Nevada Industrial Commission (NIC) had been the only provider of workers' compensation insurance in the State.

The 1979 Legislature removed the hearings process for contested claims from NIC and placed it in a new Hearings Division within the Department of Administration. The Hearings Division is responsible for the hearings and appeals process.

In 1981, the Legislature completely revised the NIC structure. Effective July 1, 1982, NIC ceased to exist and the State Industrial Insurance System (SIIS) began operation as the state-run workers' compensation insurance carrier.[3] Also on that date, the Department of Industrial Relations (DIR) began operation as the primary regulator of the State's workers' compensation program.[4]

The Commissioner of Insurance reviews and approves premium rates and is responsible for certifying self-insured employers who meet certain statutory qualifications. The Division of Insurance also regulates third-party administrators of self-insured programs and managed care organizations.

The Nevada Attorney for Injured Workers (NAIW),[5] a state agency separate from EICON, represents claimants free of charge at the Hearings Division's appeals level, in the State's district courts, and before Nevada's Supreme Court.

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[3]In July 1998, SIIS changed its name to Employers Insurance Company of Nevada (EICON).

[4]The Commissioner of Insurance retained authority to approve premium rates charged by EICON. In 1993, both the Department of Insurance and DIR were made divisions of the new Department of Business and Industry.

[5]Originally created in 1977 as the State Industrial Claimants' Attorney, in 1991, the Legislature changed the agency's name to the Nevada Attorney for Injured Workers.

## C. Emerging Problems in Nevada's Workers' Compensation Program and Early Legislative Responses

During the early- and mid-1980s, workers' compensation did not generate an inordinate amount of legislative interest in Nevada. Available information seemed to suggest that there were no major problems within the workers' compensation program. From 1984 through 1988, SIIS paid over $50 million in dividends to policyholders.[6] Additionally, from 1985 through 1988, SIIS did not request approval for any increases in premium rates charged to its policyholders.[7] During the 1980s and early-1990s, Nevada's compensation benefits were among the best in the Western States and premium rates were among the lowest.[8]

Beginning in 1988, SIIS instituted the first in a series of premium rate increases. Also at about that time, injured workers began to express more concerns about the manner in which their claims were being handled by SIIS and self-insured employers. In 1989, the Legislature enacted Assembly Bill 1 (Chapter 856, *Statutes of Nevada 1989*). This bill directed the Legislative Auditor to conduct a performance audit of Nevada's workers' compensation program. The audit covered five aspects of the program:

- Medical Benefits to Injured Workers;
- Compensation and Other Benefits to Injured Workers;
- Hearings and Appeals Process;
- State Industrial Insurance System; and
- Department of Industrial Relations.

In 1991, the Legislature enacted S.B. 7 (Chapter 723, *Statutes of Nevada 1991*) to resolve many of the issues identified by the legislative audit. This measure reflected the Legislature's intent to reform the workers' compensation system in the following ways:

1. Lower Nevada's high rate of industrial injuries by promoting safety on the job;

2. Serve Nevada's injured employees by streamlining the process for filing, hearing, and appealing claims. The object was to make certain that injured employees and their health care providers received compensation as soon as possible. In addition, the injured employees were to receive appropriate medical care and rehabilitation to allow them to return to work as soon as possible; and

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[6] *State Industrial Insurance System Business Plan*, June 1992, p. 61.

[7] *Ibid.*, p. 60.

[8] *Rate and Benefit Comparison: Nevada and Surrounding States*, State Industrial Insurance System, April 2, 1993.

3. Serve employers by protecting against fraudulent claims and by returning injured employees to work as soon as possible.

This bill also established an interim Legislative Committee on Industrial Insurance. The purpose of this Committee was to study Nevada's laws concerning industrial insurance and to prepare a report for submission to the Governor and the 1993 Legislature. Eight legislators were appointed as members of the Committee. The Committee held eight meetings, including a two-day work session, to obtain expert and public testimony. The Committee considered 188 proposed recommendations. It adopted 62 of them covering a variety of topics including:

- Determination and payment of benefits;
- Medical care, compensation, and other benefits to injured workers;
- Fraud in workers' compensation;
- The organization of SIIS;
- Employer options for industrial insurance;
- Hearings and appeals of contested claims;
- Occupational safety and health; and
- Legislative oversight concerning industrial insurance.

Many of those 62 recommendations were subsequently adopted with the enactment of Senate Bill 316 (Chapter 265, *Statutes of Nevada 1993*).

## D. 1995 Legislative Reforms

Workers' compensation reform was a major topic of discussion during the 1995 Legislative Session, as it was in 1993. However, unlike the 1993 Session, the threatened financial collapse of SIIS, while still a concern, did not dictate the focus of legislative attention in 1995. Instead, a variety of topics were addressed that resulted in the enactment of the following bills:

**Senate Bill 458** (Chapter 587, *Statutes of Nevada 1995*)—While the reforms enacted in 1993 helped to improve the financial condition of SIIS, the Legislature determined that additional reforms were necessary. With S.B. 458, the Legislature clarified provisions regarding exclusive remedy, created separate boards to administer subsequent injury programs of self-insured employers, revised provisions regarding confidentiality of records, clarified the definition of an employee leasing company, and exempted real estate brokers and salesmen from the mandatory coverage requirements of the Nevada Industrial Insurance Act. The Legislature also clarified provisions regarding eligibility for more than one program for vocational rehabilitation, created a legislative committee on workers' compensation, and authorized collection of a solvency surcharge from certain employers if SIIS is declared insolvent by the Commissioner of Insurance.

**Assembly Bill 57** (Chapter 194, *Statutes of Nevada 1995*)—This bill extends workers' compensation benefits for heart and lung disorders to forensic specialists and correctional officers employed by the State's Mental Hygiene and Mental Retardation Division at facilities

for mentally disordered offenders. This measure also provides these benefits to forensic specialists employed by the Department of Prisons.

**Assembly Bill 59** (Chapter 127, *Statutes of Nevada 1995*)—This bill allows the Attorney General to determine the propriety of submitted evidence concerning an employer taking money out of an employee's paycheck to pay workers' compensation premiums. In addition, the measure provides that, if the amount of a benefit obtained or sought in a fraudulent manner is less than $250, a person convicted of such an offense is guilty of a misdemeanor. The bill also allows the Attorney General, in workers' compensation fraud cases, to subpoena records from a financial institution without notifying the pertinent customer.

**Assembly Bill 61** (Chapter 497, *Statutes of Nevada 1995*)—Further adjustments to the penalty provisions of the workers' compensation statutes were made with A.B. 61, including a new provision to allow certain fines to be paid directly to an injured worker, and more severe penalties to be assessed on insurers that violate prohibitions against certain claims management practices.

**Assembly Bill 498** (Chapter 578, *Statutes of Nevada 1995*)—During the 1995 Session, the Legislature enacted several measures that provide employers with industrial insurance options. Group self-insurance was authorized in 1993, effective July 1, 1995. However, the Legislature reviewed existing statutes and concluded that changes were necessary to clarify the types of businesses that would be allowed to join insurance groups. In addition, the Legislature clarified provisions regarding financial requirements of groups and their members, provided for regulation of solicitors, and made other changes to help ensure that self-insurance groups will be financially viable. These provisions are included in A.B. 498.

**Assembly Bill 552** (Chapter 580, *Statutes of Nevada 1995*)—The Legislature also passed A.B. 552 to allow private carriers to offer workers' compensation insurance beginning July 1, 1999 (so-called three-way insurance). The four-year delay in establishing three-way insurance will give SIIS an opportunity to further improve its financial condition so that it can effectively operate in a competitive market. The delay also will give the Commissioner of Insurance time to implement any necessary regulatory controls.

**Assembly Bill 587** (Chapter 544, *Statutes of Nevada 1995*)—Assembly Bill 587 was enacted to enhance the ability of the Workers' Compensation Fraud Unit to investigate and prosecute employees, medical providers, and employers who engage in fraudulent activities. The bill also increases penalties for committing certain violations. In addition, A.B. 587 revises provisions relating to payment of an award for permanent partial disability in a lump sum to an employee who is the subject of a criminal action.

## E. 1997 Legislative Reforms

During the 1997 Session, the Nevada Legislature continued its efforts to reform the workers' compensation program. It enacted a number of bills including several measures designed to help the transition to a competitive market:

**Senate Bill 105** (Chapter 645, *Statutes of Nevada 1997*) requires workers' compensation insurers, other than self-insurers, to provide each insured employer with a certificate of insurance that must contain certain specified information. The bill also requires an insured employer, including a self-insured employer, to post a certificate indicating that the employer has the required industrial insurance coverage. In addition, the bill provides that the workers' compensation fraud control unit of the Office of the Attorney General must have access to the index of compensation claims maintained by the Administrator of DIR. Furthermore, S.B. 105 authorizes the administrator to impose certain fines on an employer who intentionally fails to provide information for use in the index. The bill also requires certain information to be contained in a certificate of self-insurance issued by the Commissioner of Insurance.

The measure also provides that the Administrator of the DIR may impose certain fines if the fraud control unit does not prosecute a person for specified violations. In addition, S.B. 105 authorizes the Administrator of DIR to impose certain penalties if an employer fails to provide and secure or maintain industrial insurance coverage. Finally, the bill amends certain provisions of the Industrial Insurance Act that will be effective upon the commencement of "three-way insurance" on July 1, 1999.

Sections of S.B. 105 that transfer authority to impose certain penalties against an employer who fails to maintain industrial insurance coverage were effective January 1, 1998. Sections of the bill that require insurers, other than self-insurers, to provide each insured employer with a certificate of insurance are effective on July 1, 1999. Other sections of the bill were effective on July 1, 1997.

**Senate Bill 125** (Chapter 84, *Statutes of Nevada 1997*) clarifies that the term "product" used in the unemployment security provisions relating to direct sellers includes an intangible service as well as a tangible good. In addition, the bill exempts certain direct sellers from the mandatory provisions regarding industrial insurance.

According to testimony, the exemption in the unemployment statutes for direct sellers was patterned after federal law. The Internal Revenue Service (IRS) interpreted the term "product" in the federal statute to exclude intangible services. Nevada's Employment Security Division (ESD) adopted the same interpretation of the provision in state law. After several court decisions held that an intangible service is a "product," the IRS changed its interpretation. Senate Bill 125 clarifies the definition of "product" and conforms state law to the interpretation now used under the federal statute.

In addition, S.B. 125 authorizes an exemption from mandatory workers' compensation coverage for certain direct sellers, such as individuals who sell Tupperware, Avon, Shaklee, and similar products. Testimony indicated that these individuals generally work for themselves out of their own homes and have small operations.

**Senate Bill 372** (Chapter 674, *Statutes of Nevada 1997*) provides that an offender confined in a county jail or other local detention facility may receive coverage under the modified program of industrial insurance while engaged in a work program directed by the administrator of the detention facility. An offender is limited to the rights and remedies established by the modified program established by the DIR and is not entitled to the rights and remedies of the Nevada Industrial Insurance Act and the Nevada Occupational Diseases Act.

A modified program of industrial insurance coverage for state prison inmates was enacted in 1989. According to testimony, the state program has functioned well, and representatives of local authorities indicated that a similar program for offenders confined in county jails and local detention facilities would be useful.

**Assembly Bill 114** (Chapter 133, *Statutes of Nevada 1997*) eliminates the duty of DIR to certify or authorize insurers to provide industrial insurance, and places that duty with the Commissioner of Insurance. The bill also clarifies existing statutory provisions that prohibit unauthorized insurers from providing workers' compensation insurance in Nevada.

Beginning July 1, 1999, private insurance companies will be allowed to provide workers' compensation insurance to Nevada's employers. *Nevada Revised Statutes* 616A.465 gives the Commissioner of Insurance responsibility for certifying or authorizing insurers. The statute also requires DIR to authorize whether an insurer meets requirements of the workers' compensation laws. According to testimony, the Commissioner of Insurance testified that the Commissioner should be solely responsible for certifying or authorizing insurers to provide industrial insurance.

**Assembly Bill 147** (Chapter 474, *Statutes of Nevada 1997*) limits the circumstances under which an insurer, an employer, an organization for managed care, a third-party administrator, the representative of any of those persons, or the representative of an injured employee may communicate with a physician or chiropractor regarding the medical disposition of a claim for workers' compensation benefits. The bill requires that a log that includes the date, time, and subject matter of the communications be maintained by the party that initiates an oral communication. The log must be maintained in a written form or in a form from which a written record may be produced, and it must be made available to the injured employee or his representative, or his employer, upon request.

The measure also requires that a copy of a written communication that relates to the medical disposition of a claim be provided to the employee or his representative in a timely manner. A person who violates the provisions of this bill is subject to an administrative penalty.

**Assembly Bill 184** (Chapter 487, *Statutes of Nevada 1997*) authorizes the establishment of a program by an employer in which a police officer or fireman who suffers a catastrophe resulting in temporary total disability may elect payment of his normal salary rather than workers' compensation benefits. "Police officers" are defined as those covered under heart-lung workers' compensation provisions. A "catastrophe" is defined as an illness or accident arising out of, or in the course of, employment, which is life threatening or will require convalescence in excess of 30 days.

If an employer elects to establish such a program, an eligible employee may collect normal salary for not more than one year and accrue sick leave, annual leave, and retirement benefits. Further, the program may allow a police officer or fireman to return to light-duty employment modified according to his physical restrictions or limitations. Finally, the measure applies to self-employed insurers as well as state employers of police officers and firemen.

**Assembly Bill 466** (Chapter 399, *Statutes of Nevada 1997*) stipulates that, in a county with a population of 100,000 or more, a test of an injured worker for the use of alcohol or a controlled substance must be performed by a laboratory certified by the College of American Pathologists or by the Federal Department of Health and Human Services. This bill requires that testing of breath for alcohol be performed pursuant to regulations of the Federal Department of Transportation. This measure also provides that, in addition to an insurer, an appeals officer, a hearing officer, or an employer may request that an injured employee submit himself for a medical examination.

Testimony indicated that A.B. 466 is intended to ensure that a test of an injured worker for the use of alcohol or a controlled substance is performed by a certified laboratory to minimize the chance of incorrect results being used in workers' compensation cases. The bill was made effective on July 1, 1999, to provide sufficient time for laboratories that want to perform these tests to obtain the required certifications.

**Assembly Bill 548** (Chapter 285, *Statutes of Nevada 1997*) provides that workers' compensation premium rates paid by employers under the assigned risk plan be actuarially determined to ensure that the plan is financially self-sustaining. This bill also eliminates a requirement that a private carrier provide industrial insurance for the same classes of risk in this state for which the insurer provides industrial insurance outside this state.

Testimony indicated that this bill will ensure that employers who are not in the assigned risk plan are not required to subsidize premiums of employers who are in the assigned risk plan.

In addition, testimony indicated that the requirement to provide industrial insurance for the same classes of risk in this state for which a private carrier provides industrial insurance outside this state is not necessary because another provision in the workers' compensation law allows a private carrier to refuse to provide coverage for any particular risk. Employers who cannot obtain industrial insurance in the voluntary market will receive coverage in the assigned risk plan.

**Assembly Bill 609** (Chapter 410, *Statutes of Nevada 1997*) makes various changes to Nevada's workers' compensation laws. The bill creates in the State Insurance Fund an account for "extended claims" and an account for "current claims." The bill requires the State Industrial Insurance System (SIIS) to allocate to the account for extended claims $650 million in invested assets to be used to pay liabilities of the State Insurance Fund for workers' compensation claims incurred prior to July 1, 1995. Money and assets credited to the account for current claims must be used to pay liabilities of the State Insurance Fund for claims incurred on or after July 1, 1995.

The measure also repeals provisions authorizing the imposition of a surcharge to ensure the solvency of SIIS; provides that imposition of any assessment to fund the account for extended claims requires legislative approval; authorizes the manager of SIIS to establish a plan for designating small employers for the purpose of establishing their premiums; and restricts, for a limited period, the manner in which private carriers may determine premiums for insured employers.

In addition, A.B. 609 amends a provision regarding automatic closure of an injured employee's claim. If the medical benefits required to be paid for a claim are less than $500, the claim closes automatically if the claimant does not receive medical treatment for the injury for at least 12 months, instead of the current six months.

The bill allows for the electronic transmission of certain documents related to claims; clarifies the authority of insurers to purchase annuities for the payment of claims; and transfers, from the Governor to the manager of SIIS, the authority to hire and set the salaries of assistant managers.

Assembly Bill 609 also transfers, from SIIS to the Division of Industrial Relations, the authority to perform certain regulatory functions, including adoption of regulations regarding the manner in which otherwise confidential information may be made available to certain state and federal agencies. The bill establishes procedures relating to filing of a claim against the uninsured employers' claim fund and provides authority to impose a penalty for failure to secure and maintain workers' compensation insurance. The bill also specifies which records of SIIS are confidential.

Many sections of the bill were effective on July 1, 1997, including sections that create separate accounts for extended and current claims; allow SIIS to establish a plan for designating small employers for the purposes of establishing their premiums; affect automatic closure of certain claims; allow insurers to purchase annuities; and specify which records of SIIS are confidential. Sections of the bill relating to regulation of confidential records, electronic transmission of information, and transfer of certain regulatory functions are effective on January 1, 1998. Other sections of the bill are effective on July 1, 1999, and July 1, 2003.

## III. DISCUSSION OF RECOMMENDATIONS

### A. Three-Way Workers' Compensation Insurance

The Legislative Committee on Workers' Compensation heard extensive testimony during the interim related to "leveling the playing field" among providers of workers' compensation insurance. These providers include EICON, self-insured employers, associations of self-insured employers, and beginning July 1, 1999, private insurance carriers. In an effort to "level the playing field," the Committee made several recommendations to the 1999 Session of the Nevada State Legislature, including the following recommendation regarding pooling. A pool is a purchasing group that obtains economies of scale not otherwise available to individual members. Group and association programs that pool to purchase workers' compensation insurance provide a means for small businesses to access comprehensive safety and loss control programs.

1. **Enact legislation to expand the types of employer groups who can pool and allow private carriers to offer fully insured workers' compensation coverage to employer pools or groups. (S.B. 38/BDR 53–379)**

Pursuant to NRS 616A.485, access to employer records may be used to determine the accuracy of payroll, the number of persons employed, and any other information necessary for the administration of Chapters 616A through 617 of NRS. Regarding access to employer records, the Committee made the following recommendation:

2. **Amend NRS 616A.485 to provide that the books, records, and payrolls of an employer insured by a private carrier must be open to inspection by the private carrier providing workers' compensation insurance to that employer. Pursuant to NRS 616A.485, EICON and the DIR currently have access to the books, records, and payroll of the employers. (S.B. 38/BDR 53–379)**

Pursuant to NRS 616B.460 insurers are required to notify DIR if an employer has changed his insurance carrier or if coverage has lapsed within 24 hours or by the end of the next working day. According to testimony, the purpose of the 24-hour provision is to ensure that there are no lapses in coverage. However, testimony further indicated that the length of the notification requirement is of no consequence to DIR as its enforcement efforts will be based on information it received from the advisory organization, the National Council on Compensation Insurance (NCCI). The Committee made the following recommendation:

3. **Amend NRS 616B.460 to change the requirement for an insurer to notify DIR of changes in the insurance status of employers from the current 24 hours to 15 days. (S.B. 38/BDR 53–379)**

Section 686B.1779 of NRS identifies the basis on which the Commissioner of Insurance may disapprove the rates filed by an insurer. Effective July 1, 1999, until July 1, 2003, the rates filed by an insurer must comply with the administrative rating schedule provided in NRS 686B.177. To clarify, the Committee made the following recommendation:

4. **Amend NRS 686B.1779 to clarify that the effective date of the competitive rating schedule is July 1, 2003, and not July 1, 1999. (BDR 57–381)**

Members of the Committee agreed that statutes which encourage the sharing of information among state agencies are critical to Nevada's efforts to ensure compliance with business and tax laws. Specifically, Nevada's Department of Taxation requires the name and address of an employer and the number of employees for enforcement of tax laws. Pursuant to subsection 6 of NRS 616B.012, the Administrator of DIR shall provide lists containing the names and addresses of employers, the number of persons employed by each employer, and the total wages paid by each employer to the Department of Taxation, upon request, for its use in verifying returns for the business tax. Based on testimony, the Committee adopted the following recommendation changing the information DIR shall provide to the Department of Taxation:

5. **Amend subsection 6 of NRS 616B.012 to state the Administrator of DIR shall provide lists containing the names and addresses of employers or any other records he maintains (or the division is required by law to maintain) and the total wages paid by each employer to the Department of Taxation, upon request, for its use in verifying returns for the business tax. The Administrator may charge a reasonable fee to cover any related administrative expenses. (S.B. 54/BDR 53–694)**

The Commissioner of Insurance has appointed NCCI to be the statistical agent to collect data for rate making. Testimony indicated that NCCI is costly and requires an excessive amount of information. The Committee discussed the alternative of DIR collecting claims data rather than NCCI. In accordance, the Committee made the following recommendation:

6. **For the information system being developed for three-way insurance, enact legislation to allow DIR to collect only basic claims information from associations of self-insured employers, EICON, private carriers, and self-insured employers. Specify that in carrying out its general responsibilities and regulatory activities, DIR may at a maximum collect only that information which is currently collected by DIR or EICON. The frequency of the requirement to report this information must be the same for associations of self-insured employers, EICON, private carriers, and self-insured employers. (S.B. 53/BDR 53–696)**

According to testimony heard by the Committee, primary cause is the most frequently litigated issue in workers' compensation. Primary cause deals with the situation where there is a preexisting disability that is aggravated or accelerated as a result of an industrial injury. In

many cases there is a substantial disagreement between attorneys as well as physicians as to what primary cause is. For example, an individual with severe diabetes had stubbed his toe during his employment. His injury resulted in a serious medical condition in which he ultimately lost his leg just below the knee. There was a disagreement as to the primary cause of the injury. Pursuant to NRS 616C.175 the industrial injury has to aggravate, accelerate, or precipitate the pre-existing condition. In this example, the argument was that the diabetes made the injury worse; the injury did not make the diabetes worse. Therefore, NRS 616C.175 did not apply. The Committee discussed an alternative approach where the most prevalent cause of the condition can be identified, substituting the phrase "preponderant cause" for primary cause." A preponderance of evidence denotes evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it. However, the word "preponderant" means more than weight. It denotes a superiority of weight or outweighing. Therefore, the Committee made the following recommendation:

7. **Amend subsection 1(b) of NRS 616C.175 by deleting the phrase "which aggravates, precipitates or accelerates his preexisting condition," and changing the term "primary cause" to "preponderant cause." Also amend subsection 2(b) of NRS 617.366 by changing the term "primary cause" to "preponderant cause." (S.B. 95/BDR 53–386)**

## B. Regulation of Employers Insurance Company of Nevada and Private Carriers Under Three-Way Insurance

During the course of its study, the Committee heard considerable testimony on the role and regulation of EICON under the three-way insurance system. In anticipation of a three-way environment, the Committee asked representatives from Colorado and Utah to discuss their experiences as quasi-public entities operating in a competitive environment.[9]

At the April 7, 1998, meeting the Committee reviewed a letter to Senator Ann O'Connell, committee chair, dated March 31, 1998, from the Legal Division, Legislative Counsel Bureau, indicating where and in what manner the *Nevada Revised Statutes* treat EICON differently than private insurance carriers.[10]

The following recommendations address the application of specific provisions of the Insurance Code to EICON. With respect to subparagraph (d.) of the recommendation, the assessment paid by an insurer, including EICON, would be based on the lines of insurance written by the insurer. The assessment is currently used to fund the fraud unit in the office of the Commissioner of Insurance; and investigations and examinations.

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[9]Handouts titled "WCF History and Status" and "Colorado Compensation Insurance Authority" are included in this report as Exhibits B and C, respectively.

[10]Letter from the Legal Division, Legislative Counsel Bureau, is included in this report as Exhibit D.

8. **Make the following provisions of NRS specifically applicable to EICON (S.B. 43/BDR 53–396):**

   a. **Provisions of Chapter 686A of NRS regarding fair trade practices;**

   b. **NRS 616B.472 which provides that the Commissioner of Insurance may suspend the authority of an insurer to provide industrial insurance;**

   c. **Provisions of Chapter 683A of NRS which require the use of licensed insurance agents to market and sell workers' compensation insurance; and**

   d. **NRS 679B.158 for the portion of the assessment which supports investigations and examinations to investigate fraud and ensure compliance with the fair trade practices act.**

Chapter 686A of NRS, commonly referred to as the Unfair Trade Practices Act, pertains to trade practices, fraud, and financing of premiums as applicable to providers of workers' compensation coverage in Nevada. The Committee made the following recommendation:

9. **Specify that Chapter 686A of *Nevada Revised Statutes* is the exclusive jurisdiction of the Commissioner of Insurance, except to the extent it may affect DIR's responsibility to regulate the payment of workers' compensation benefits to claimants. Clarify that the authority of DIR in the area of claims practices specifically relates to the responsibility of insurers to pay benefits to injured workers. (S.B. 43/BDR 53–396)**

For private carriers, pursuant to NRS 679B.190, all documents in possession of the Division of Insurance are considered public information unless deemed confidential by another statutory provision or they fall under one of the exceptions in NRS 679B.190. The exceptions include records relating to investigations or examinations that are ongoing or have not been finalized, other documents the Commissioner of Insurance classifies as confidential because they were obtained from another governmental agency or from sources upon the express condition that they remain confidential, and medical records. Section 616B.014 of NRS currently governs the types of information held by EICON that are considered proprietary and confidential. The Committee made the following recommendation regarding confidentiality of information:

10. **Amend NRS regarding the confidentiality of information of EICON (S.B. 37/BDR 53–382):**

    a. **Make applicable to EICON the portions of Title 57 of NRS (the *Insurance Code*) relating to the confidentiality of information so that EICON and private carriers are subject to the same standards of confidentiality under three-way insurance; and**

b. **Enact legislation requiring EICON to open its records to the same extent as any other insurer. An exception would be provided to make information available to the Legislature.**

According to the Commissioner of Insurance, the average deposit for a new certificate of authority is approximately $200,000. A formula to determine the deposit for insurers providing workers' compensation coverage has not yet been established. It is expected that an insurer that already has a certificate of authority would be required to have an additional $100,000 deposit in order to provide workers' compensation insurance. Currently, EICON is not required to deposit cash or securities in order to transact workers' compensation insurance in Nevada. Rather, EICON is authorized by statute to write workers' compensation insurance. An industry representative indicated to the Committee that the Commissioner concurred with the recommendation that measures required of EICON should also be required of other insurers. Therefore, the following recommendation was approved by the Committee:

11. **Specifically exempt all insurers who provide workers' compensation, including EICON, from NRS 680A.140 which requires an insurer to deposit cash or securities in order to be authorized to transact insurance in Nevada. This exemption would specifically relate to the provision of workers' compensation insurance and not other lines of insurance. (S.B. 43/BDR 53–396)**

Pursuant to NRS 680A.060 a person shall not act as an insurer and transact insurance in the State of Nevada without authorization by a certificate of authority. Pursuant to NRS 680B.010, insurers must pay the following fees for a certificate of authority to the Commissioner of Insurance: a fee of $2,450 for filing the initial application for a certificate of authority; a fee of $283 for issuance of a certificate for one kind of insurance; and a fee of $578 for issuance of a certificate for two or more kinds of insurance. Pursuant to NRS 680B.010 related to fees, insurers must pay to the Commissioner of Insurance a fee of $2,450 for each annual continuation of a certificate of authority. It was unanimously agreed that EICON should not be required to purchase a certificate of authority and that exempting EICON from this requirement would not result in a competitive disadvantage to other carriers of such a magnitude that it would require a legislative adjustment. The Committee approved the following recommendation:

12. **Specifically exempt EICON from the following provisions of Title 57 of NRS (S.B. 43/BDR 53–396):**

    a. **NRS 680A.060 stating that an insurer must have a certificate of authority to transact insurance in Nevada;**

    b. **Subsection 1(a) of NRS 680A.180 and subsection 1(c) of NRS 680B.010 requiring an insurer to pay an annual continuation fee;**

c. **Subsection 1 of NRS 680A.250 stating that an insurer must appoint the Commissioner as its attorney to receive service of legal process before the Commissioner may authorize that insurer to transact insurance in Nevada; and**

d. **NRS 692C.260 and NRS 692C.270 requiring each insurer which is a member of an insurance holding company system to register with the Commissioner.**

The Committee heard testimony addressing the State Personnel Act and EICON's ability to successfully compete in a competitive environment. According to testimony, the State Personnel Act does not provide EICON sufficient flexibility with respect to human resource policies when dealing with its employees in a competitive environment. For example, if a classified employee of EICON is offered a 10 percent pay increase to work for a competitor, EICON does not have the ability to match that offer, making it difficult for EICON to retain its best employees. The Committee and representatives from EICON conceded that EICON must first develop a comprehensive personnel plan before it can to be exempted from the State Personnel Act. In accordance, the Committee made the following recommendation:

13. **Enact legislation to exempt EICON from the State Personnel Act effective no later than July 1, 1999. Employees of EICON would have the option to remain in the State Personnel System or to select to become subject to a new comprehensive personnel system developed by EICON. (S.B. 37/BDR 53–382)**

The Committee heard testimony addressing EICON's ability to underwrite other lines of insurance. It was indicated by testimony that prohibiting EICON to underwrite other lines of insurance could give private carriers a competitive advantage. It was recommended during testimony that the statute should clarify that EICON's ability to sell other lines of insurance should not become the obligation of Nevada's State General Fund at some later date. In response, the Committee made the following recommendation:

14. **Clarify NRS to allow EICON to form alliances with private carriers for the purpose of marketing other lines of insurance, so long as EICON does not take on the financial liability for any line of insurance other than workers' compensation. (S.B. 37/BDR 53–382)**

Subsection 2(a) of NRS 616B.083 provides that EICON shall report to the Commissioner of Insurance only its financial statement and results of operations for the account for current claims in accordance with those account principals that are prescribed by the Commissioner and applied to other insurers providing coverage for workers' compensation. When EICON was experiencing financial difficulties, the Legislature passed reform legislation to bifurcate EICON's account into an "old account" and a "new account." It is unlawful for a licensed insurance carrier to sell insurance if operating from an insolvent fund. The bifurcation of EICON's account enabled EICON to continue to serve the workers' compensation insurance needs of Nevada businesses while it addressed its financial issues. The Committee received

testimony expressing concern that EICON may be accumulating a deficit on its old claims. Testimony suggested that if EICON's old claims are underfunded, it will put at risk the funds of private insurers entering Nevada's workers' compensation market. To address this concern, the Committee made the following recommendations:

15. **Amend subsection 2(a) of NRS 616B.083 to require EICON to report to the Commissioner of Insurance its financial statement and results of operations for the account for current claims in accordance with those accounting principles that are prescribed by the Commissioner and applied to other insurers providing coverage for workers' compensation and report to the Commissioner its financial statement and results of operations for the account for current claims and the account for extended claims in accordance with generally accepted accounting principles in a fiscal year basis. (S.B. 37/BDR 53–382)**

16. **Enact legislation to require EICON to report annually to the Legislative Committee on Workers' Compensation on the status of the $650 million account for extended claims. Require that the report include the financial status of the account, the payments made for claims against the account, investment income, and projections of the adequacy of the account to cover claims incurred prior to July 1, 1995. (S.B. 37/BDR 53–382)**

Testimony was heard by the Committee addressing the need for a board of directors for EICON. It was generally agreed upon by individuals testifying and members of the Committee that a new section should be added to NRS creating a board of directors to assist the manager of EICON with policy development and planning the future direction of the agency under three-way insurance. The Committee adopted the following recommendations regarding a board of directions:

17. **Enact legislation to create a board of directors for EICON, structured as follows (S.B. 93/BDR 53–393):**

    a. **Employers Insurance Company of Nevada shall be under the direct supervision of a board of directors composed of nine members, each of which shall be a policyholder or an employee of a policyholder of EICON. The members of the board may not hold legislative or judicial positions in government. The board of directors shall consist of three members appointed by the Majority Leader of the Senate in consultation with the Minority Leader of the Senate, three members appointed by the Speaker of the Assembly in consultation with the Minority Leader of the Assembly, and three members appointed by the Governor.**

    b. **Board members shall serve for a term of four years and shall not be permitted to serve for more than two successive terms of appointment, except in the**

first year of the enactment of this law in which case one member from each class of appointments shall serve for two years and one member shall serve for six years. The original terms of appointment should be staggered with no board member serving less than two years. After the stagger is accomplished, no term should be for less than four years.

c. The term of each regular appointment shall commence on July 1 of the appointment year and expire on June 30 following four years of service.

d. Vacancies on the board amongst members appointed by the Legislature shall be filled by the Legislative Commission. Such appointments shall be for the remaining term of the vacancies, thereby preserving the staggered terms of the board members.

e. Service as a member of the board appointed by the Legislative Commission shall not be considered a term of appointment for the purposes of the limitation of two terms.

f. The board shall meet at least quarterly.

g. The duties of the board shall be those prescribed in Chapters 616A through 616D, inclusive, and 617 of NRS. The board may adopt rules and procedures, not inconsistent with the law, as required for the conduct of its business. Any regulations adopted by the board shall be in compliance with Chapter 233B of NRS.

h. Board members shall be compensated by EICON for meetings at a rate of not less than $80 per meeting day plus travel and per diem expenses. The board may set a rate of compensation for its members greater than $80 per meeting day.

i. The board shall elect a chairman from amongst its members. The chairman shall serve for a term of one year and shall not be permitted to serve more than two successive one-year terms. The chairman shall be responsible for the conducting and scheduling of all meetings.

18. If a board is established, amend NRS 616B.062 regarding the appointment and function of the manager of EICON to read as follows (S.B. 93/BDR 53–393):

a. The board shall appoint a manager to be in charge of the operation of the system;

**b. The manager is the chief executive officer of the system and is responsible in consultation with the board for all duties of the system; and**

**c. The manager shall serve at the pleasure of the board.**

**19. If a board is established, amend NRS 616B.065 regarding the selection and classification of assistant managers of EICON to read as follows (S.B. 93/BDR 53–393):**

**a. The manager shall select assistant managers whose appointments are effective upon the confirmation by the board of directors. Assistant managers are in the unclassified service of the state and are entitled to receive annual salaries fixed by the board.**

**b. The assistant managers shall serve at the pleasure of the manager, subject to the review of the board.**

## C. Owner-Controlled Insurance Programs (OCIPs)

An OCIP is a specialized insurance agreement for a large construction project. Under an OCIP, the owner purchases insurance on behalf of the general contractor and subcontractors that will perform work at the construction site. A typical OCIP covers a specific construction site for the duration of the project.[11]

On several different occasions, the Committee heard testimony regarding OCIPs. According to testimony heard on April 7, 1998, these programs are utilized for several different reasons including: (1) they centralize the purchasing power of the owner; (2) they reduce red tape; (3) they provide a unified loss control safety program for the job site, resulting in a safer work environment; and (4) they streamline project management.

The Committee adopted the following recommendation, appointing a voluntary working group to develop recommendations regarding OCIPs:[12]

**20. Appoint a voluntary working group to develop specific recommendations to the Committee regarding the regulation of OCIPs. The working group would consider several topics, including the coverage, operations, and regulation of OCIPs. The**

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[11]Memorandum titled "Brief Review of Information on Owner-Controlled Insurance Programs," dated April 1, 1998, from Senator O'Connell, committee chair, to members of the Legislative Committee on Workers' Compensation is included in the document as Exhibit E.

[12]The document outlining the working group's recommendations to the Committee is included in this report as Appendix F.

**working group would report back to the Committee by September 30, 1998, and would include at a minimum representatives of the Associated General Contractors, the insurance industry, insurance agents, labor, and the Commissioner of Insurance.**

21. **Amend NRS 686A.200 and NRS 686A. 220 to allow private carriers to write OCIP and contractor-controlled insurance program (CCIP) coverage. (S.B. 133/BDR 53–384)**

After considering public testimony, and receiving recommendations from the Working Group on OCIPs, the Committee adopted the following recommendations:

22. **Enact a provision in NRS to require that a contract for an OCIP or CCIP include the following specific requirements (S.B. 133/BDR 53–384):**

    a. **The project site must include all operations in the course or scope of the OCIP project, including all related off-site operations;**

    b. **A description of the on-site safety program shall be required. The owner, general contractor, or insurer must develop and implement a safety program that includes: minimum safety standards; safety meetings; safety training; site inspections; advising subcontractors on special hazards; and investigation of serious injuries. Any and all sites covered by wrap-up coverage must have a qualified safety and claims administrator on-site at all times when construction work is underway. The safety and claims administrator must not be assigned to a particular subcontractor or be, in any way, under the control or oversight of a subcontractor;**

    c. **The owner, construction manager, general contractor, and all subcontractors working on the project must be listed as named insureds (A named insured is specified as the insured in an insurance policy. A business added to a policy, other than the named insured, is considered an additional insured.);**

    d. **The owner or general contractor must be designated as responsible for loss control and claims handling programs, the designated claims administrator of the owner or general contractor shall be responsible for filing the C-1 and C-3 forms, coordinating direction of the injured worker to the appropriate clinic, handling all issues regarding the claim that can be managed at the worksite;**

    e. **Penalties for failing to comply with the safety plan and claims procedures;**

    f. **Duration, terms, and conditions of coverage;**

g. **Insurance for completed operations and project coverages for a minimum of three years, except for residential projects which would be required to have five years of completed operations and project coverages;**

h. **A provision specifying that if work activity that has been performed on the site of the project covered by the wrap-up is moved in a manner that requires workers dedicated to the construction of the project covered by wrap-up insurance to work off the site of the project, the subcontractor will keep track of the payroll for those dedicated workers while they perform work off-site. The subcontractor will be reimbursed by the owner for the workers' compensation costs for those dedicated workers moved off-site;**

i. **A provision specifying that workers dedicated to work on the project covered by the wrap-up who, by the nature of their job, must work off-site (e.g. delivery drivers, fabricators, etc.) will be the responsibility of the subcontractor. The subcontractor will be responsible for all safety, claims administration, and loss history as long as the insurance costs initially included in the bid are reimbursed by the owner;**

j. **A provision specifying that all employees who will work only on the site of the project covered by the wrap-up will be the responsibility of the owner. All safety, claims administration, and lost history issues will be the responsibility of the owner of the site;**

k. **The individual or entity responsible for each section of the contract shall be identified; and**

l. **The names and qualifications of persons responsible for safety oversight on the project.**

23. **Prohibit the withholding of periodic payments to subcontractors or members enrolled in an OCIP or CCIP by the owner or general contractor if the subcontractor does not sign the C-3 form. (S.B. 133/BDR 53–384)**

24. **Enact a "file and approve" provision in NRS that would require a contract for an OCIP or CCIP to be filed with the Division of Insurance 60 days prior to the start of the project. The Commissioner of Insurance would have 60 days after submission of the materials to review and approve or disapprove the contract. If no action is taken by the Commissioner within 60 days, the contract would be considered approved. (S.B. 133/BDR 53–384)**

25. Amend NRS to specifically allow the following entities to participate in or sponsor OCIP or CCIP agreements: (1) private companies, including firms undertaking to construct a project(s) in Nevada; (2) public bodies; and (3) utilities. (S.B. 133/BDR 53–384)

26. Clarify in NRS that the insurer for the OCIP or CCIP is liable for all workers' compensation claims related to injuries that arise in the course of employment on the project which are covered by the OCIP or CCIP contract, including future claims filed after the completion of the project. Provide in NRS that a subcontractor or enrolled member of the OCIP or CCIP may not be made liable for payment of claims, including claims filed after the completion of the project, related to the OCIP. An enrolled member is a company that is covered under the OCIP or CCIP agreement under the definition of enrolled member. This provision would apply for the time period of the wrap-up, OCIP, or CCIP agreement and after the completion of the project, including situations in which the insurer and/or owner of the project are no longer present or conducting business in the State of Nevada. (S.B. 133/BDR 53–384)

27. Amend NRS to include the following educational requirements and notification requirements related to an OCIP or CCIP (S.B. 133/BDR 53–384):

    a. The owner or general contractor must clearly notify subcontractors if a project is a proposed OCIP or CCIP. This notification must be made in the document that requests bids in advance of the bid. The purpose of this notification is to allow subcontractors to bid the project with and without insurance costs, as well as with bid fees relating to the costs of loss control and claims administration.

    b. The pre-bid conference must at a minimum include the following information: (1) the general concept of an OCIP or CCIP; (2) the requirement for contractors to carry separate workers' compensation coverage for work not performed on the "project site"; (3) the basic safety plan; and (4) claims administration procedures.

28. Enact a provision in NRS to specify that a designated on-site safety official has to meet the appropriate qualifications in NRS 618.710 or have three to five years of on-the-job experience. (S.B. 133/BDR 53–384)

29. Enact a provision in NRS to require that no designated safety administrator can be qualified for more then one site covered by wrap-up coverage at a time. (S.B. 133/BDR 53–384)

## D. Benefits and Administration of the Workers' Compensation System

The Committee received testimony addressing the possible inadequacy of existing notices regarding automatic closure of claims under certain circumstances. Pursuant to subsection 2 of NRS 616C.235, if the medical benefits required to be paid for a claim are less than $500, the claim closes automatically if the claimant does not receive medical treatment for the injury for at least 12 months. While a notice of the circumstances under which a claim can be automatically closed is provided on the back of the Report of Initial Treatment (form C-4), the Committee adopted the following recommendation to provide that each injured employee receive a separate notice regarding automatic closure of his or her claim.

**30. Amend NRS 616C.235 to require insurers to notify, by letter, claimants of the circumstances under which a claim may be closed automatically (this is in addition to any forms currently used which may notify claimants of the provisions of NRS 616C.235). (S.B. 38/BDR 53–379)**

Subsection 4 of NRS 616C.490 provides that unless the regulations adopted pursuant to NRS 616C.110 (adoption of American Medical Association's *Guides to the Evaluation of Permanent Impairment*) provide otherwise, a rating evaluation must include an evaluation of the loss of motion, sensation and strength of an injured employee if the injury is of a type that might have caused such a loss. No factors other than the degree of physical impairment of the whole man may be considered in calculating the entitlement to compensation for a permanent partial disability. However, the Committee heard testimony indicating that rateable impairments currently can be rated based on subjective pain only. Based on testimony, the Committee made the following recommendation:

**31. Amend subsection 4 of NRS 616C.490 regarding rating evaluations for permanent partial disability (PPD) to clarify that PPD ratings must be done using objective medical findings only. Specify that impairments cannot be rated based solely on subjective pain. (S.B. 95/BDR 53–386)**

Subsection 1 of NRS 616C.505 provides that the cost of transportation of the remains of a deceased employee shall be borne by the insurer if the transportation is not beyond the continental limits of the United States. The Committee heard testimony citing the explosion at the Sierra Chemical Company which killed four employees. Two of the four bodies were returned to Mexico, the employees' country of origin. The families of the two men whose remains were returned to Mexico were advised that they would need to make arrangements to have the remains collected at the border. The Committee made the following recommendation:

**32. Amend NRS 616C.505 to remove the provision which limits payment for the transport of the body of a deceased employee beyond the continental limits of the United States. (S.B. 95/BDR 53–386)**

The Committee heard testimony indicating that there is a need for the appeals officers to have certain qualifying experience. The following recommendation was adopted by the Committee:

33. **Amend subsection 2 of NRS 616C.340 to clarify that an appeals officer must have not only been licensed to practice in Nevada for two years, but must have experience in workers' compensation claims and proceedings. Each appeals officer must be an attorney who has been licensed to practice law before all the courts of this state and have actively practiced law in actions related to claims for compensation for at least two years. (S.B. 55/BDR 53–387)**

34. **Amend NRS to require the Chief of the Hearings Division to adopt regulations governing the conduct of hearing officers and appeals officers that will include the standards set forth in the *Nevada Code of Judicial Conduct*. (S.B. 55/BDR 53–387)**

The following recommendation made by the Committee is designed to provide information regarding the work load of appeals officers (AO) and the correctness of decisions made at the AO level of appeal.

35. **Amend NRS to require that the performance of appeals officers be evaluated based on pertinent information including the criteria of timeliness and consistency. The Department of Administration shall compile the number of hearings on the merits each appeals officer conducts on a monthly basis throughout the appeals officer's term of office. The Department of Administration shall compile on a yearly basis the number of appeals filed with the district court and the Supreme Court from the decisions of each appeals officer during the appeals officer's term of office. The Department shall also compile the number of decisions for each Appeals Officer that are upheld and reversed at the district court and Supreme Court levels during the appeals officer's term of office. Cases that are pending at the time the data is compiled shall be noted as such. (S.B. 55/BDR 53–387)**

The Committee heard testimony proposing that hearings and appeals officers should be required to author their own decisions to ensure that they are thoroughly familiar with each case. Testimony also indicated that appeals officers currently prepare decision letters wherein they explain their decisions and the rationale for the decisions and direct one of the attorneys of record to draft the formal findings of fact, conclusions of law, and order. Also proposed was a review panel that would provide an additional, optional level of review before a case is appealed to the district court. The following recommendation specifying changes to the hearings and appeals process was adopted by the Committee:

36. **Enact legislation to make the following changes to the hearings and appeals process (S.B. 55/BDR 53-387):**

    a. **Clarify that the responsibility of the Senior Appeals Officer over appeals officers includes the review and measurement of performance against standards, review of decisions for consistency and precedents, and responsibility for training.**

    b. **Hearing officers and appeals officers must write their own decisions and may not solicit or use draft decisions or proposed decisions received from parties to a case.**

    c. **Include a provision in Chapter 616C of NRS that allows any party aggrieved by a decision of an appeals officer pursuant to NRS 616C.360 to appeal to a three-member panel of appeals officers within 15 days after the decision is rendered. The panel shall be appointed by the Senior Appeals Officer. The matter shall be set for hearing before the panel within 45 days of the receipt of the notice of appeal. The appeals officer who renders the original decision shall not serve on the panel. The panel's review shall be limited to whether there was substantial evidence to support the original appeals officer's decision. The panel shall render its decision within 30 days. Any party aggrieved by a decision of the panel may appeal to the district court pursuant to NRS 616C.370.**

Subsequent injury funds are established in statute for EICON, self-insured employers, associates of self-insured employers, and private carriers. Subsequent injury funds were established to enhance employment opportunities for disabled workers and to protect employers from expensive claims resulting from additional injuries to workers with disabilities. The Subsequent Injury Fund for Self-Insured Employers provides monetary relief to employers who retain disabled employees; however, it is not a benefit to injured workers. The American Insurance Association recommended that all states should abolish second injury funds, because many of the funds: (1) deviate from the principal that an employer's costs should be internalized; (2) have not met their objective of promoting the hiring of disabled workers; (3) have accumulated large unfunded deficits; and (4) create administrative costs and disputes, and promote attorney involvement.[13] The Committee made the following recommendation:

37. **Repeal the provisions of NRS related to all subsequent injury funds as of July 1, 1999. (S.B. 42/BDR 53-389)**

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[13]The document titled "Second Injury Funds Should be Abolished" dated April 1997, by the American Insurance Association in included in this report as Appendix G.

## E. Qualifications of Associations of Self-Insured Employers

Section 616B.386 of NRS provides that an employer have a tangible net worth of at least $500,000 or a manual premium of at least $15,000 in order to qualify for membership in a self-insurance group. Representatives of self-insured groups testified that this requirement creates an artificial barrier which would inhibit the ability of self-insured groups to successfully compete under three-way insurance. Testimony further indicated that with the advent of three-way insurance, there is a need to allow for additional flexibility in the groups that have met certain requirements for certification, tangible net worth, and membership. Groups that maintain these conditions, may use their own business underwriting and financial practices to qualify new members. The Committee made the following recommendations:

38. **Amend NRS 616B.386 to provide that an association of self-insured public or private employers that meets the criteria listed below may adopt internal policies that specify what type of documentation a proposed new member must submit to the association and the Commissioner of Insurance to demonstrate its financial solvency. Such an association must have (S.B. 44/BDR 53–934):**

    a. **Been certified by the Commissioner of Insurance for at least three consecutive years;**

    b. **A combined tangible net worth of all the members of the association of at least $5 million; and**

    c. **At least 15 members.**

39. **Amend NRS 616B.386 to provide that an association of self-insured public or private employers that meets the criteria listed below may adopt internal policies setting the tangible net worth and manual premium for each proposed new member. Such an association must have (S.B. 44/BDR 53–934):**

    a. **Been certified by the Commissioner of Insurance for at least three consecutive years;**

    b. **A combined tangible net worth of all the members of the association of at least $5 million;**

    c. **At least 15 members; and**

    d. **Not had an informal meeting arranged for it by the Commissioner of Insurance pursuant to subsection 1 of NRS 616B.431 due to an issue of the association's solvency or an alleged violation of law within the previous 18 months or, if such a meeting has been arranged by the Commissioner**

**within the last 18 months, there must have been a satisfactory resolution of the concerns which made the meeting necessary, as evidenced by a letter from the Commissioner.**

## F. Coverage for Heart and Lung Disease for Retired Police Officers and Firefighters

Testimony heard by the Committee revealed that due to the unique function performed by police officers and firefighters, they are exposed to conditions that normal workers are not. The heart and lung problems incurred by police officers and firefighters do not develop overnight. Prolonged exposure to hazardous elements contribute to the development of heart or lung disease in the latter years of life. Considerable discussion was also devoted to the issue of determining if the occurrence of heart or lung disease could be attributed to factors other then occupational exposure, such as obesity or consumption of tobacco products. Members of the Committee agreed that police and firemen should be compensated for the higher risk experienced on the job, but issues of fairness and overall costs need to be considered as well. With the following recommendation, the Committee aimed to set some standards for coverage for police officers and firefighters during retirement:

**40. Amend NRS to limit the compensation for heart and lung disease of firefighters and police officers that occurs after the employees have retired or are no longer working as firefighters or police officers (S.B. 132/BDR 53–925):**

**a. Amend NRS 617.455 and NRS 617.457 to provide that the presumption in subsection 1 of each section applies to disabling heart or lung disease diagnosed after the termination of the person's employment if the diagnosis occurs within a period which begins with the last date the employee actually worked in the qualifying capacity and extends for a period calculated by multiplying four months by the number of full years of his employment. For example, an employee with 30 years of service would have continued eligibility for compensation of heart and lung disease for 120 months (10 years) after the employee retires. Nevada law currently provides that diseases of the heart and lung of certain persons who have been employed as firefighters or police officers are presumed to arise out of and in the course of employment.**

**b. Amend subsection 6 NRS 617.455 and subsection 6 of 617.457 to add the following provision. These subsections currently state that failure to correct predisposing conditions which lead to heart or lung disease as ordered by a physician in the annual examination excludes the employee from benefits if the correction is within the ability of the employee.**

***Such annual physical examinations shall be required during the periods of extended eligibility provided in section 1. Failure to comply with the***

*requirements for physical examinations shall result in the suspension of eligibility for the benefits provided by this section.*

c. **Amend NRS 617.455 and NRS 617.457 to provide that if a person is entitled to benefits under subsection 1 or 2, the firefighter or police officer shall not be entitled to temporary total disability benefits pursuant to NRS 616C.475. This provision would only apply to cases in which the person is retired or otherwise separated, voluntarily or otherwise, from employment or volunteer status as a police officer or firefighter before the claim is opened.**

d. **Amend NRS 617.455 and NRS 617.457 to provide that the last injurious exposure rule must be used to determine the insurer responsible for payment of benefits to the police officer or fireman who has retired or otherwise separated from employment as a police officer or fireman. The last injurious exposure rule imposes liability on the insurer of the employer that last exposed a person to conditions that could have caused the occupational disease.**

e. **Provide that a retired police officer or firefighter who meets the requirements of subsection 1 of NRS 617.455 or subsection 1 of 617.457 but who is receiving retirement benefits at the time he is diagnosed with heart or lung disease would not be eligible for disability compensation (because his average monthly wage when retired is zero); such retired police officer or firefighter would still be eligible for medical benefits. Provide that a police officer or firefighter who meets the requirements of subsection 1 of NRS 617.455 or subsection 1 of 617.457, who is no longer working for the police department or fire department, but who is not receiving retirement benefits is eligible for disability compensation, as well as medical benefits. Specify that the average monthly wage for such a police officer or firefighter be taken from the last 12 weeks of employment with the police department or fire department who last exposed him to heart or lung disease. Specify that a police officer or firefighter who meets the requirements of subsection 1 of NRS 617.455 or subsection 1 of 617.457, who is eligible for retirement benefits but who has not yet elected to receive retirement benefits, is eligible for disability benefits, as well as medical benefits, but that if he later wants to elect to take his retirement benefits, he must choose between retirement benefits and disability benefits; he would remain eligible for medical benefits.**

## G. Coverage for Correctional Officers Who are Exposed to Contagious Disease

Testimony presented to the Committee indicated that workers' compensation claims for exposure to Hepatitis, Human Immunodeficiency Virus (HIV), or the development of positive antibodies for tuberculosis (TB) are generally denied by insurers unless an employee actually

develops the disease.[14] A representative of the Risk Management Division testified that claims involving a correctional officer's exposure to Hepatitis or HIV in the course and scope of employment, absent a physical injury, are not covered by workers' compensation insurance in Nevada. Denial of coverage was also reported in cases where police officers tested positive for TB antibodies during their routine screening. Again coverage is denied unless the employee actually contracts the disease. In response, the Committee made the following recommendation:

41. **Amend NRS to cover correctional officers who are exposed to contagious disease (S.B. 132/BDR 53-925):**

    a. **Amend subsection 2 of NRS 616A.035, which defines the term "accident benefits," to include medical benefits as defined by NRS 617.130, and preventive care. Preventive treatment administered as a precaution to an employee who is exposed to a contagious disease while providing medical services, including emergency medical care, in the course and scope of his employment, and preventive treatment administered as a precaution to an employee of the Department of Prisons or the Mental Hygiene and Mental Retardation Division of the Department of Human Resources at facilities for mentally disordered offenders.**

    b. **Add a new subsection 4 to NRS 616A.035 to specify that "preventive treatment" includes tests to determine if an employee has contracted the disease to which he was exposed.**

    c. **Amend subsection 2 of NRS 616A.265, which provides what does and does not constitute an "injury by accident arising out of and in the course of employment."**

    d. **Create a new section in Chapter 616C concerning an employee of the Department of Prisons (DOP) who qualifies as a police officer pursuant to subsection 7 of NRS 617.135 or an employee of the Mental Hygiene and Mental Retardation Division (MH/MR) of the Department of Human Resources who qualifies as a police officer pursuant to subsection 9 of NRS 617.135 who is exposed to a contagious disease when battered by an offender or when responding to a physical altercation between offenders at an institution or facility of the DOP or MH/MR in the course and scope of his employment and the battery or employee's response to the altercation is documented by the creation and maintenance of a report by DOP or MH/MR.**

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[14]Letter from Susan Dunt, Risk Management Division, Department of Administration, dated November 18, 1998, detailing the experiences of the Risk Management Division when dealing with exposures to blood borne pathogens is included in this report as Exhibit H.

**If after retiring the employee develops a contagious disease, the employee's entitlement to workers' compensation would be limited to a certain period of time determined by the following formula (also adopted by the Committee on Workers' Compensation for determining retired firemen and police officers' entitlement to workers' compensation): after the diagnosis occurs within a period which begins with the last date the employee actually worked in the qualifying capacity and extends for a period calculated by multiplying four months by the number of full years of his employment.**

## H. Permanent Total Disability

The Committee heard testimony indicating that many of Permanent Total Disability cases are older injured workers who due to age, lack of education, lack of other employable skills, or other factors unrelated to the physical impairment are virtually unemployable in a competitive labor market. Hence, the injury itself may only account for a small percentage of the reason the individual is unemployable. Testimony supported making the industrial injury the primary cause as to why an injured employee is determined to be permanently and totally disabled. In response, the Committee made the following recommendation:

**42. Amend NRS 616C.435 by adding a new subsection to include the following concept (S.B. 95/BDR 53-386):**

**Except as provided in subsection 1, in no case may an insurer make a determination that an injured employee is permanently and totally disabled unless a physician has indicated in writing to the insurer that the preponderant cause of the injured employee's inability to effectively compete in the labor market is an industrial injury or an occupational disease.**

## I. Subrogation of Insurer to Rights of Injured Employees

In the past subrogration cases have involved use of the *Breen* formula when distributing any recovery an injured worker obtained from a third-party.[15] The *Breen* formula was used by the Nevada Supreme Court in the case of *Breen v. Caesar's Palace*, 102 Nev. 79, 715 P.2d 1070 (1986). It was designed to determine how much money the insurer is entitled to receive from the third party recovery, as reimbursement for the workers' compensation expenditures made by the insurer.

---

[15]The *Breen* Formula: Insurer's Lien / Settlement - (Attorney's fees + Costs) = Percent of Attorney's fees and Costs Insurer bears.

Testimony heard by the Committee indicated several problems with the *Breen* formula. For example, no other jurisdiction in the United States uses the *Breen* formula, and mistakes in calculating the formula are common because of the difficult and confusing nature of the formula. Some employers have indicated that the formula does not adequately reimburse the insurer's lien for medical and compensation expenditures. Others noted that in some instances, the *Breen* formula operates unfavorably with respect to the injured worker. The outcome depends on several factors including the amount of the insurer's lien, the amount recovered from the third party, and the total costs and attorney's fees.

The proposed formula, first introduced in 1993 by Riley M. Beckett, attorney, Carson City, would provide the payment of attorney contingency fees, and allow for a guaranteed payment to the injured worker of one-third of the remainder of the settlement. The insurer would recover its lien amount, and any remaining funds would be paid to the injured worker. In a majority of cases, the involved parties (the injured worker, the insurer, and the injured worker's attorney) will each receive a portion of the settlement. Therefore, the Committee concluded that the proposed formula ensures a more equitable distribution of the recovery than the *Breen* formula allowed. Testimony indicated there are two circumstances when the proposed formula would not be used: (1) in cases where a pre-negotiated settlement has been reached; and (2) in cases where an employer has intervened in the action in order to protect his rights. Based on the testimony heard, the Committee made the following recommendation:

43. **Amend NRS 616C.215 to provide that if the insurer has not intervened and the parties cannot otherwise agree, any recovery obtained by an injured employee from a third party must be distributed according to the following formula: Attorney's fees and costs are to be paid first pursuant to the agreement between the injured worker and his attorney. From the remaining amount, the injured worker is guaranteed one-third, and the insurer receives the remaining amount or the amount of lien, whichever is less. Any amount remaining beyond the amount of the insurer's lien goes to the injured worker in addition to his guaranteed one-third share. (S.B. 94/BDR 53–1076)**

Testimony regarding subrogation also indicated that currently there is no requirement for notification to the insurer of an action taken by an injured worker against a third party, and therefore the insurer often is not notified of a pending lawsuit. There is currently no penalty for those who settle without notifying the insurer, and there is no statutory mandate that states a plaintiff's attorney must notify the insurer and request a copy of the lien amount. The Committee addressed this situation with the following recommendation:

44. **Revise provisions in NRS concerning notification to the insurer of action taken by an injured worker against a third party, and require full disclosure to the injured worker of anticipated settlement costs by the injured worker's attorney. (S.B. 64/BDR 53–1077)**

## J. Workers' Compensation Fraud

Testimony heard by the Committee cited instances where claimants have argued that they did not certify their disability because a spouse or supervisor endorsed the benefit checks, leaving the state with the burden of proving that claimants had signed the checks. The Committee made the following recommendation to aid in the prevention and prosecution of workers' compensation fraud:

45. **Amend NRS 616D.300 to add a reference to Chapter 617. In addition, enact a provision in NRS to specify that the penalty for an injured worker falsely certifying that he has been continually disabled for the 14 days prior to the date of the check extends to injured workers receiving benefits pursuant to Chapter 617 of NRS. The new provision shall state (S.B. 95/BDR 53–386):**

> **Every check issued by an insurer for workers' compensation benefits shall include the following restrictive endorsement:**
>
> > ***By signing this check for temporary disability, permanent total disability or rehabilitation maintenance benefits, I hereby certify under penalty of perjury that I have been continuously disabled and unable to work in any occupation for the 14 days prior to the date of this check. I understand that any false statement to obtain benefits is a crime, punishable by up to a category D felony pursuant to NRS 616D.300.***
>
> **Once such a check is issued, endorsed, and/or negotiated, it creates a rebuttable presumption that the named claimant received, endorsed, and/or negotiated the check.**

## K. Applicability of Chapter 617 of NRS

The Committee discussed the language inconsistencies between Chapters 616 and 617 of NRS. In the past when wording changes have been made in one chapter, the required changes have not been carried through to other affected chapters. An example was noted by the Committee regarding inconsistences between "entity," "governmental entity," and "public entity," within Chapters 616 and 617 of NRS. The Committee expressed a preference to standardize those terms by using "governmental entity" throughout, and made the following recommendation:

46. **Amend provisions of Chapters 616A to 616D, inclusive, of NRS and other provisions of NRS to ensure that references to Chapter 617 ("Occupational Diseases") are included in all appropriate provisions. The addition of references to Chapter 617 would be made to clarify existing provisions, and only where it appears to be the original intent of the provision. Such references should not create a substantive change or expansion of a provision. (S.B. 92/BDR 53–1078)**

## IV. CONCLUSION

The Nevada Legislature is faced with the difficult task of preparing Nevada's marketplace for industrial insurance for the entrance of private carriers on July 1, 1999. Considerable work has been done by the Legislative Committee on Workers' Compensation and by individuals throughout the State to ensure the success of three-way insurance in Nevada, and to ensure that Nevada's market of industrial insurance is equitable to employers and injured employees alike.

This report presents a summary of the deliberations of the Committee presented to the 70th Session of the Nevada Legislature. The recommendations contained in this report are designed to "level the playing field" among competitors in Nevada's workers' compensation market, enhance and clarify existing statutes, and prepare EICON, self-insured employers, associations of self-insured employers, and private carriers for three-way insurance.

The members of the Committee take this opportunity to thank all of the individuals and organizations who participated in the interim hearings. The Committee's meetings were significantly enhanced by the assistance provided by all of the individuals who willingly contributed their expertise in testimony and written correspondence.

## V. APPENDICES

# APPENDIX A

NRS 218.5375 through 218.5378

## LEGISLATIVE COMMITTEE ON WORKERS' COMPENSATION

**NRS 218.5375 Creation; membership; chairman and vice chairman; vacancies.**

1. There is hereby created a legislative committee on workers' compensation. The committee consists of:

(a) Four members appointed by the majority leader of the senate, in consultation with the minority leader of the senate, from the membership of the senate standing committee on commerce and labor during the immediately preceding session of the legislature.

(b) Four members appointed by the speaker of the assembly from the membership of the assembly standing committee on labor and management during the immediately preceding session of the legislature. The members must represent each political party represented in the assembly in the approximate proportion that they are represented in that house, but at least one member must be chosen from each political party.

2. The members of the committee shall elect a chairman and vice chairman from among their members. The chairman must be elected from one house of the legislature and the vice chairman from the other house. After the initial election of a chairman and vice chairman, each of those officers holds office for a term of 2 years commencing on July 1 of each odd-numbered year. If a vacancy occurs in the chairmanship or vice chairmanship, the members of the committee shall elect a replacement for the remainder of the unexpired term.

3. Any member of the committee who is not a candidate for reelection or who is defeated for reelection continues to serve until the convening of the next session of the legislature.

4. Vacancies on the committee must be filled in the same manner as original appointments.

(Added to NRS by 1995, 2162)

**NRS 218.5376 Meetings; compensation of members.**

1. The members of the committee shall meet at least quarterly and at the times and places specified by a call of the chairman. The research director of the legislative counsel bureau or a person he has designated shall act as the nonvoting recording secretary. Five members of the committee constitute a quorum, and a quorum may exercise all the power and authority conferred on the committee.

2. Except during a regular or special session of the legislature, the members of the committee are entitled to receive the compensation provided for a majority of the members of the legislature during the first 60 days of the preceding session, the per diem allowance provided for state officers and employees generally and the travel expenses provided pursuant to NRS 218.2207 for each day or portion of a day of attendance at a meeting of the committee and while engaged in the business of the committee. The salaries and expenses of the members of the committee and any other expenses incurred by the committee in carrying out its duties must be paid from assessments imposed pursuant to NRS 232.680.

(Added to NRS by 1995, 2163)

**NRS 218.5377 Powers and duties.** The committee:

1. May review issues related to workers' compensation.

2. May study the desirability of establishing a preferred employee program which provides exemptions from the payment of premiums and other financial incentives for employers who provide suitable employment for injured employees and any other program for returning injured employees to work.

3. May review the manner used by the division of industrial relations of the department of business and industry to rate physical impairments of injured employees.

4. Shall, to ensure the solvency of the state industrial insurance system:

(a) Review and study the financial condition of the state industrial insurance system; and

(b) Determine the extent of any apparent insolvency of the system.

5. May conduct investigations and hold hearings in connection with carrying out its duties pursuant to this section.

6. May direct the legislative counsel bureau to assist in its research, investigations, hearings and reviews.

(Added to NRS by 1995, 2163; A 1997, 1449)

**NRS 218.5378 Fees and mileage for witnesses.** Each witness who appears before the committee by its order, except a state officer or employee, is entitled to receive for his attendance the fees and mileage provided for witnesses in civil cases in the courts of record of this state. The fees and mileage must be audited and paid upon the presentation of proper claims sworn to by the witness and approved by the chairman of the committee.

(Added to NRS by 1995, 2164)

# APPENDIX B

Handout titled, "WCF History and Status," provided by Tom Callanan, Senior Vice President, Workers' Compensation Fund of Utah

# WCF History and Status

- Quasi-public, mutual insurance corporation
- Board of Directors
- Certificate of Authority from Utah Insurance Department
- By statute, the State of Utah is not liable for WCF debts
- Created as the State Insurance Fund in 1917 with initial appropriation of $40,000. Money returned to state treasury in mid 1920's - only money WCF has ever received from the state.
- Under authority of:
  - Industrial Commission until 1941
  - Finance Commission until 1981
  - Department of Administrative Services until 1988
    *Name changed to Workers Compensation Fund of Utah in 1986
- Status of quasi-public corporation in 1988
- Insurance Commissioner jurisdiction over WCF in 1993
  1) Received a certificate of authority
  2) Complies with all provisions of Utah Insurance Code
  3) WCF is a full participant in Guaranty Association



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# WCF History and Status (Cont'd)

- Utah Supreme Court cases: '36, '77, '78, and '82

  Hansen v. Utah State Retirement Board—'82

  The State Insurance Fund operates essentially as a private insurance company; it receives no public moneys and pays its own administrative expenses from the premiums received. The moneys paid into the Fund do not belong to the State but in effect to contributing employers. . . . The funds are in effect held as trust funds for an insurance program, which is designed to protect private persons.

Affiliation with the State

- Insurer of the residual workers' compensation market
- Governor appoints board
- State required to insure with WCF
- WCF employees participate in State Retirement System (but not state employees)

WCF Tax Status

- Pays:
  - premium taxes
  - property taxes
  - sales taxes

- Does not pay federal income tax

# WCF Fact Sheet

- '97Year-end premium $114 million
- 52% of market---27, 000 customers
- Insurer of last resort = 10% of premium
  - Small accounts
  - High hazard industries
  - High loss ratio accounts
- Approximately 300 employees in 3 locations
- Surplus (net worth) @ Dec, '97 = $209 million
- Dividends of $120 million to customers in past 5 years
- Writes "Out of State-Utah" business — $3.75 million
- A.M. Best rating A- (Excellent)—'97
- Manage our own investment portfolio
- Audited by Big 6 accounting firm
- WCF owns subsidiaries
  - Univantage
  - Advantage WC Services
  - Pinnacle Risk Management (Majority interest)
- Utah's rates are 3rd or 4th lowest in U. S.



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APPENDIX C

Handout titled, "Presentation to Nevada Legislative Committee
On Workers' Compensation Regarding Colorado
Compensation Insurance Authority (CCIA),"
provided by Gary J. Pon,
President and General
Manger, CCIA

Presentation to

Nevada Legislative Committee on Workers' Compensation

Regarding

Colorado Compensation Insurance Authority (CCIA)

May 28, 1998

Gary J. Pon
President and General Manager

# Notes

## A. CCIA STRUCTURE

- Created by statute in 1915
- Transformed to quasi-public authority July 1, 1987
- Body corporate, political subdivision, *not* a state agency

Colorado Compensation Insurance

## B. QUASI-PUBLIC CHARACTERISTICS AND TIES TO STATE GOVERNMENT

- Serve a public purpose
- Governor appoints board of directors
- State treasurer is custodian over funds
- State auditor selects audit firm and receives annual audit report
- Employees covered by Public Employees Retirement Association
- Participate in state risk management program
- Covered by governmental immunity act
- Non-profit nature
- Exempt from federal income tax liability

Colorado Compensation Insurance

## C. Advantages and Disadvantages of Quasi-Public Structure

- **Advantages**

+Federal tax exemption

+Governmental Immunity Protection

+Tax exempt purchasing

+PERA

- **Disadvantages**

- Insurer of last resort
- Potential to politicize operations
- Less discretion over investments
- Stigma associated with being a public entity
- Public perception/expectations regarding duty to accommodate
- Cost/benefit of audits
- Single line, single state operation

Colorado Compensation Insurance

# Notes

## D. BOARD OF DIRECTORS

- 7 members appointed by governor subject to senate confirmation
- 4 employer (including 1 agriculture), 2 employee and 1 insurance representative
- Staggered 5 year terms
- Chair elected annually
- Duties:
  - Appoint general manager
  - Approve annual budget
  - Oversee operations
  - Approve policies and procedures
  - Approve rates before filing with insurance commissioner



## E. REGULATION BY COMMISSIONER OF INSURANCE

- Subject to essentially the same regulation as a commercial insurance company *except*
  - May develop and file separate rate tiers
  - Special surplus requirement
  - Supervision/rehabilitation provisions phase-in



## F. OVERSIGHT BY THE LEGISLATURE

- Senate confirmation of board appointees
- Annual audit report to legislative audit committee
- Annual report on operations
- Senate business affairs and labor committee oversight
- Enabling act

APPENDIX D

Letter from the Legal Division, Legislative Counsel Bureau
dated March 31, 1998, regarding the manner
NRS treats EICON differently than
private carriers

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March 31, 1998

Senator Ann O'Connell
7225 Montecito Circle
Las Vegas, Nevada 89120-3118

Dear Senator O'Connell:

You have asked this office to produce a table that indicates where and in what manner the Nevada Revised Statutes treat the State Industrial Insurance System ("SIIS") differently than private insurance carriers. This table is set forth separately and attached for your consideration. In compiling the table that you requested, we have provided citations to sections of the Nevada Revised Statutes that would be affected if the Legislature desires to change the manner in which SIIS is authorized to conduct business. It should be noted that because SIIS is not an "insurer" as that term is used throughout most of the insurance code, which is codified as Title 57 of NRS (*see* footnote 1 of the table), most of the insurance code does not apply to SIIS. The necessary result of this arrangement is that SIIS is "treated differently" than private carriers of insurance in the chapters of Title 57. Because Title 57 of NRS is comprised of 46 separate chapters, it would not be possible to cover each of these differences. Thus, in compiling this table, we have highlighted those sections of NRS that are concerned with the relative authorities and responsibilities of SIIS and private carriers of insurance and the way in which SIIS and private carriers are subject to the regulatory authority of the Commissioner of Insurance.

If you have any further questions regarding this matter, please do not hesitate to contact this office.

Very truly yours,

Brenda J. Erdoes
Legislative Counsel

By _____
Scott McKenna
Deputy Legislative Counsel

By _____
Kimberly Marsh Guiñasso
Principal Deputy Legislative Counsel

cc: Melissa Stafford Jones

| Requirement or Authority | Private Carriers | SIIS | NRS §§ Involved | Footnotes (to explain reason for different treatment) |
|---|---|---|---|---|
| Insurer must have "certificate of authority" to transact insurance in this state. (NRS 680A.060) | Must obtain certificate. | Not required to obtain certificate. | 0.039; 616B.050; 616B.463; 679A.100; and 680A.060 | Footnote #1 |
| Insurer must pay annual "continuation fee" (presently set at $2,450) to keep certificate of authority in force. (NRS 680A.180(1)(a); 680B.010(1)(c)) | Must pay continuation fee to keep certificate of authority in force. | Not required to pay continuation fee. | 0.039; 616B.050; 679A.100; 680A.180; and 680B.010 | Same as footnote #1. In Title 57 of NRS, "insurer" does not include SIIS. |
| Each insurer that is authorized to transact casualty or property insurance in this state must: (a) record and report certain information to allow commissioner to "assess the relationship of premiums and related income to costs and expenses of insurers"; and (b) pay a reasonable fee for the administration and enforcement of the provisions of NRS relating to stabilization of insurance costs. (NRS 679B.430(2); 679B.450; NAC 679B.160) | Required to pay fee if they "transact casualty or property insurance in this state." | Not required to pay fee. | 0.039; 616B.050; 679A.100; 679B.430; 679B.450; and 679B.460<br><br>NAC 679B.160 | Same as footnote #1. In Title 57 of NRS, "insurer" does not include SIIS. |

1. In Title 57 of NRS (the Nevada Insurance Code), SIIS is not considered to be an "insurer." For Title 57, an "insurer" is defined as "every person engaged as principal and as indemnitor, surety or contractor in the business of entering into contracts of insurance." NRS 679A.100. The preliminary chapter of NRS makes clear that the term "person" does not include a "governmental agency." NRS 0.039. Because SIIS is a public agency (*see* NRS 616B.050), SIIS is not a "person" and therefore is not an "insurer" for the provisions of Title 57. Note, however, that beginning July 1, 1999, SIIS will be an "insurer" for the purposes of some provisions of Title 57, but not for any of the provisions of Title 57 that are set forth in this table. *See, e.g.*, NRS 680B.027. In addition, NAC 616B.015 sets forth certain sections of Title 57 with which SIIS must comply.

| Requirement or Authority | Private Carriers | SIIS | NRS §§ Involved | Footnotes (to explain reason for different treatment) |
|---|---|---|---|---|
| Each insurer that holds a certificate of authority must pay an annual assessment "for the investigation of fraudulent claims." (NRS 679B.158(3); NAC 679B.157) | Required to pay fee. | Not required to pay fee. | 0.039; 616B.050; 679A.100; 679B.158; and NAC 679B.157 | Same as footnote #1. In Title 57 of NRS, "insurer" does not include SIIS. |
| Each insurer must appoint the commissioner as its attorney to receive service of legal process before the commissioner may authorize that insurer to transact insurance in this state. (NRS 680A.250(1)) | Required to make appointment if they desire to transact insurance in this state. | Not required to make appointment. | 0.039; 616B.050; 679A.100; and 680A.250 | Same as footnote #1. In Title 57 of NRS, "insurer" does not include SIIS. |
| Each insurer "which is authorized to do business in this state and which is a member of an insurance holding company system" is required to register with the commissioner by filing a registration statement. (NRS 692C.260; 692C.270) | Required to file statement if: (a) authorized to do business in this state; and (b) a member of an insurance holding company system. | Not required to file statement. | 0.039; 616B.050; 679A.100; 692C.260; and 692C.270 | Same as footnote #1. In Title 57 of NRS, "insurer" does not include SIIS. |
| To be authorized to transact insurance in this state, an insurer must deposit cash or securities to protect its policyholders and/or creditors. (NRS 680A.140) | Required to deposit cash or securities. | Not required to deposit cash or securities. | 0.039; 616B.050; 679A.100; and 680A.140 | Same as footnote #1. In Title 57 of NRS, "insurer" does not include SIIS. |
| The authority to make a "jeopardy assessment," which is an immediate assessment of accrued premiums, penalties and interest, the collection of which will be jeopardized by delay. (NRS 616B.248) | NRS does not set forth an equivalent authority for private carriers. | The manager of SIIS is empowered to make such an assessment pursuant to NRS 616B.248. | 616B.248 | NRS does not provide such authority to private carriers of insurance. |

| Requirement or Authority | Private Carriers | SIIS | NRS §§ Involved | Footnotes (to explain reason for different treatment) |
|---|---|---|---|---|
| Authority to use services provided by state agencies. (NRS 616B.050) | NRS does not provide this authority to private carriers of insurance. | NRS 616B.050(3) states that SIIS is entitled, but not required, to "use any services provided to state agencies." | 616B.050 | |
| Records of private insurance carrier or SIIS to be kept confidential. | No specific section devoted to confidentiality of records of private carrier, but some confidentiality is afforded. *See* footnote #2. | NRS 616B.014 specifically sets out that certain of SIIS's records, including proprietary information, is confidential. | 616B.014; 679B.190; and 679B.285 | Footnote #2 |
| A person may not hold himself out as an insurance "agent" unless licensed as such. (NRS 683A.090) An "agent" is "an individual, firm or corporation appointed by an insurer to solicit applications for insurance or annuity contracts or to negotiate for such contracts on its behalf . . . ." (NRS 683A.030) | Applies to private insurance carriers. | No equivalent provision of NRS requires those who solicit business for SIIS to be licensed as "agents." | 683A.030; and 683A.090 | Same as footnote #1. In Title 57 of NRS, "insurer" does not include SIIS. |

2. Although there is no section in NRS specifically devoted to the confidentiality of records of private insurance carriers, as there is for SIIS (*see* NRS 616B.014), two sections afford some measure of confidentiality. First, NRS 679B.190 states that during the period in which the commissioner is investigating or examining an insurer, the information and documents possessed by the commissioner that relate to the investigation or examination are confidential. Second, NRS 679B.285 states that when the commissioner examines an insurer (pursuant to NRS 679B.230), the commissioner may disclose the contents of final and preliminary reports of the examination, but the underlying information that is the "work product" of the examination remains confidential.

| Requirement or Authority | Private Carriers | SIIS | NRS §§ Involved | Footnotes (to explain reason for different treatment) |
|---|---|---|---|---|
| Commissioner may suspend authority to provide industrial insurance. | Applies to private carriers if such carriers intentionally or repeatedly fail to comply with chapters of NRS that are concerned with industrial insurance. (NRS 616B.472) | The commissioner does not appear to have this same level of authority to punish SIIS for violations of industrial insurance chapters of NRS. | 616B.472 (effective July 1, 1999) | This difference does not exist at present, but will exist beginning July 1, 1999, when private carriers are allowed to begin providing industrial insurance. |
| Ability of private carrier or SIIS to have open access to records of employer to whom it provides industrial insurance. | If an employer is insured by a private carrier, the administrator of the division of industrial relations of the dept. of bus. and industry or the administrator's auditor or agent is allowed open access to the books, records and payroll of the employer. | If an employer is insured by SIIS, the books, records and payrolls of the employer are open to SIIS in addition to the administrator and dept. of taxation. | 616A.485 eff. July 1, 1999 | This discrepancy appears to give SIIS access to certain records of an employer to whom it provides industrial insurance that a private carrier would not have. |
| Political ties of Chief Executive Officer of private insurance carrier or SIIS. | NRS does not create any ties between the CEO of an insurer and the State of Nevada. | The manager of SIIS (its CEO) "serves at the pleasure of the governor" and the manager's salary is fixed by the governor. This arrangement continues even after July 1, 1999. | 616B.062; and 616B.068 | |

| Requirement or Authority | Private Carriers | SIIS | NRS §§ Involved | Footnotes (to explain reason for different treatment) |
|---|---|---|---|---|
| Requirement to pay general tax on premiums and effect of failure to pay taxes on premiums. (NRS 680A.190 and 680B.027) | Pursuant to NRS 680A.190(e), the commissioner is required to "refuse to continue, suspend or revoke" an insurer's certificate of authority if the insurer fails to pay taxes on its premiums. | Beginning on July 1, 1999, SIIS is required to pay the general tax on premiums (*see* NRS 680B.027). | 680A.190; and 680B.027 eff. July 1, 1999 | Commissioner does not appear to have authority to remove SIIS's ability to provide industrial insurance for failure to pay premium taxes. |
| Liability for engaging in unfair methods of competition or unfair or deceptive acts or practices. (NRS 686A.010 to 686A.280, inclusive) | Chapter 686A of NRS prohibits insurers from engaging in certain acts constituting unfair methods of competition or unfair or deceptive acts or practices. | Because most of these provisions prohibit a "person" from doing certain acts, the provisions do not prohibit SIIS from engaging in such acts. *See* footnote #1. | 0.039; 616B.050; 679A.100; and 686A.010 to 686A.280, inclusive | Same as footnote #1. In Title 57 of NRS, "insurer" does not include SIIS. |
| Commissioner may hold hearing to determine whether an insurer or an employee of an insurer has engaged in "unsuitable conduct." (NRS 679B.310 to 679B.370, inclusive) | Applies to private carriers. | No equivalent provision of NRS authorizes the Commissioner of Insurance to hold such a hearing with respect to SIIS. | 0.039; 616B.050; 679A.100; and 679B.310 to 679B.370, inclusive | Same as footnote #1. In Title 57 of NRS, "insurer" does not include SIIS. |

Questions regarding this document should be addressed to:

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APPENDIX E

Memorandum dated April 1, 1998, to Legislative Committee On Workers' Compensation from Senator Ann O'Connell, Chairwoman, titled "Brief Review of Information on Owner-Controlled Insurance Programs"

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# MEMORANDUM

DATE: April 1, 1998

TO: Members of the Legislative Committee on Workers' Compensation (*Nevada Revised Statutes* 218.5375)

FROM: Senator Ann O'Connell, Chairwoman

SUBJECT: **Brief Review of Information on Owner-Controlled Insurance Programs (OCIPs), also Known as Wrap-Ups**

An OCIP is a specialized insurance agreement for a large construction project. OCIP coverage is typically for a time-specific building project and usually includes several lines of insurance in addition to workers' compensation.

*Summary of States*

Information regarding wrap-up agreements was obtained from 18 states with competitive state funds which responded to a recent survey. State funds that compete in the marketplace with private carriers to provide workers' compensation insurance to employers are considered competitive state funds.

- Six states allow the competitive state fund to participate in wrap-ups.
- Three states prohibit wrap-ups altogether; and therefore, the competitive state funds are also prohibited from participating in wrap-up agreements;
- Six competitive state funds have not provided coverage under a wrap-up agreement, although nothing in statute specifically prohibits their participation in wrap-ups.
- Three competitive state funds have not addressed the issue of whether they may participate in a wrap-up agreement.

*Statutory Provisions Relating to OCIPs*

The Commissioner of Insurance has indicated that *Nevada Revised Statutes* 686A.200 and NRS 686A.220 would apply to private carriers using an OCIP. It is important to keep in mind, however, that SIIS currently does not for the most part fall under Nevada's Insurance Code, which includes NRS Chapter 686A.

NRS 686A.200 **Favored agent or insurer.**

1. No person shall require, directly or indirectly, or through any trustee, director, officer, agent or employee or affiliate, as a condition, agreement or understanding to selling or furnishing any other person any loan, or extension thereof, credit, sale, goods, property, contract, lease or service, that such other person shall place, continue (other than as to life insurance) or renew any policy of insurance of any kind through any particular agent, broker or insurer. No agent, broker or insurer shall knowingly participate in any such prohibited plan or transaction. No person shall fix a price charged for such thing or service, or discount from or rebate upon price, on the condition, agreement or understanding that any insurance is to be obtained through a particular agent, broker or insurer.

2. Subsection 1 does not prevent:

(a) The exercise by any such person upon a reasonable basis of any right to approve or disapprove of the insurer and representative to underwrite the insurance. Such basis shall relate only to the adequacy and terms of the coverage with respect to the interest of the vendor, lender, lessor or provider of service to be insured thereunder, the financial standards to be met by the insurer, and the ability of the insurer or representative to service the policy.

(b) The exercise by the vendor, lender, lessor or provider of service of the right to furnish or renew the insurance, and to charge the account of the other person with the costs thereof, if such other person fails to deliver such insurance to the lender, vendor, lessor or provider of service, where otherwise called for and in order, at least 15 days prior to expiration of the existing policy.

NRS 686A.220 **Favored agent or surety for bonds under public building or construction contract.**

1. No officer or employee of this state, or of any public agency, public authority or public corporation (except a public corporation or public authority created pursuant to agreement or compact with another state), and no person acting or purporting to act on behalf of such officer or employee, or public agency or public authority or public corporation, shall, with respect to any public building or construction contract which is about to be or which has been competitively bid, require the bidder to make application or furnish financial data to, or to obtain or

procure any of the surety bonds or contracts of insurance specified in connection with such contracts or by any law from, a particular insurer or agent or broker.

2. No such officer or employee or any person acting or purporting to act on behalf of such officer or employee shall negotiate, make application for, obtain or procure any of such surety bonds or contracts of insurance (except contracts of insurance for builder's risk or owner's protective liability) which can be obtained or procured by the bidder, contractor or subcontractor.

3.This section does not, however, prevent the exercise by such officer or employee on behalf of the state or such public agency, public authority or public corporation of its right to approve the form, sufficiency or manner of execution of the surety bonds or contracts of insurance furnished by the insurer selected by the bidder to underwrite such bonds or contracts of insurance.

4. Any provisions in any invitation for bids or in any of the contract documents in conflict with this section are declared to be contrary to the public policy of this state.

5. A violation of this section is subject to the penalties provided by NRS 679A.180 (general penalty).

*Arguments For and Against OCIPs*

The following arguments have been made in support of OCIP agreements:

- OCIPs provide coordinated insurance to address injuries and claims related to the project;
- OCIPs allow better management of safety and prevention;
- Employees working on the project have uniform workers' compensation coverage; and
- Premiums are significantly reduced for the owner of a project.

The following arguments have been made against OCIPs:

- They are a monopoly in that they prohibit the sale of insurance to individual contractors (or subcontractors) who are involved in an OCIP;
- Since the coverage is under the owner, the owner realizes the savings as opposed to the subcontractor, who is really paying for the coverage;
- The subcontractors no longer manage their own safety programs or the impact on their experience modification factor; and
- The owner may not have the legal authority to provide workers' compensation coverage under an OCIP for all the employees on the project.

## QUESTIONS NEEDING ANSWERS

The Committee will need to consider the following questions regarding OCIPs:

1. The private sector would be prohibited from taking part in an OCIP under NRS 686A.200 and NRS 686A.220. However, the Commissioner of Insurance has not applied these provisions of the Insurance Code to SIIS. Should the unfair trade practices law in NRS Chapter 686A also apply to SIIS?

2. Since retrospective plans and OCIPs (which have a similar structure to retro plans) deal with workers' compensation rates, should they be considered a rate filing and therefore subject to the review of the Commissioner of Insurance?

3. Should SIIS have the authority to determine whether a member of a self-insured association is prohibited from participating in an OCIP?

4. What requirements should OCIPs have regarding claims and coverage issues? What happens to workers' compensation coverage if an employee is injured not actually on the job site but at a shop where he is doing work related to the project covered by the OCIP?

5. How should the experience rating be tracked for each contractor? Should individual experience rating of subcontractors working under the OCIP contract be required? Should there be a sharing of any rebate to the project owner with the subcontractors?

6. Under NRS 679B.230, the Commissioner can review the reserves of an insurance company. Should this provision apply to SIIS?

7. Does the Commissioner of Insurance have the authority to review the reserves for an OCIP agreement under SIIS? If not, should the Commissioner have this authority?

8. Should SIIS be held accountable and possibly penalized for having inadequate reserves related to an OCIP without negatively affecting the other SIIS policyholders?

9. Should there be a threshold project value in order to qualify for an OCIP?

10. Since we are in uncharted waters, should the private sector be allowed to bid on an OCIP?

AO/sfr:W0694-1.55

# APPENDIX F

Document provided by the Voluntary Working Group
on OCIPs and Wrap-Ups, dated November 30, 1998,
detailing final recommendations

Submitted by Scott Craigie on behalf of the Task Force on Wrap-Up coverage issues. November 30, 1998.

At the direction of Chairwoman Ann O'Connell, a series of meetings was held with Gary Milliken, Tom Czehowski, Sam McMullen, Jan Rhodes, Phil Heyde and Scott Craigie. Agreement was reached among all those representatives.

All have agreed that the OCIP program should be built on the principles set forth below.

The next two years should be viewed as a transition period when we build the wrap-up market within our state. This trial period for OCIPs is necessary to make sure that owner / prime contractor / insurance carriers all perform well in this important new market area. Some considerations regarding the two year trial:

- ✓ One of the most important features of wrap-ups is the improved safety benefit it brings to the workplace. Another important benefit is that at a work site that has numerous sub-contractors, it is most efficient to have a single claims management system that quickly delivers benefits to an injured worker. To ensure these goals are met by the program we create in Nevada, our laws must ensure that any and all sites covered by wrap-up coverage have qualified safety and claims administration on-site at all times when construction work is underway. (The safety and claims administration must not be assigned to the sub-contractor or be, in any way, under the control or oversight of the sub-contractor.)

- ✓ The legislation should include a specific list of qualifications for the designated on-site safety official. (To take advantage of the experienced professionals serving in this capacity in Nevada today, the Task Force agreed we should allow those with 3 or 5 years safety oversight experience to be covered by our qualifications. We liked the language on this issue contained at the end of this summary that comes from the Michigan plan.)

- ✓ The designated claims administrator will be responsible for filing the C-1 and C-3 forms; coordinating direction of the injured worker to the right clinic; handling all issues regarding the claim that can be managed at the worksite.

- ✓ During this first two years, rolling wraps will not be allowed.

Wrap-up coverage will insure workers only while they perform work on-site. The site will be defined in the contract, but must be contained in a reasonably contiguous area. Some issues that need attention include the following:

- ✓ If work activity that has been performed on-site is moved in a manner that requires workers dedicated to the construction of the project covered by wrap-up insurance, the sub contractor will keep track of the payroll for those dedicated workers while they perform work off site. The sub contractor will be reimbursed by the owner for the workers' comp costs for those dedicated workers moved off-site.

- ✓ Off-site employees dedicated to site work (e.g. Delivery drivers, fabricators, etc.) will fall under the sub-contractor. Given these workers fall under the sub-contractor, the sub- will be responsible for all safety, claims administration and loss history as long as the insurance costs initially included in the bid are reimbursed by the owner.

- ✓ As indicated above, all on-site employees will be the responsibility of the owner. All safety, claims administration and lost history issues will reside with the owner of the site.

Caps or minimums are not necessary so long as regulatory language specifies safety requirements, proper claims management procedures, claims handling by the owner-prime contractor or private insurance carrier in all contracts. In addition, all these conditions must be subject to review and approval of the Commissioner of Insurance.

Each and every wrap-up contract must include the following:

- ✓ A clearly defined work site.

- ✓ Definition of the individual of entity that is responsible for each section of the contract.

- ✓ A description of the on-site safety program.

- ✓ Definition of the duration of the coverage.

- ✓ Definition of the specific project to be completed and covered by the coverage.

- ✓ A clearly defined protocol spelling out who is responsible for the claims administration and safety program.

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Our group discussed in detail how we felt these Wrap-Up insurance programs should operate. We found some language in material supplied to the Committee at a previous meeting. You have a copy of the September 8, 1997 letter from Bruno Czyrka, Deputy Director, Department of Consumer & Industry Services that contains this and other information.

Our group thought it would be instructive to re-submit this information to the Committee as you consider individual operational components for the Wrap-Ups. There are some excellent operational / definitional components here:

- ✓ Each construction site shall have an appointed construction safety and health director employed by the owner, construction manager, general contractor of the construction site, or insurance carrier for the project.
- ✓ The safety and health director shall have experience in the field of construction safety and health. The construction safety and health director shall be a full-time director with job duties limited to occupational safety and health-related issues.
- ✓ The safety and health director shall be located at and work from the construction site, whenever construction activity takes place on the site.

- ✓ The owner, construction manager, or general contractor shall designate an alternate construction safety and health director with experience in the field of construction safety and health during multiple shifts and temporary absences of the construction safety and health director.
- ✓ The alternate construction safety and health director shall exercise the same responsibilities and authority as the construction safety and health director and report to the safety and health director on the activities at the site during the safety and health director's absence.
- ✓ The safety and health director shall be responsible for coordination among all employers at the construction site to provide a safe and healthful worksite.
- ✓ The construction safety and health director shall be the final authority for resolution of all disputes related to construction safety and health at the worksite.

Hope this was helpful.

# APPENDIX G

Document dated April 1997, from the
American Insurance Association,
titled "Second Injury Funds
Should be Abolished"

AMERICAN INSURANCE ASSOCIATION
LAW DEPARTMENT

1130 Connecticut Avenue N.W.
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Washington, D.C. 20036
(202) 828-7100
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## SECOND INJURY FUNDS SHOULD BE ABOLISHED

States should abolish workers' compensation second injury funds, because second injury funds (1) deviate from the principle that an employer's costs should be internalized; (2) have not met their objective of promoting the hiring of disabled workers; (3) have accumulated large unfunded deficits; and (4) create administrative costs and dispute, and promote attorney involvement.

(1) Second injury funds deviate from the principle that an employer's costs should be internalized. An employer with no responsibility for injuries occurring in another employer's workplace should not subsidize that employer's losses. It is inequitable to shift costs to another employer who had no responsibility for the injury. Workers' compensation costs should be allocated to employers in accordance with the costs of injuries to their own employees. This assures that costs are distributed fairly, and encourages safety, prompt reemployment and prevention of fraud.

Second injury funds are especially unfair to small employers. Larger employers have more opportunity to benefit from second injury funds, because they experience considerably more claims. Nonetheless, small employers are assessed to cover these losses, although they may never have a loss qualifying for second injury fund coverage.

Furthermore, eliminating second injury funds will not adversely effect an employer's loss experience. Small business is not experience-rated; and experience is only partially predictive for other than the largest employers with significantly higher premiums (the higher the premium, the more actuarially predictive is experience and the greater weight that is given to such experience). Even for employers whose premium is sufficiently large so as to be fully experience-rated, second injury fund recoveries have little impact on experience. This is because the experience rating formula weights *frequency* (which SIF recoveries do not affect) more than *severity;* and *severity* (the net dollar cost of the injury) is unaffected by a second injury fund recovery.

(2) Second injury funds have not met their stated objective of promoting the hiring of disabled workers. In the decades since their creation, there is no demonstrable evidence that second injury funds have significantly influenced hiring decisions, nor influenced them to the degree that would justify retaining the funds, given

their well-documented problems. They *have* been successful in spreading losses among all employers, but without more than a theoretical justification for second injury funds, socializing losses has become an end in itself.

AIA believes the ADA is a more direct, and thus certain, remedy for promoting employment of disabled workers, because it prohibits certain improper inquiries about the existence or nature of a disability prior to an employment offer. Even following an offer of employment, when an inquiry would not violate the ADA, a second injury fund gives an employer the incentive to inquire about a preexisting disability. This is so, because, some states require an employer to ascertain at time of hire whether an employee has a preexisting injury in order to qualify for second injury fund coverage of a subsequent injury. Even without a prior knowledge requirement, a second injury fund gives an employer at time of injury a powerful incentive to inquire into a claimant's medical history in order to hunt down a qualifying preexisting injury and spread the losses of any subsequent injury to other employers. Therefore, second injury funds can give an unscrupulous employer a pretext to inquiring into preexisting disabilities. Thus, in a perverse way, second injury funds may operate to *call attention* to disabilities.

Although the ADA does not cover employers with fewer than 15 employees, it is doubtful abolition of a second injury fund would have an effect on small employers' incentives to hire disabled individuals. This is because there is little, if any, demonstrable evidence the funds have had any impact on hiring decisions in the decades following their creation.

(3) Second injury funds have accumulated large unfunded deficits. Second injury funds are financed on a pay-as-you-go basis (generally through assessments on self-insured and insured employers). Many funds have expanded and become financial monsters, when rapidly rising workers' compensation costs have increased incentives to dump cases into the fund and raised the ultimate value of those cases. Connecticut's second injury fund was estimated to have $6 billion in unfunded liabilities when it was repealed several years ago; Kentucky, over $2 billion when repealed last year. Florida's is estimated to have over a $4 billion deficit. For employers, the assessments required to pay these ever-rising liabilities will last for decades and constitute for all employers -- insured and self-insured -- an additional cost of workers' compensation simply to pay the future cost of injuries that have already occurred. Furthermore, in some states assessments have risen so high to meet cash flow obligations that states have limited the assessments on insured employers to fund current obligations (e.g, Florida, Massachusetts), forcing insurers to settle for amounts less than due and raising additional questions about the efficacy of second injury funds in preventing discrimination.

Furthermore, these unfunded liabilities have prompted the American Institute of Certified Public Accountants (AICPA) to propose that insurers and self-insured employers be required to accrue immediately for second injury fund liabilities, where assessments are based on paid losses. This proposal recognizes that payment for second injury fund losses is an unavoidable future obligation of all employers and cannot be avoided even if an insurer or employer ceases operations in the state. For these reasons, AIA recommends that assessments on insured employers be based on premium and collected outside the rate base (i.e., surcharge).

(4) Second injury funds generate transaction costs and disputes. Second injury funds typically are administered by state workers' compensation agencies. They require staff and other resources necessary to evaluate coverage, track payments and assessments, and provide for defense of the fund. These unavoidable costs are part of each employer's assessment.

Second injury funds also generate disputes, attorney involvement, and litigation. They introduce another party to the determination (the fund), adding another layer of dispute. In some states (e.g., Missouri, Oklahoma), the injured worker is required to file a separate claim for benefits through the fund, guaranteeing a separate proceeding and potential dispute (along with attorney involvement) on each second injury fund claim. Finally, incentives to "hunt" for a pre-existing injury to minimize an employer's *direct* financial obligation (while it shifts costs to other employers) encourage case-dumping at the expense of other employers and raise legal costs.

* * *

**AMERICAN INSURANCE ASSOCIATION**
**APRIL 1997**

# APPENDIX H

Letter from Susan Dunt, Risk Management Division,
dated November 18, 1998, regarding coverage
of correctional officers exposed
to contagious diseases

STATE OF NEVADA
DEPARTMENT OF ADMINISTRATION
RISK MANAGEMENT DIVISION
400 W. King Street, Suite 300
Carson City, Nevada 89710
Telephone (702) 687-4085
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BOB MILLER
Governor

JOHN P. COMEAUX
Director

November 18, 1998

Senator Ann O'Connell, Chairman
Legislative Committee on Workers' Compensation
C/O Vance Hughey,
Legislative Counsel Bureau

RE: Coverage of Correctional Officers exposed to contagious diseases
BDR 53-637 / BDR 925

FROM: Susan Dunt, Workers' Comp and Safety Manager

Dear Senator O'Connell and Members of the Committee,

This is a request to be included on the agenda for the next Committee Hearing to discuss input in regard to BDR 53-637 and 925 as it applies to State of Nevada employees.

The Risk Management Division is the designated representative for workers' compensation issues for all Central Payroll Agencies, as per a contractual agreement between Doug Dirks and John Comeaux. Our Division pays workers compensation premiums on behalf of all agencies. Our Legislative performance indicators are related to the ability to minimize and control these costs. My title is Workers' Compensation and Safety Manager. I am responsible to oversee and manage the workers' comp program for State employees within the Central Payroll agencies. I plan to present the following information regarding the proposed language to amend Subsection 2 of Nevada Revised Statutes 616A.035

Overview
We support the theory of this amendment. However, as written, it may be too broad in regard to the diseases it is intended to cover. We believe that the specific diseases that are intended to be included are Tuberculosis, Hepatitis, and HIV (Aids). These diseases are defined in medical dictionaries and OSHA regulations as **"infectious diseases"**. These diseases have known preventative medication that can be provided that will hinder the probability that the full-blown disease will be contracted. If there are other specific diseases that can be identified and for which preventative medication is available, they can be included as necessary and justified.

Secondly we suggest that the preventative care not be limited to an employee of the department of prisons, but to all State of Nevada employees who qualify as a police officer pursuant to subsections 2-7 of Nevada Revised Statutes 617.135.

(702) 687-3847
Telecommunication Device for the Deaf

Thirdly we suggest that the language not be limited to altercations or attacks (battering). It should also include exposures incurred during transport, processing of offenders, response to emergencies such as suicides or attempted suicides, general custody of an offender with a suspected or confirmed disease or any other situation which occurs during the course of a police or correctional officer's duties. This should also include situations in which an unknown substance is thrown onto an officer, which in turn gets in their eyes, mouth or open wound, but does not otherwise involve a physical injury.

Discussion:
As an employer, we would prefer to see immediate preventative care provided for these specific diseases, in lieu of bearing the expense of a full-blown disease if it develops. **An ounce of prevention is worth a pound of cure.** It is also the appropriate moral approach to take on behalf of our employees. Statistics show that offenders have a higher than average incidence of these diseases. Therefore the rate of exposure is higher than average. The State of Nevada has had employees from various protective agencies, not just Prisons, who report exposure to infectious diseases (bloodborne pathogens) or T.B. during the course of their employment. The total numbers are not that high. To my knowledge, we average between 10 and 20 such exposures each year.

Claims for an exposure to Hepatitis or HIV or for the development of positive antibodies for TB are generally denied unless the employee actually develops the disease. In the case of T.B., it is often difficult to be able to identify a confirmed source if the offender is not in the Prison system. Currently, if an employee has an actual physical injury (i.e. cut, stab, needle stick, etc.) related to exposure to a confirmed source, the physical injury is accepted. The employee is then provided screening under medical investigation for up to one year for the infectious disease. IT DOES NOT INCLUDE PREVENTATIVE CARE.

We must keep in mind that offenders first must be detained and processed before a determination can even be made as to whether or not they are contagious. In addition, offenders can be carriers and turn active and contagious once in the system. Someone has to transport offenders to medical care or to provide custody services while the care is provided.

**Hepatitis and HIV**
In the Prison settings, the gray area that often occurs (and which we would like to see the amendment addressed) is when either blood or an unknown liquid is propelled into an officer's eyes, mouth or broken area in the skin or if the source cannot be immediately be confirmed. As noted above, if there is not a physical injury, a claim generally cannot be accepted. It has been reported that HIV tainted blood is a valuable weapon within prisons. It can be and reportedly has been distributed to other offenders, who are not active carriers, to use to throw at officers when the opportunity arises. In this case the source or the substance may not be able to be confirmed. Officers must also respond to suicides or attempted suicides, during which an exposure could occur. Under these circumstances it is not reasonable to only have employees providing medical care afforded the benefit of preventative medications. Often other employees have also been exposed.

**Tuberculosis**
In the case of T.B., an exposure can occur through coughing or other methods in which a physical injury does not occur. When a known active T.B. carrier is identified we currently must tell employees:

> "Yes, Offender A has been confirmed to have active T.B. We realize you had to transport this offender to medical care while he was coughing in a close proximity to you. However, the law only allows us to provide preventative care to those who actually provide medical care-so sorry you are out of luck and on your own, unless you actually get the disease."

Once again, under these circumstances it is not reasonable to only have employees providing medical care afforded the benefit of preventative medications.

Another scenario that occurs is that an employee's T.B. skin test converts from negative to positive from one year to the next. Police and correctional officers are tested annually for T.B. Employees submit a claim and it is denied, because they do not have active T.B., they have only developed the antibodies. Preventative care is not offered. It would seem reasonable to accept this as a claim for the provision of preventative care as long as the employee did not have any other identified risk factors that could have contributed to this conversion (i.e. travel out of the country, family member with T.B., etc.)

**OSHA Requirements**
OSHA regulations (1910.1030-Bloodborne Pathogens) require an employer to provide a medical consultation and post exposure prophylaxis medication to employees who have an Post Exposure Incident-This is defined as:

> "a specific eye, mouth, other mucous membrane, non-intact skin or parenteral contact with blood or other potentially infectious materials that results from the performance of an employee's duties".

Most State of Nevada agencies cannot adequately project these types of exposures and do not budget funds or have funds available to pay the costs of these medical evaluations and the provision of preventative medication. They are subject to OSHA fines if they do not comply. It is generally expected that these issues will be covered by workers' comp. These programs are often confused. In reality, since the workers' comp program cannot pay these expenses, it presents a legal and financial problem. If the funds are not available, an employee cannot be forced to use their own health plan benefits to obtain the preventative care. Some employees simply cannot afford the care and do not feel that they should be responsible to pay it. They feel that because of the potentially fatal results of such an exposure and the increased risk that is present within the offender populations, that this care should be provided for them.

**Costs for Preventative Care:**
**HIV**
The cost of the preventative medicine for a significant exposure incident to HIV (as determined by the physician) is approximately $1,500. It must be provided within two hours of exposure for maximum effectiveness and be administered for 30 days.

The screening tests are conducted at 6 weeks, 3 months, 6 months and one year. These costs generally do not exceed $250. If a physical injury is not involved, it will not be covered under workers' compensation.

To my knowledge we have only had several recent instances of this situation -primarily at the Ely State Prison, when an employee is exposed to a known HIV carrier. We have really had to scramble to determine how to find funds to pay for the preventative care. To my knowledge, the State of Nevada has not had an employee who has contracted HIV or T.B. from a confirmed carrier. The actual risk is small, but the fear and disruption that occurs when an employee is exposed is great. It is my position that we need to support these employees by providing any and all care that is available. To have this situation occur and than have a claim denied not only infuriates an employee, it also creates feelings of abandonment and betrayal. I know this from my experience in dealing with employees when this situation occurs.

**Hepatitis**
The cost of preventative care for Hepatitis A and Hepatitis C is approximately $50 and involves a one-time injection of immune serum globulin. Although it's effectiveness is questionable, it is at least worth a try.

Preventative care for Hepatitis B could require between one and four immunizations for a maximum cost of $200. This is dependent on whether or not the employee chose to accept the HBV inoculations and if those inoculations were sufficient to produce immunity.

The most important benefit of providing preventative care in this case is the counseling and accurate medical information that can be provided to the employee.

**T.B.**
The cost of preventative care for exposure to T.B. is approximately $500, as recently quoted to me by an Occupational Health Clinic. This includes Isoniazad pills for 6 months-(one pill a day), plus a vitamin B-6 supplement, liver function tests and initial chest X-rays. (Thereafter, annual chest X-rays are provided as part of the annual physical exam required of all police officers.)

The fiscal impact to the State of Nevada is not expected to exceed $5,000 per year. The Department of Prisons reports 7 incidents of T.B. conversions and 11 Hepatitis/HIV exposures that did not involve a physical injury within the past year. Other police agencies including Nevada Highway Patrol and Parole and Probation have experienced between 3 and 5 exposures or T.B conversions within the past year.

I submit modifications to the proposed amendment as noted on the Attachment A for your consideration. Please note that this is proposed only for State of Nevada employees and does not include employees defined as police officers under subsection 1 of Nevada Revised Statutes 617.135.

Thank you for your consideration of this issue.

Susan Dunt

ATTACHMENT A

**COVERAGE FOR STATE OF NEVADA EMPLOYEES WHO ARE EXPOSED TO SPECIFIC INFECTIOUS DISEASES:**

Amend subsection 2 of Nevada Revised Statutes 616A.035, which defines the term accident benefits to read as follows:

2. The term includes:
   (a) Medical benefits as defined by Nevada Revised Statutes 617.030
   ~~(b) as written=no changes~~
   (c) Preventative treatment administered as a precaution to an employee of the [department of prisons] State of Nevada who:
      (1) Qualifies as a police officer pursuant to subsections 2-9 of N R S 617.135; and
      (2) Was exposed to an infectious disease limited to tuberculosis, Hepatitis and HIV, while performing duties within the course and scope of their employment; and
      (3) Does not test positive as a carrier of the disease at the time of exposure, and
      (4) Provides a documented report of the exposure incident from his agency.

AND

Add a new subsection 4 of Nevada Revised Statutes 616A.035 to specify that preventative treatment includes medical evaluation and counseling, appropriate preventative medication available to inhibit the development of the disease and tests to determine if an employee has contracted the disease to which he was exposed.

AND

Amend subsection 2 of Nevada Revised Statutes 616A.265, which provides what does and does not constitute an "injury by accident arising out of and in the course of employment", to add a new paragraph as follows:

( c) The exposure to an "infectious" disease of an employee of the State of Nevada who:
   (1) Qualifies as a police officer pursuant to subsection 7 of N R S 617.135; and
   (2) Was exposed to an infectious disease including tuberculosis, Hepatitis and HIV, while performing duties within the course and scope of their employment; and
   (3) Does not test positive as a carrier of the disease at the time of exposure, and
   (4) Provides a documented report of the exposure incident from his agency.

AND

Appropriate language in regard to the new section proposed for retirement coverage.

# APPENDIX I

## Suggested Legislation

SUMMARY—Makes various changes concerning duties and powers of insurers who provide industrial insurance. (BDR 53-379)

FISCAL NOTE: Effect on Local Government: Yes.

Effect on the State or on Industrial Insurance: No.

AN ACT relating to industrial insurance; requiring certain records of an employer who is insured by a private carrier to be open to inspection by that private carrier; expanding the types of organizations or associations of employers to which private carriers may provide industrial insurance; changing the period within which an insurer must provide notice that an employer has changed insurers or allowed his industrial insurance to lapse; requiring an insurer to notify certain claimants of circumstances under which a claim for workers' compensation may be closed automatically; providing a penalty; 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.** NRS 616A.485 is hereby amended to read as follows:

616A.485 1. The books, records and payrolls of an employer insured by the system must be open to inspection by the administrator, the system or its auditor or agent or by auditors of the department of taxation to determine:

(a) The accuracy of the payroll;

(b) The number of persons employed; and

(c) Any other information necessary for the administration of chapters 616A to 617, inclusive, of NRS.

2. The books, records and payroll of an employer who is self-insured, a member of an association of self-insured public or private employers or insured by a private carrier must be open to inspection by the administrator or his auditor or agent in the manner prescribed in subsection 1.

***3. The books, records and payroll of an employer who is insured by a private carrier must be open to inspection by that private carrier or its auditor or agent in the manner prescribed in subsection 1.***

**Sec. 2.** NRS 616B.026 is hereby amended to read as follows:

616B.026 1. An insurer, other than a self-insured employer or an association of self-insured public or private employers, shall provide to each employer to whom the insurer provides industrial insurance ***, whether or not the employer is a member of a group that is provided with industrial insurance pursuant to NRS 616B.036,*** a certificate of insurance which indicates that the employer has obtained a policy of industrial insurance.

2. A certificate of insurance provided by an insurer pursuant to subsection 1 must include, without limitation:

(a) The name of the insurer;

(b) The name of the insured;

(c) The number of the policy; and

(d) The period for which the policy is effective.

**Sec. 3.** NRS 616B.036 is hereby amended to read as follows:

616B.036 1. The system and private carriers may provide industrial insurance for an organization or association of employers as a group if:

(a) The members of the ~~[group or]~~ organization ***or association*** are engaged in a common trade or business; and

(b) The formation and operation of a program of industrial insurance for the organization or association will substantially assist in the handling of claims and the prevention of accidents for the employers as a group.

2. ***Notwithstanding the provisions of subsection 1, a private carrier may provide industrial insurance for an organization or association of employers as a group whose members are not engaged in a common trade or business if:***

***(a) The organization or association of employers is formed and maintained for purposes other than obtaining industrial insurance; and***

***(b) The contract or other agreement pursuant to which the private carrier will provide industrial insurance for the organization or association provides that:***

*(1) A separate policy will be issued to each member of the organization or association; and*

*(2) The organization or association and each of its members are not liable for the cost of the administration of claims or the compensation payable pursuant to the provisions of chapters 616A to 616D, inclusive, or chapter 617 of NRS.*

*3.* The commissioner must approve each ~~[group or]~~ organization *or association* before a policy of industrial insurance may be issued to it ~~[.~~

~~3.]~~ *as a group pursuant to subsection 1 or 2.*

*4.* The commissioner shall adopt regulations for the qualification of ~~[groups for industrial insurance.]~~ *organizations or associations of employers described in subsections 1 and 2.*

**Sec. 4.** NRS 616B.460 is hereby amended to read as follows:

616B.460 1. An employer may elect to purchase industrial insurance from a private carrier for his employees pursuant to chapters 616A to 617, inclusive, of NRS.

2. An employer may elect to purchase insurance from an insurer other than his present insurer if the employer has:

(a) Given at least 10 days' notice to the administrator of the change of insurer; and

(b) Furnished evidence satisfactory to the administrator that the payment of compensation has otherwise been secured.

3. Each private carrier and the system shall notify the administrator if an employer has changed his insurer or has allowed his insurance to lapse, within ~~[24 hours or by the end of the next working day]~~ ***15 days*** after the insurer has notice of the change or lapse.

**Sec. 5.** NRS 616C.235 is hereby amended to read as follows:

616C.235 1. Except as otherwise provided in subsection 2:

(a) When the insurer determines that a claim should be closed before all benefits to which the claimant may be entitled have been paid, the insurer shall send a written notice of its intention to close the claim to the claimant by first-class mail addressed to the last known address of the claimant. The notice must include a statement that if the claimant does not agree with the determination, he has a right to request a resolution of the dispute pursuant to NRS 616C.305 and 616C.315 to 616C.385, inclusive. A suitable form for requesting a resolution of the dispute must be enclosed with the notice. The closure of a claim ***pursuant to this subsection*** is not effective unless notice is given as required by this subsection.

(b) If the insurer does not receive a request for the resolution of the dispute, it may close the claim.

(c) Notwithstanding the provisions of NRS 233B.125, if a hearing is conducted to resolve the dispute, the decision of the hearing officer may be served by first-class mail.

2. If the medical benefits required to be paid for a claim are less than $500, the claim closes automatically if the claimant does not receive ***additional*** medical treatment for the injury for at least 12 months ~~[.]~~ ***after the claim is opened.*** The claimant may not

appeal the closing of such a claim. ***The insurer shall send to each claimant who receives less than $500 in medical benefits within 6 months after the claim is opened a written notice that explains the circumstances under which a claim may be closed automatically pursuant to this subsection. The written notice must be:***

***(a) Sent by first-class mail addressed to the last known address of the claimant; and***

***(b) A document that is separate from any other document or form that is used by the insurer.***

***The closure of a claim pursuant to this subsection is not effective unless notice is given as required by this subsection.***

**Sec. 6.** NRS 616D.250 is hereby amended to read as follows:

616D.250 1. Any employer insured by the system who refuses to submit his books, records and payroll for inspection, as provided by NRS 616A.485, to a representative of the system or the administrator, or to an auditor from the department of taxation ~~,~~ presenting written authority for the inspection, is subject to a penalty of $1,000 for each offense, to be collected by a civil action in the name of the system or the administrator.

2. A self-insured employer, a member of an association of self-insured public or private employers or an employer insured by a private carrier who refuses to submit his books, records and payroll to the administrator ***or the private carrier*** for inspection as provided by NRS 616A.485 ~~,~~ is subject to a penalty of $1,000 for each offense, to be

collected by a civil action in the name of the administrator ~~[.]~~ ***or the private carrier, as applicable.***

3. The person who gives such refusal is guilty of a misdemeanor.

**Sec. 7.** 1. This section and section 5 of this act become effective on July 1, 1999.

2. Sections 1 to 4, inclusive, and 6 become effective at 12:01 a.m. on July 1, 1999.

SUMMARY—Makes various changes regarding industrial insurance. (BDR 53-382)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: No.

AN ACT relating to industrial insurance; allowing certain employees of the system to retain their rights to reemployment in the executive branch of state government under certain circumstances; authorizing the state industrial insurance system to enter into certain agreements with agents, brokers and insurers to provide and market packages of insurance that combine industrial insurance coverage provided by the system with other kinds of insurance provided by other insurers; authorizing the system to pay a commission to those agents, brokers and insurers; requiring the manager of the state industrial insurance system to report annually to the legislative committee on workers' compensation concerning the status of the account for the administration of extended claims; requiring the state industrial insurance system to provide certain information to the commissioner of insurance; requiring the state industrial insurance system to report to the commissioner of insurance concerning the financial condition of the account for the administration of extended claims; setting forth the circumstances in which the commissioner is authorized to make such

information available publicly; exempting the employees of the state industrial insurance system from certain provisions governing employment in the executive branch of state government; 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 616B of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 5, inclusive, of this act.

**Sec. 2.** *1. Except as otherwise provided in this section, all officers and employees of the system are exempt from the provisions of chapter 284 of NRS and are entitled to such salaries, leaves of absences and other terms and conditions of employment as the manager prescribes.*

*2. An employee hired by the system as a classified employee before the effective date of this act retains his rights to reemployment.*

*3. If the manager lays off an employee described in subsection 2, the manager shall:*

*(a) Give the employee at least 30 days' written notice before the effective date of the layoff; and*

*(b) Provide the department of personnel with such information as is necessary for the department to ensure the employee receives his rights to reemployment.*

*4. As used in this section, "rights to reemployment" means all rights to be reemployed by the executive branch of state government established by the provisions of chapter 284 of NRS and the regulations adopted pursuant thereto, including, without limitation, the right to be placed on an appropriate reemployment list in the appropriate order.*

Sec. 3. *1. The system may enter into an agreement with an agent, broker or insurer for the provision and marketing of packages of insurance coverage to employers that consist of:*

*(a) Industrial insurance which is provided by the system; and*

*(b) One or more kinds of insurance, other than industrial insurance, which are not provided by the system.*

*2. The system shall not accept, assume or otherwise undertake any manner of financial liability or responsibility with respect to insurance that is provided by an insurer pursuant to paragraph (b) of subsection 1.*

*3. An agreement entered into pursuant to subsection 1 may provide for the system to pay a commission to an agent, broker or insurer for soliciting, negotiating, procuring, effecting or renewing a contract for a package of insurance coverage that includes industrial insurance which is provided by the system.*

*4. As used in this section:*

*(a) "Agent" has the meaning ascribed to it in NRS 683A.030.*

*(b) "Broker" has the meaning ascribed to it in NRS 683A.040.*

*(c) "Insurer" has the meaning ascribed to it in NRS 679A.100.*

Sec. 4. *1. After the close of each fiscal year of the system, the manager shall:*

*(a) Prepare a written report concerning the status for that fiscal year of the account for the administration of extended claims created pursuant to NRS 616B.087;*

*(b) Submit the report to the legislative committee on workers' compensation; and*

*(c) Testify before the committee concerning the report.*

*2. The report must be submitted within 4 months after the close of each fiscal year of the system. The manager may testify before the committee after the end of the 4-month period if the report was submitted in a timely manner and no meeting of the committee is scheduled after the date of submission of the report and before the end of the 4-month period.*

*3. The report must include the:*

*(a) Financial statement of the system which must include:*

*(1) A balance sheet indicating the amount of assets and liabilities of the account at the close of that fiscal year; and*

*(2) A statement of operations for the account indicating the:*

*(I) Amount of money paid on claims against the account and other operating expenses in that fiscal year;*

*(II) Investment income and other income generated by the account in that fiscal year; and*

*(III) Changes in the accumulated deficit or accumulated earnings that occurred during that fiscal year; and*

*(b) Manager's opinion as to whether the amount of money allocated to the account pursuant to NRS 616B.083 and 680B.060 will be adequate to satisfy the obligations and liabilities of the state insurance fund for claims for workers' compensation that are related to injuries which were incurred before July 1, 1995.*

Sec. 5. *1. Notwithstanding any other provision of law, the system shall comply with those provisions of Title 57 of NRS that require a private carrier to provide information to the commissioner, except those provisions that the commissioner determines are not reasonably applicable to the system. In complying with such provisions, the system shall provide to the commissioner the same or substantially similar information as that which a private carrier is required to provide to the commissioner.*

*2. The commissioner shall make information received from the system pursuant to this section available publicly only if the commissioner makes the same or substantially similar information received from a private carrier available publicly.*

Sec. 6. NRS 616B.014 is hereby amended to read as follows:

616B.014 1. Except as otherwise provided in this section and in NRS 616B.006, 616B.012 and 616B.021, ***and section 5 of this act,*** the following records of the system are confidential:

(a) Files of individual claimants and policyholders of the system.

(b) Any reports that contain information that would identify individual claimants and policyholders of the system.

(c) Any proprietary information of the system.

2. The system ~~[may]~~ ***shall, upon request,*** disclose such confidential information:

(a) To the governor and any member of his staff authorized to receive such information;

(b) To a member of the legislature and any member of his staff authorized to receive such information;

(c) To the administrative director of an executive agency who is otherwise authorized to receive such information pursuant to specific statute or administrative regulation; or

(d) Pursuant to a lawful order issued by a court of competent jurisdiction.

3. ~~[A]~~ ***Except as otherwise provided in section 5 of this act, a*** person who obtains such confidential information pursuant to subsection 2 shall not disclose:

(a) The identity of an individual claimant or policyholder of the system; or

(b) Any proprietary information of the system,

except pursuant to a lawful order of a court of competent jurisdiction.

4. As used in this section, "proprietary information" means any information which, if disclosed to the general public, may result in a competitive disadvantage to the system, including, without limitation:

(a) Rules, criteria and standards for underwriting policies that are applied by the system.

(b) Plans or other documents concerning the marketing or strategic planning of the system.

(c) Data, studies and reports concerning the development of new products or services.

(d) Data that identify the share of the market of the system within each class of risk.

(e) Any worksheets relating to the financial condition of the system, except ~~[a]~~ *:*

*(1) A* financial statement resulting from an audit of the system conducted pursuant to NRS 616B.056 ~~[and a]~~ *;*

*(2) A* final report of an audit conducted by the legislative auditor ~~[.]~~ *; or*

***(3) The report concerning the account for the administration of extended claims prepared pursuant to section 4 of this act.***

(f) The annual actuarial valuation and report of the soundness of the system prepared pursuant to NRS 616B.056.

**Sec. 7.** NRS 616B.050 is hereby amended to read as follows:

616B.050 1. The state industrial insurance system is hereby established as an independent actuarially funded system to insure employers against liability for injuries and occupational diseases for which their employees may be entitled to receive

compensation pursuant to chapters 616A to 616D, inclusive, of NRS or chapter 617 of NRS, and the federal Longshoremen's and Harbor Workers' Compensation Act. The system may create one or more entities to carry out the business of the system, which may be operated under any legal name in addition to the state industrial insurance system on behalf of the system.

2. The system is a public agency which administers and is supported by the state insurance fund. The executive and legislative departments of the state government shall regularly review the system.

3. The system is entitled but not required to use any services provided to state agencies. ~~[Except as otherwise provided for specified positions, its employees are in the classified service of the state.]~~

**Sec. 8.** NRS 616B.065 is hereby amended to read as follows:

616B.065 1. The manager shall select assistant managers who are ~~[in the unclassified service of the state and are]~~ entitled to receive annual salaries fixed by the manager.

2. The assistant managers ~~[shall]~~ serve at the pleasure of the manager.

3. The assistant managers must be graduates of a 4-year college or university with a degree in business administration or public administration or an equivalent degree.

**Sec. 9.** NRS 616B.068 is hereby amended to read as follows:

616B.068 The manager is ~~[in the unclassified service of the state but is]~~ entitled to receive an annual salary fixed by the governor.

**Sec. 10.** NRS 616B.083 is hereby amended to read as follows:

616B.083 1. The money and assets held in trust by the system include:

(a) All premiums and other money paid to the system;

(b) All property and securities acquired through the use of money in the state insurance fund; and

(c) All interest and dividends earned upon money in the state insurance fund and deposited or invested as provided in chapters 616A to 616D, inclusive, of NRS.

2. The system shall:

(a) Report to the commissioner ~~[only]~~ its financial statement and results of operations for ~~[the]~~ *:*

*(1) The* account for *the administration of* current claims *created pursuant to NRS 616B.088* in accordance with those accounting principles that are prescribed by the commissioner and applied to other insurers providing coverage for workers' compensation.

*(2) The account for the administration of extended claims created pursuant to NRS 616B.087 on the basis of a fiscal year in accordance with generally accepted accounting principles.*

(b) Discount its reserve for losses for accounting periods beginning on or after July 1, 1995, at a rate determined by the manager, but not to exceed 4 percent.

(c) Allocate to the account for the administration of extended claims created pursuant to NRS 616B.087 $650,000,000 in invested assets.

**Sec. 11.** NRS 616B.167 is hereby amended to read as follows:

616B.167 The manager:

1. Has full power, authority and jurisdiction over the system.

2. May perform all acts necessary or convenient in the exercise of any power, authority or jurisdiction over the system, either in the administration of the system or in connection with the business of insurance to be carried on by the system under the provisions of chapters 616A to 616D, inclusive, of NRS, including the establishment of premium rates.

3. May appoint ~~[in the unclassified service of the state]~~ no more than five persons, engaged in management, who report directly to the manager or an assistant manager. The manager shall designate these positions, and may not change them without the approval of the personnel commission. These persons are entitled to receive annual salaries fixed by the manager.

**Sec. 12.** NRS 284.013 is hereby amended to read as follows:

284.013 1. Except as otherwise provided in subsection 4, this chapter does not apply to:

(a) Agencies, bureaus, commissions, officers or personnel in the legislative department or the judicial department of state government, including the commission on judicial discipline;

(b) Any person who is employed by a board, commission, committee or council created in chapters 590, 623 to 625A, inclusive, 628, 630 to 644, inclusive, 648, 652, 654 and 656 of NRS; or

(c) Officers or employees of any agency of the executive department of the state government , ***including the state industrial insurance system,*** who are exempted by specific statute.

2. Except as otherwise provided in subsection 3, the terms and conditions of employment of all persons referred to in subsection 1, including salaries not prescribed by law and leaves of absence, including, without limitation, annual leave and sick and disability leave, must be fixed by the appointing or employing authority within the limits of legislative appropriations or authorizations.

3. Except as otherwise provided in this subsection, leaves of absence prescribed pursuant to subsection 2 must not be of lesser duration than those provided for other state officers and employees pursuant to the provisions of this chapter. The provisions of this subsection do not govern the legislative commission with respect to the personnel of the legislative counsel bureau.

4. Any board, commission, committee or council created in chapters 590, 623 to 625A, inclusive, 628, 630 to 644, inclusive, 648, 652, 654 and 656 of NRS which contracts for the services of a person, shall require the contract for those services to be in writing. The contract must be approved by the state board of examiners before those services may be provided.

**Sec. 13.** 1. This section and sections 1, 2, 7, 8, 9, 11 and 12 of this act become effective upon passage and approval.

2. Sections 3 to 6, inclusive, and 10 of this act become effective on July 1, 1999.

SUMMARY—Establishes provisions governing consolidated insurance programs. (BDR 53-384)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: No.

AN ACT relating to industrial insurance; authorizing certain private companies, public entities and utilities to establish and administer a consolidated insurance program to obtain industrial insurance coverage for a construction project; providing certain limitations regarding the scope of a consolidated insurance program; authorizing the state industrial insurance system or certain private carriers to provide industrial insurance coverage for a consolidated insurance program; requiring that a consolidated insurance program must provide for the safety and administration of claims of employees of contractors and subcontractors who are engaged in a construction project; setting forth the provisions that must be included within a contract to provide industrial insurance coverage for a consolidated insurance program; allocating responsibility for the payment of claims for industrial insurance that are covered by a consolidated insurance program; 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 616A of NRS is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 4 of this act.

Sec. 2. *"Consolidated insurance program" means a program of insurance that provides:*

*1. Industrial insurance coverage;*

*2. A comprehensive program of safety; and*

*3. For the administration of claims for industrial insurance,*

*for each employee of a contractor or subcontractor who is engaged in a construction project when such an employee works at the site of the construction project.*

Sec. 3. *"Contractor-controlled insurance program" means a consolidated insurance program that is established and administered by the principal contractor of the construction project.*

Sec. 4. *"Owner-controlled insurance program" means a consolidated insurance program that is established and administered by the owner of the construction project.*

Sec. 5. NRS 616A.020 is hereby amended to read as follows:

616A.020 1. The rights and remedies provided in chapters 616A to 616D, inclusive, of NRS for an employee on account of an injury by accident sustained arising

out of and in the course of the employment shall be exclusive, except as otherwise provided in those chapters, of all other rights and remedies of the employee, his personal or legal representatives, dependents or next of kin, at common law or otherwise, on account of such injury.

2. The terms, conditions and provisions of chapters 616A to 616D, inclusive, of NRS for the payment of compensation and the amount thereof for injuries sustained or death resulting from such injuries shall be conclusive, compulsory and obligatory upon both employers and employees coming within the provisions of those chapters.

3. The exclusive remedy provided by this section to a principal contractor extends, with respect to any injury by accident sustained by an employee of any contractor in the performance of the contract, to every architect, land surveyor or engineer who performs services for:

(a) The contractor;

(b) The owner of the property; or

(c) Any such beneficially interested persons.

4. ***The exclusive remedy provided by this section applies to the owner of a construction project who provides industrial insurance coverage for the project by establishing and administering a consolidated insurance program pursuant to section 8 of this act to the extent that the program covers the employees of the contractors and subcontractors who are engaged in the construction of the project.***

*5.* If an employee receives any compensation or accident benefits under chapters 616A to 616D, inclusive, of NRS, the acceptance of such compensation or benefits shall be in lieu of any other compensation, award or recovery against his employer under the laws of any other state or jurisdiction and such employee is barred from commencing any action or proceeding for the enforcement or collection of any benefits or award under the laws of any other state or jurisdiction.

**Sec. 6.** NRS 616A.025 is hereby amended to read as follows:

616A.025 As used in chapters 616A to 616D, inclusive, of NRS, unless the context otherwise requires, the words and terms defined in NRS 616A.030 to 616A.360, inclusive, ***and sections 2, 3 and 4 of this act,*** have the meanings ascribed to them in those sections.

**Sec. 7.** Chapter 616B of NRS is hereby amended by adding thereto the provisions set forth as sections 8 to 19, inclusive, of this act.

**Sec. 8.** *1. A private company, public entity or utility may:*

*(a) Establish and administer a consolidated insurance program to provide industrial insurance coverage for employees of contractors and subcontractors who are engaged in a construction project of which the private company, public entity or utility is the owner or principal contractor; and*

*(b) As a condition precedent to the award of a contract to perform work on the construction project, require that contractors and subcontractors who will be engaged in the construction of the project participate in the consolidated insurance program.*

*2. If a private company, public entity or utility:*

*(a) Establishes and administers a consolidated insurance program; and*

*(b) Pursuant to the contract for the construction of the project, owes a periodic payment to a contractor or subcontractor whose employees are covered under the consolidated insurance program,*

*the private company, public entity or utility shall not withhold such a periodic payment on the basis that the contractor or subcontractor has not signed an employer's report of industrial injury or occupational disease as required pursuant to NRS 616C.045.*

**Sec. 9.** *A consolidated insurance program must not cover more than one construction project.*

**Sec. 10.** *A consolidated insurance program may cover more than one construction project.*

**Sec. 11.** *1. The system or a private carrier who is authorized to transact industrial insurance in this state may contract with a private company, public entity or utility to provide industrial insurance coverage for a consolidated insurance program.*

*2. A private company, public entity or utility that enters into a contract with the system or a private carrier for the provision of industrial insurance coverage for a consolidated insurance program shall file a copy of the contract with the commissioner at least 60 days before the date on which the construction project is scheduled to begin.*

*3. The commissioner shall, within 60 days after receiving a copy of a contract pursuant to subsection 2, review and approve or disapprove the contract. If the*

*commissioner does not disapprove the contract within 60 days after receiving it, the contract shall be deemed approved.*

Sec. 12. *1. A consolidated insurance program that a private company, public entity or utility is authorized to establish and administer pursuant to section 8 of this act must, in the manner set forth in this section, provide for the safety of an employee of a contractor or subcontractor who is engaged in the construction project when such an employee works at the site of the construction project.*

*2. The owner or principal contractor of the construction project shall develop and carry out a safety program that includes, without limitation:*

*(a) The establishment of minimum standards of safety to be observed during construction of the project;*

*(b) The holding of regular meetings to address and discuss issues related to safety;*

*(c) Training of contractors and subcontractors regarding issues and procedures related to safety;*

*(d) Regular inspections of the site of the construction project to identify potential safety hazards and ensure that minimum standards of safety are being observed;*

*(e) The notification of contractors and subcontractors of special hazards that exist at the site of the construction project, including advice on ways in which the contractors and subcontractors can avoid those hazards; and*

*(f) The prompt investigation of any injuries that take place at the site of the construction project which result in death or serious bodily injury.*

*3. The owner of the construction project, if the project is covered by an owner-controlled insurance program, or the principal contractor of the construction project, if the project is covered by a contractor-controlled insurance program, shall appoint two persons to serve as the primary and alternate coordinators for safety for the construction project. A person so appointed must:*

*(a) Possess credentials in the field of safety that the commissioner determines to be adequate to prepare a person to act as a coordinator for safety for a construction project, including, without limitation, credentials issued by the:*

*(1) Board of Certified Safety Professionals;*

*(2) World Safety Organization;*

*(3) Insurance Institute of America; or*

*(4) American Society of Safety Engineers; or*

*(b) Have at least 3 years of experience in overseeing matters of occupational safety and health in the field of construction that the commissioner determines to be adequate to prepare a person to act as a coordinator for safety for a construction project.*

*4. The primary and alternate coordinators for safety for the construction project:*

*(a) Must be full-time employees of the person or entity that appointed them;*

*(b) Must not serve as coordinators for safety for another construction project that is covered by a different consolidated insurance program;*

*(c) Shall oversee and enforce the safety program established pursuant to subsection 2, including, without limitation, resolving problems related to the operation of the safety program; and*

*(d) Shall ensure that the contractors, employers and subcontractors who are engaged in the construction of the project coordinate their efforts regarding issues of occupational safety and health to create and maintain a safe and healthful workplace.*

*5. The alternate coordinator for safety shall report to the primary coordinator for safety regarding activities that take place at the site of the construction project when the primary coordinator is absent.*

*6. The owner of the construction project, if the project is covered by an owner-controlled insurance program, or the principal contractor of the construction project, if the project is covered by a contractor-controlled insurance program, shall ensure that the primary or alternate coordinator for safety for the construction project is physically present at the site of the construction project whenever activity related to construction is taking place at the site.*

Sec. 13. *1. A consolidated insurance program that a private company, public entity or utility is authorized to establish and administer pursuant to section 8 of this act must, in the manner set forth in this section, provide for the administration of claims for industrial insurance for an employee of a contractor or subcontractor who is engaged in the construction project when such an employee works at the site of the construction project.*

*2. The owner of the construction project, if the project is covered by an owner-controlled insurance program, or the principal contractor of the construction project, if the project is covered by a contractor-controlled insurance program, shall appoint a person to serve as the administrator of claims for industrial insurance for the construction project. A person so appointed must not serve as an administrator of claims for industrial insurance for another construction project that is covered by a different consolidated insurance program.*

*3. The administrator of claims for industrial insurance for the construction project who is appointed pursuant to subsection 2 shall:*

*(a) Assist an employee who is covered under the consolidated insurance program or, in the event of the employee's death, one of his dependents, in filing a written notice of injury or death as required pursuant to NRS 616C.015 or a written notice of an occupational disease as required pursuant to NRS 617.342;*

*(b) Sign and file on behalf of a contractor or subcontractor whose employees are covered under the consolidated insurance program an employer's report of industrial injury or occupational disease as required pursuant to NRS 616C.045;*

*(c) Ensure that an employee who is covered under the consolidated insurance program and who has been injured or who has incurred an occupational disease while working on the construction project is directed to a medical facility that will provide treatment to the employee under the program; and*

*(d) Handle all issues, to the extent reasonably practicable, relating to claims for industrial insurance at the site of the construction project.*

*4. The owner of the construction project, if the project is covered by an owner-controlled insurance program, or the principal contractor of the construction project, if the project is covered by a contractor-controlled insurance program, shall ensure that the administrator of claims for industrial insurance for the construction project is physically present at the site of the construction project whenever activity related to construction is taking place at the site.*

Sec. 14. *1. The contractors and subcontractors who are engaged in the construction of a project that is covered by a consolidated insurance program shall post a bond that is adequate to purchase:*

*(a) Coverage for completed operations liability; and*

*(b) Industrial insurance coverage for the employees of the contractors and subcontractors who are engaged in the construction of the project after the project is completed,*

*for at least 5 years after the date on which the construction project is completed, if the project is a residential construction project, or for at least 3 years after the date on which the construction project is completed, if the project is not a residential construction project.*

*2. As used in this section, "completed operations liability" has the meaning ascribed to it in NRS 695E.030.*

Sec. 15. *1. A consolidated insurance program must not provide:*

*(a) Industrial insurance coverage;*

*(b) A comprehensive program of safety; or*

*(c) For the administration of claims for industrial insurance,*

*for an employee of a contractor or subcontractor who is engaged in the construction of the project that is covered by the consolidated insurance program at any time that such an employee does not work at the site of the construction project.*

*2. A contractor or subcontractor who is engaged in the construction of a project that is covered by a consolidated insurance project shall maintain separate industrial insurance coverage for its employees who:*

*(a) Are not assigned to participate in the construction of the project; or*

*(b) Are assigned to participate in the construction of the project but who do not work at the site of the project.*

*3. The owner of a construction project, if the project is covered by an owner-controlled insurance program, or the principal contractor of a construction project, if the project is covered by a contractor-controlled insurance program, shall reimburse a contractor or subcontractor who bids successfully on the construction project for the cost of providing separate industrial insurance coverage for an employee if:*

*(a) The contractor or subcontractor set the amount of his bid in a reasonable, good faith belief that the employee would work at the site of the construction project and would therefore be covered by the consolidated insurance program; and*

*(b) Because of changed circumstances not reasonably foreseeable at the time the bid was submitted, the employee worked in whole or in part at a location other than the site of the construction project, requiring the contractor or subcontractor to obtain separate industrial insurance coverage for that employee.*

Sec. 16. *If an owner or principal contractor establishes and administers a consolidated insurance program pursuant to section 8 of this act, each employee who is covered under the consolidated insurance program shall be deemed to be an employee of the owner or principal contractor for the purpose of determining the loss experience of the owner or principal contractor.*

Sec. 17. *With respect to a construction project for which the owner intends to establish and administer an owner-controlled insurance program or the principal contractor intends to establish and administer a contractor-controlled insurance program, the owner or principal contractor, as appropriate, shall:*

*1. In the notice or advertisement for bids for the construction of the project, state:*

*(a) That the employees of contractors and subcontractors who are engaged in the construction of the project will be covered under a consolidated insurance program when such employees work at the site of the project; and*

*(b) Whether such a program will be an owner-controlled insurance program or a contractor-controlled insurance program; and*

*2. Hold a pre-bid conference at which it provides to potential contractors and subcontractors, without limitation, the following information:*

*(a) A general explanation of the manner in which a consolidated insurance program operates;*

*(b) An overview of the provisions of sections 8 to 19, inclusive, of this act;*

*(c) A general description of the safety procedures that will be required as part of the consolidated insurance program; and*

*(d) The procedures pursuant to which claims for industrial insurance will be administered.*

Sec. 18. *The system or a private carrier who contracts to provide industrial insurance coverage for a consolidated insurance program pursuant to section 11 of this act is liable to pay each claim for industrial insurance that is covered by the program, regardless of whether:*

*1. The claim is filed after the completion of the construction project; or*

*2. Any party to the contract is not transacting business within this state at the time the claim is filed.*

Sec. 19. *A contract for the provision of industrial insurance that is authorized pursuant to section 11 of this act must include, without limitation:*

*1. Provisions that require compliance with each of the requirements relating to safety and the administration of claims for industrial insurance at the site of the construction project that are set forth in sections 12 and 13 of this act;*

*2. The names and qualifications of the persons appointed to oversee issues of safety and the administration of claims for industrial insurance at the site of the construction project pursuant to sections 12 and 13 of this act;*

*3. The terms and conditions pursuant to which the contract provides industrial insurance coverage. The terms and conditions must include, without limitation:*

*(a) A definition of the site of the construction project that:*

*(1) Delineates clearly the area within which coverage is provided; and*

*(2) Is reasonably contiguous to the actual physical site of the construction project; and*

*(b) A description of the scope and details of the construction project and the duration of industrial insurance coverage that is provided for the project;*

*4. A list in which the owner, principal contractor, construction manager, contractors and subcontractors of the construction project are set forth as named insureds;*

*5. A provision setting forth the penalties to which the owner, principal contractor, construction manager, contractors and subcontractors of the construction project may be subject if such persons or entities fail to comply with the provisions relating to safety and the administration of claims for industrial insurance that are required pursuant to sections 12 and 13 of this act; and*

**Sec. 20.** NRS 616B.612 is hereby amended to read as follows:

616B.612 1. Every employer within the provisions of chapters 616A to 616D, inclusive, of NRS, and those employers who accept the terms of those chapters and are governed by their provisions, shall provide and secure compensation according to the terms, conditions and provisions of those chapters for any personal injuries by accident sustained by an employee arising out of and in the course of the employment.

2. ***A contractor or subcontractor shall be deemed to have provided and secured compensation for its employees as required pursuant to subsection 1 to the extent that those employees are covered by a consolidated insurance program.***

*3.* Travel for which an employee receives wages shall, for the purposes of chapters 616A to 616D, inclusive, of NRS, be deemed in the course of employment.

~~[3.]~~ ***4.*** In such cases the employer or any insurer of the employer is relieved from other liability for recovery of damages or other compensation for those personal injuries unless otherwise provided by the terms of chapters 616A to 616D, inclusive, of NRS.

**Sec. 21.** NRS 616C.045 is hereby amended to read as follows:

616C.045 1. ~~[Within]~~ ***Except as otherwise provided in section 13 of this act, within*** 6 working days after the receipt of a claim for compensation from a physician or chiropractor, an employer shall complete and file with his insurer or third-party administrator an employer's report of industrial injury or occupational disease.

2. The report must:

(a) Be on a form prescribed by the administrator;

(b) Be signed by the employer or his designee;

(c) Contain specific answers to all questions required by the regulations of the administrator; and

(d) Be accompanied by a statement of the wages of the employee if the claim for compensation received from the treating physician or chiropractor indicates that the injured employee is expected to be off work for 5 days or more.

3. An employer who files the report required by subsection 1 by electronic transmission shall, upon request, mail to the insurer or third-party administrator the form that contains the original signature of the employer or his designee. The form must be mailed within 7 days after receiving such a request.

4. The administrator shall impose an administrative fine of not more than $1,000 on an employer for each violation of this section.

**Sec. 22.** NRS 686A.200 is hereby amended to read as follows:

686A.200 1. ~~[No]~~ ***Except as otherwise provided in section 8 of this act, no*** person shall require, directly or indirectly, or through any trustee, director, officer, agent or employee or affiliate, as a condition, agreement or understanding to selling or furnishing any other person any loan, or extension thereof, credit, sale, goods, property, contract, lease or service, that such other person shall place, continue (other than as to life insurance) or renew any policy of insurance of any kind through any particular agent, broker or insurer. No agent, broker or insurer shall knowingly participate in any such prohibited plan or transaction. No person shall fix a price charged for such thing or

service, or discount from or rebate upon price, on the condition, agreement or understanding that any insurance is to be obtained through a particular agent, broker or insurer.

2. Subsection 1 does not prevent:

(a) The exercise by any such person upon a reasonable basis of any right to approve or disapprove of the insurer and representative to underwrite the insurance. Such basis shall relate only to the adequacy and terms of the coverage with respect to the interest of the vendor, lender, lessor or provider of service to be insured thereunder, the financial standards to be met by the insurer, and the ability of the insurer or representative to service the policy.

(b) The exercise by the vendor, lender, lessor or provider of service of the right to furnish or renew the insurance, and to charge the account of the other person with the costs thereof, if such other person fails to deliver such insurance to the lender, vendor, lessor or provider of service, where otherwise called for and in order, at least 15 days prior to expiration of the existing policy.

**Sec. 23.** NRS 686A.220 is hereby amended to read as follows:

686A.220 1. ~~[No]~~ ***Except as otherwise provided in section 8 of this act, no*** officer or employee of this state, or of any public agency, public authority or public corporation (except a public corporation or public authority created pursuant to agreement or compact with another state), and no person acting or purporting to act on behalf of such officer or employee, or public agency or public authority or public corporation, shall, with respect

to any public building or construction contract which is about to be or which has been competitively bid, require the bidder to make application or furnish financial data to, or to obtain or procure any of the surety bonds or contracts of insurance specified in connection with such contracts or by any law from, a particular insurer or agent or broker.

2. ~~[No]~~ ***Except as otherwise provided in section 8 of this act, no*** such officer or employee or any person acting or purporting to act on behalf of such officer or employee shall negotiate, make application for, obtain or procure any of such surety bonds or contracts of insurance (except contracts of insurance for builder's risk or owner's protective liability) which can be obtained or procured by the bidder, contractor or subcontractor.

3. This section does not, however, prevent the exercise by such officer or employee on behalf of the state or such public agency, public authority or public corporation of its right to approve the form, sufficiency or manner of execution of the surety bonds or contracts of insurance furnished by the insurer selected by the bidder to underwrite such bonds or contracts of insurance.

4. Any provisions in any invitation for bids or in any of the contract documents in conflict with this section are declared to be contrary to the public policy of this state.

5. A violation of this section is subject to the penalties provided by NRS 679A.180 (general penalty).

**Sec. 24.** 1. This section and sections 1 to 9, inclusive, and 11 to 23, inclusive, of this act become effective on October 1, 1999.

2. Section 10 of this act becomes effective on October 1, 2001.

3. Section 9 of this act expires by limitation on September 30, 2001.

SUMMARY—Makes various changes to provisions relating to provision of benefits for industrial insurance. (BDR 53-386)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: Yes.

AN ACT relating to industrial insurance; requiring a person who endorses a check that is issued by an insurer for payment of certain benefits for industrial insurance to certify that he is entitled to those benefits; revising the provisions governing the payment of compensation if an injury or condition that is not related to employment is involved; limiting the circumstances under which an insurer may determine that a disability is a permanent total disability; requiring rating evaluations for permanent partial disability to be based upon certain objective findings; removing the limitation on the payment of a death benefit for the transportation of the remains of a deceased employee beyond the continental limits of the United States; 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 616C of NRS is hereby amended by adding thereto a new section to read as follows:

*1. Each check issued by an insurer pursuant to the provisions of chapters 616A to 616D, inclusive, or chapter 617 of NRS for temporary total disability, temporary partial disability or permanent total disability must include a restrictive endorsement that is substantially similar to the following statement:*

> *By endorsing this check for temporary total disability, temporary partial disability or permanent total disability, I certify under penalty of perjury that I have been continuously disabled and either unable to work or working in a manner authorized pursuant to chapters 616A to 616D, inclusive, or chapter 617 of NRS for the type of benefits this check provides for the 14 days immediately preceding the date of this check. I understand that any false statement to obtain benefits is a crime which is punishable as a misdemeanor or as a category D felony and requires restitution pursuant to NRS 616D.300.*

*2. Each check issued by an insurer pursuant to the provisions of chapters 616A to 616D, inclusive, or chapter 617 of NRS for rehabilitation maintenance benefits must include a restrictive endorsement that is substantially similar to the following statement:*

*By endorsing this check for rehabilitation maintenance benefits, I certify under penalty of perjury that I have been participating in a program of vocational rehabilitation and have not been working at a job without the approval of my employer's insurer for the 14 days immediately preceding the date of this check. I understand that any false statement to obtain benefits is a crime which is punishable as a misdemeanor or as a category D felony and requires restitution pursuant to NRS 616D.300.*

*3. For the purposes of chapters 616A to 616D, inclusive, or chapter 617 of NRS, the issuance, endorsement or negotiation of a check described in subsection 1 or 2 creates a rebuttable presumption that the person named on the check received, endorsed or negotiated the check.*

**Sec. 2.** NRS 616C.175 is hereby amended to read as follows:

616C.175 1. An employee is not entitled to compensation pursuant to the provisions of chapters 616A to 616D, inclusive, of NRS if:

(a) He has a preexisting condition from a cause or origin that did not arise out of or in the course of his current or past employment; and

(b) He subsequently sustains an injury by accident arising out of and in the course of his employment ~~[which aggravates, precipitates or accelerates his]~~ *that affects the same parts or functions of the body as the* preexisting condition,

unless information from a physician or chiropractor establishes to the satisfaction of the insurer that the subsequent injury ~~[is the primary cause]~~ ***contributed more to the development*** of the resulting condition ~~[.]~~ ***than the preexisting condition.***

2. An employee is not entitled to compensation pursuant to the provisions of chapters 616A to 616D, inclusive, of NRS if:

(a) He sustains an injury by accident arising out of and in the course of his employment; and

(b) He subsequently aggravates, precipitates or accelerates the injury in a manner that does not arise out of and in the course of his employment,

unless the injury described in paragraph (a) ~~[is the primary cause]~~ ***contributed more to the development*** of the resulting condition ~~[.]~~ ***than the effect described in paragraph (b).***

**Sec. 3.** NRS 616C.435 is hereby amended to read as follows:

616C.435 1. In cases of the following specified injuries, in the absence of proof to the contrary, the disability caused thereby shall be deemed total and permanent:

(a) The total and permanent loss of sight of both eyes.

(b) The loss by separation of both legs at or above the knee.

(c) The loss by separation of both arms at or above the elbow.

(d) An injury to the spine resulting in permanent and complete paralysis of both legs or both arms, or one leg and one arm.

(e) An injury to the skull resulting in incurable imbecility or insanity.

(f) The loss by separation of one arm at or above the elbow, and one leg by separation at or above the knee.

2. The enumeration in subsection 1 is not exclusive . ~~[, and in all other]~~ ***In all*** cases ***not specified in subsection 1, an insurer shall determine whether the disability of an injured employee is a*** permanent total disability ~~[must be determined by the insurer]~~ in accordance with the facts presented ~~[.]~~ ***and the provisions of this subsection. An insurer shall not determine that a disability of an injured employee is a permanent total disability unless information submitted by a physician or chiropractor establishes to the satisfaction of the insurer that the industrial injury or occupational disease contributed more to the impairment of his earning capacity or ability to retain or obtain employment than all other conditions or characteristics of the injured employee.***

**Sec. 4.** NRS 616C.490 is hereby amended to read as follows:

616C.490 1. Except as otherwise provided in NRS 616C.175, every employee, in the employ of an employer within the provisions of chapters 616A to 616D, inclusive, of NRS, who is injured by an accident arising out of and in the course of employment is entitled to receive the compensation provided for permanent partial disability. As used in this section, "disability" and "impairment of the whole man" are equivalent terms.

2. Within 30 days after receiving from a physician or chiropractor a report indicating that the injured employee may have suffered a permanent disability and is stable and ratable, the insurer shall schedule an appointment with a rating physician or chiropractor to determine the extent of the employee's disability. The insurer shall select

a physician or chiropractor from a group of rating physicians and chiropractors designated by the administrator, to determine the percentage of disability in accordance with the American Medical Association's Guides to the Evaluation of Permanent Impairment as adopted and supplemented by the division pursuant to NRS 616C.110. Rating physicians and chiropractors must be selected in rotation from the list of qualified physicians and chiropractors designated by the administrator, according to their area of specialization and the order in which their names appear on the list.

3. At the request of the insurer, the injured employee shall, before an evaluation by a rating physician or chiropractor is performed, notify the insurer of:

(a) Any previous evaluations performed to determine the extent of any of the employee's disabilities; and

(b) Any previous injury, disease or condition sustained by the employee which is relevant to the evaluation performed pursuant to this section.

FLUSH The notice must be on a form approved by the administrator and provided to the injured employee by the insurer at the time of the insurer's request.

4. Unless the regulations adopted pursuant to NRS 616C.110 provide otherwise, a rating evaluation must include an evaluation of the loss of motion, sensation and strength of an injured employee if the injury is of a type that might have caused such a loss. *A rating evaluation conducted pursuant to this section:*

***(a) Must be based upon objective medical findings; and***

***(b) Must not be based upon subjective pain.***

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

5. The rating physician or chiropractor shall provide the insurer with his evaluation of the injured employee. After receiving the evaluation, the insurer shall, within 14 days, provide the employee with a copy of the evaluation and notify the employee:

(a) Of the compensation to which he is entitled pursuant to this section; or

(b) That he is not entitled to benefits for permanent partial disability.

6. Each 1 percent of impairment of the whole man must be compensated by a monthly payment:

(a) Of 0.5 percent of the claimant's average monthly wage for injuries sustained before July 1, 1981;

(b) Of 0.6 percent of the claimant's average monthly wage for injuries sustained on or after July 1, 1981, and before June 18, 1993; and

(c) Of 0.54 percent of the claimant's average monthly wage for injuries sustained on or after June 18, 1993.

Compensation must commence on the date of the injury or the day following the termination of temporary disability compensation, if any, whichever is later, and must continue on a monthly basis for 5 years or until the claimant is 70 years of age, whichever is later.

7. Compensation benefits may be paid annually to claimants who will be receiving less than $100 a month.

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 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.

9. The division may adopt schedules for rating permanent disabilities resulting from injuries sustained before July 1, 1973, and reasonable regulations to carry out the provisions of this section.

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

11. This section does not entitle any person to double payments for the death of an employee 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. 5.** NRS 616C.505 is hereby amended to read as follows:

616C.505 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 chapters 616A to 616D, inclusive, of NRS, the compensation is known as a death benefit, and is payable as follows:

1. In addition to any other compensation payable pursuant to chapters 616A to 616D, inclusive, of NRS, burial expenses are payable in an amount not to exceed $5,000. 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 must be borne by the insurer . ~~[if the transportation is not beyond the continental limits of the United States.]~~

2. To the surviving spouse of the deceased employee, 66 2/3 percent of the average monthly wage is payable until his death or remarriage, with 2 years' compensation payable in one lump sum upon remarriage.

3. In the event of the subsequent death of the surviving spouse:

(a) Each surviving child of the deceased employee must share equally the compensation theretofore paid to the surviving spouse but not in excess thereof, and it is payable until the youngest child reaches the age of 18 years.

(b) Except as otherwise provided in subsection 11, if the children have a guardian, the compensation they are entitled to receive may be paid to the guardian.

4. Upon the remarriage of a surviving spouse with children:

(a) The surviving spouse must be paid 2 years' compensation in one lump sum and further benefits must cease; and

(b) Each child 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. If there are any surviving children of the deceased employee under the age of 18 years, but no surviving spouse, then each such child is entitled to his proportionate share of 66 2/3 percent of the average monthly wage for his support.

6. Except as otherwise provided in subsection 7, if there is no surviving spouse or child under the age of 18 years, there must be paid:

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

7. The aggregate compensation payable pursuant to subsection 6 must not exceed 66 2/3 percent of the average monthly wage.

8. In all other cases involving a question of total or partial dependency:

(a) The extent of the dependency must be determined in accordance with the facts existing 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 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 the

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 must be fixed in accordance with the facts shown, but may not exceed compensation for 100 months.

9. Compensation payable to a surviving spouse is for the use and benefit of the surviving spouse and the dependent children, and the insurer may, from time to time, apportion such compensation between them in such a way as it deems best for the interest of all dependents.

10. In the event of the death of any dependent specified in this section before the expiration of the time during which compensation is payable to him, funeral expenses are payable in an amount not to exceed $5,000.

11. If a dependent is entitled to receive a death benefit pursuant to this section and is less than 18 years of age or incompetent, the legal representative of the dependent shall petition for a guardian to be appointed for that dependent pursuant to NRS 159.044. An insurer shall not pay any compensation in excess of $3,000, other than burial expenses, to the dependent until a guardian is appointed and legally qualified. Upon receipt of a certified letter of guardianship, the insurer shall make all payments required by this section to the guardian of the dependent until the dependent is emancipated, the guardianship terminates or the dependent reaches the age of 18 ~~[,]~~ *years,* whichever occurs first, unless paragraph (a) of subsection 12 is applicable. The fees and costs related to the guardianship must be paid from the estate of the dependent. A guardianship

established pursuant to this subsection must be administered in accordance with chapter 159 of NRS, except that after the first annual review required pursuant to NRS 159.176, a court may elect not to review the guardianship annually. The court shall review the guardianship at least once every 3 years. As used in this subsection, "incompetent" has the meaning ascribed to it in NRS 159.019.

12. Except as otherwise provided in paragraphs (a) and (b), the entitlement of any child to receive his proportionate share of compensation pursuant to this section ceases when he dies, marries or reaches the age of 18 years. A child is entitled to continue to receive compensation pursuant to this section if he is:

(a) Over 18 years of age and incapable of supporting himself, until such time as he becomes capable of supporting himself; or

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

13. As used in this section, "surviving spouse" means a surviving husband or wife who was married to the employee at the time of the employee's death.

**Sec. 6.** NRS 616D.300 is hereby amended to read as follows:

616D.300 Unless a different penalty is provided pursuant to NRS 616D.370 to 616D.410, inclusive, a person who knowingly makes a false statement or representation, including, but not limited to, a false statement or representation relating to his identity or the identity of another person, or who knowingly conceals a material fact to obtain or attempt to obtain any benefit, including a controlled substance, or payment under the

provisions of this chapter or chapter 616A, 616B , ~~[or]~~ 616C ***or 617*** of NRS, either for himself or for any other person, shall be punished as follows:

1. If the amount of the benefit or payment obtained or attempted to be obtained was less than $250, for a misdemeanor.

2. If the amount of the benefit or payment obtained or attempted to be obtained was $250 or more, for a category D felony as provided in NRS 193.130.

In addition to any other penalty, the court shall order the person to pay restitution.

**Sec. 7.** NRS 617.366 is hereby amended to read as follows:

617.366 1. An employee is not entitled to compensation pursuant to the provisions of this chapter if:

(a) He has a preexisting condition from a cause or origin that did not arise out of and in the course of his current or past employment; and

(b) He subsequently contracts an occupational disease ~~[which aggravates, precipitates or accelerates his]~~ ***that affects the same parts or functions of the body as the*** preexisting condition,

unless information from a physician or chiropractor establishes to the satisfaction of the insurer that the occupational disease ~~[is the primary cause]~~ ***contributed more to the development*** of the resulting condition ~~[.]~~ ***than the preexisting condition.***

2. An employee is not entitled to compensation pursuant to the provisions of this chapter if:

(a) He contracts an occupational disease; and

(b) He subsequently aggravates, precipitates or accelerates the occupational disease in a manner that does not arise out of and in the course of his employment,

unless the occupational disease ~~[is the primary cause]~~ ***described in paragraph (a) contributed more to the development*** of the resulting condition ~~[.]~~ ***than the effect described in paragraph (b).***

**Sec. 8.** This act becomes effective on July 1, 1999.

SUMMARY—Makes various changes regarding industrial insurance. (BDR 53-387)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: Yes.

AN ACT relating to industrial insurance; requiring hearing officers, appeals officers and appeals panels to author their own decisions; requiring the senior appeals officer to conduct written evaluations of the appeals officers employed by the hearings division of the department of administration; authorizing a party aggrieved by a decision of an appeals officer to appeal from that decision to an appeals panel; requiring the chief of the hearings division to appoint appeals officers; requiring an appeals officer to have a certain amount of experience practicing law in claims for compensation for industrial injuries before his appointment; requiring the chief of the hearings division to adopt regulations that govern the conduct of hearing and appeals officers; requiring the chief of the hearings division to prescribe by regulation the training, continuing education and standards for performance of appeals officers and compile certain information regarding the performance of appeals officers; 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.** NRS 616A.450 is hereby amended to read as follows:

616A.450 1. Any claimant may request the appointment of the Nevada attorney for injured workers to represent him. The request must be made in writing.

2. The appeals officer , ***appeals panel*** or administrator, as the case may be, shall consider each request within a reasonable time and shall make any inquiry as ~~[he]~~ ***the appeals officer, appeals panel or administrator*** deems necessary. If ~~[he]~~ ***the appeals officer, appeals panel or administrator*** finds that the claimant would be better served by legal representation in the case, ~~[he]~~ ***the appeals officer, appeals panel or administrator*** shall appoint the Nevada attorney for injured workers to represent the claimant. Once the Nevada attorney for injured workers has been appointed to represent a claimant, the Nevada attorney for injured workers is authorized to represent the claimant at any level of proceedings if, in the opinion of the Nevada attorney for injured workers, the representation is necessary.

**Sec. 2.** NRS 616A.455 is hereby amended to read as follows:

616A.455 1. Except as otherwise provided in subsection 3, the Nevada attorney for injured workers shall, when appointed by an appeals officer , ***an appeals panel*** or the administrator, represent without charge a claimant before the appeals officer, ***appeals panel,*** administrator, district court or supreme court. In addition, the Nevada attorney for

injured workers may give advice regarding a claimant's rights before a hearing officer and the procedure for enforcing those rights.

2. When representing a claimant, the Nevada attorney for injured workers shall:

(a) Advise the claimant and present his case to the appeals officer , ***appeals panel*** or administrator; and

(b) Present in the district court or supreme court an appeal from the decision of the appeals officer , ***appeals panel*** or administrator if, in the opinion of the Nevada attorney for injured workers, the appeal is merited.

3. If the Nevada attorney for injured workers determines, in accordance with the guidelines adopted pursuant to subsection 4, that a claim is frivolous or lacks merit, he may refuse to represent a claimant.

4. The Nevada attorney for injured workers shall establish the policies to be followed in determining whether a claim is frivolous or lacks merit.

**Sec. 3.** NRS 616B.018 is hereby amended to read as follows:

616B.018 1. The administrator shall establish a method of indexing claims for compensation that will make information concerning the claimants of an insurer available to other insurers and the fraud control unit for industrial insurance established pursuant to NRS 228.420.

2. Every insurer shall provide information as required by the administrator for establishing and maintaining the index of claims.

3. If an employee files a claim with an insurer, the insurer is entitled to receive from the administrator a list of the prior claims of the employee. If the insurer desires to inspect the files related to the prior claims, he must obtain the written consent of the employee.

4. Any information obtained from the index of claims must be admitted into evidence in any hearing before an appeals officer, ***an appeals panel,*** a hearing officer or the administrator.

5. The division may assess and collect a reasonable fee for its services provided pursuant to this section. The fee must be payable monthly or at such other intervals as determined by the administrator.

6. If the administrator determines that an insurer has intentionally failed to provide the information required by this section, the administrator shall impose an administrative fine of $1,000 for each initial violation, or a fine of $10,000 for a second or subsequent violation.

**Sec. 4.** NRS 616B.215 is hereby amended to read as follows:

616B.215 1. Except as otherwise provided in subsection 2:

(a) A principal contractor or an owner of property acting as a principal contractor aggrieved by a letter issued pursuant to NRS 616B.645; or

(b) An employer aggrieved by a determination made pursuant to NRS 616C.585,

may appeal from the letter or determination by filing a notice of appeal with the administrator within 30 days after the date of the letter or determination.

2. An employer shall not seek to remove costs that have been charged to his account by appealing to the administrator any issue that relates to a claim for compensation if the issue was raised or could have been raised before a hearing officer , ~~[or]~~ an appeals officer ***or an appeals panel*** pursuant to NRS 616C.315 or 616C.345 ~~[.]~~ ***or section 8 of this act, respectively.***

3. The decision of the administrator is the final and binding administrative determination of an appeal filed pursuant to this section, and the whole record consists of all evidence taken at the hearing before the administrator and any findings based thereon.

**Sec. 5.** Chapter 616C of NRS is hereby amended by adding thereto the provisions set forth as sections 6 to 9, inclusive, of this act.

**Sec. 6.** ***1. A hearing officer, an appeals officer or an appeals panel:***

***(a) Shall, with respect to each appeal or contested claim for compensation, make its own findings of fact, reach its own conclusions of law and author the decision it renders; and***

***(b) Shall not solicit or accept findings of fact, conclusions of law or decisions that have been drafted or proposed by another person or governmental entity.***

***2. The provisions of this section do not prohibit a hearing officer, an appeals officer or an appeals panel from soliciting or accepting assistance with the copying, printing, typing or processing of the text of findings of fact, conclusions of law or decisions, if such services do not extend to assistance with creating the substantive content of such documents.***

Sec. 7. *The senior appeals officer shall:*

*1. At least twice each year, conduct an evaluation of the performance of each of the other appeals officers employed by the hearings division of the department of administration. In conducting an evaluation pursuant to this section, the senior appeals officer shall determine whether the appeals officer being evaluated has:*

*(a) Met the standards for performance prescribed by the chief of the hearings division pursuant to NRS 616C.295; and*

*(b) Rendered decisions in contested claims for compensation in a timely manner as required pursuant to subsection 5 of NRS 616C.360.*

*2. Within 15 days after completing an evaluation pursuant to subsection 1, prepare a written report of the evaluation and transmit a copy to the chief of the hearings division of the department of administration for compilation pursuant to NRS 616C.295.*

*3. In accordance with the requirements for training and continuing education, standards and procedures prescribed by the chief of the hearings division of the department of administration pursuant to NRS 616C.295, provide training to each of the other appeals officers employed by the hearings division.*

Sec. 8. *1. A party aggrieved by a decision of an appeals officer relating to a claim for compensation may appeal from the decision by filing a notice of appeal with the senior appeals officer within 15 days after the date of the decision.*

*2. Upon the receipt of a notice of appeal filed pursuant to subsection 1, the senior appeals officer shall appoint an appeals panel that consists of three appeals officers, none of whom may be the appeals officer who rendered the decision from which the aggrieved party is appealing.*

*3. Except as otherwise provided in NRS 616C.380, the filing of a notice of appeal does not automatically stay the enforcement of the decision of an appeals officer. The appeals panel may order a stay, when appropriate, upon the application of a party. If such an application is submitted, the decision is automatically stayed until a determination is made concerning the application. A determination on the application must be made within 30 days after the filing of the application. If a stay is not granted by the panel after reviewing the application, the decision must be complied with within 10 days after the date of the refusal to grant the stay.*

*4. Except as otherwise provided in this subsection, the appeals panel shall, within 10 days after receiving a notice of appeal pursuant to this section, schedule a hearing on the merits of the appeal for a date and time within 45 days after its receipt of the notice, and give notice by mail or by personal service to all parties to the matter and their attorneys or agents at least 30 days before the date and time scheduled. The appeals panel may, upon request, schedule the hearing for a date and time that is not within 45 days after the appeals panel received the notice of appeal if all parties to the appeal agree to the request. Notice given pursuant to this subsection must include a*

*statement that a party who is an injured employee may be represented by a private attorney or seek assistance and advice from the Nevada attorney for injured workers.*

*5. An appeal may be continued upon written stipulation of all parties, or upon good cause shown.*

*6. Failure to file a notice of appeal within the period specified in subsection 1 may be excused if the party aggrieved shows by a preponderance of the evidence that he did not receive the notice of the decision and the forms necessary to appeal the decision. The claimant, employer or insurer shall notify the appeals officer of a change of address.*

**Sec. 9.** *1. A stenographic or electronic record must be kept of the hearing before an appeals panel, and the rules of evidence applicable to contested cases pursuant to chapter 233B of NRS apply to the hearing.*

*2. The scope of a hearing before an appeals panel is limited to determining whether substantial evidence existed to support the decision rendered by the appeals officer.*

*3. If necessary to resolve a medical question concerning an injured employee's condition, an appeals panel may refer the employee to a physician or chiropractor chosen by the appeals panel. If the medical question concerns the rating of a permanent disability, the appeals panel may refer the employee to a rating physician or chiropractor. The rating physician or chiropractor must be selected in rotation from the list of qualified physicians or chiropractors maintained by the administrator pursuant to*

*subsection 2 of NRS 616C.490, unless the insurer and the injured employee otherwise agree to a rating physician or chiropractor. The insurer shall pay the costs of any examination requested by the appeals panel.*

*4. A party to the appeal or the appeals panel may order a transcript of the record of the hearing at any time before the seventh day after the hearing. The transcript must be filed within 30 days after the date of the order unless the appeals panel otherwise orders.*

*5. An appeals panel shall render its decision:*

*(a) If a transcript is ordered within 7 days after the hearing, within 30 days after the transcript is filed; or*

*(b) If a transcript has not been ordered, within 30 days after the date of the hearing.*

*6. An appeals panel may affirm, modify or reverse a decision made by the appeals officer and issue any necessary and proper order to give effect to its decision.*

*7. The decision of an appeals panel must be based upon the affirmative vote of at least two of the three appeals officers appointed to the panel.*

*8. The decision of an appeals panel is the final and binding administrative determination of a claim for compensation pursuant to chapters 616A to 616D, inclusive, 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. 10.** NRS 616C.050 is hereby amended to read as follows:

616C.050 1. An insurer shall provide to each claimant:

(a) Upon written request, one copy of any medical information concerning his injury or illness.

(b) A statement which contains information concerning the claimant's right to:

(1) Receive the information and forms necessary to file a claim;

(2) Select a treating physician or chiropractor in accordance with the provisions of NRS 616C.090;

(3) Request the appointment of the Nevada attorney for injured workers to represent him before the appeals officer ~~[,]~~ ***or the appeals panel;***

(4) File a complaint with the administrator;

(5) When applicable, receive compensation for:

(I) Permanent total disability;

(II) Temporary total disability;

(III) Permanent partial disability;

(IV) Temporary partial disability; or

(V) All medical costs related to his injury or disease;

(6) Receive services for rehabilitation if his injury prevents him from returning to gainful employment;

(7) Review by a hearing officer of any determination or rejection of a claim by the insurer within the time specified by statute; and

(8) Judicial review of any final decision within the time specified by statute.

2. The administrator shall adopt regulations for the manner of compliance by an insurer with the provisions of subsection 1.

**Sec. 11.** NRS 616C.140 is hereby amended to read as follows:

616C.140 1. Any employee who is entitled to receive compensation under chapters 616A to 616D, inclusive, of NRS shall, if:

(a) Requested by the insurer or employer; or

(b) Ordered by an appeals officer , ***an appeals panel*** or a hearing officer,

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 division.

2. If the insurer has reasonable cause to believe that an injured employee who is receiving compensation for a permanent total disability is no longer disabled, the insurer may request the employee to submit to an annual medical examination to determine whether the disability still exists. The insurer shall pay the costs of the examination.

3. The request or order for an examination must fix a time and place therefor, with due regard for the nature of the medical examination, the convenience of the employee, his physical condition and his ability to attend at the time and place fixed.

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

5. If the employee refuses to submit to an examination ordered or requested pursuant to subsection 1 or 2 or obstructs the examination, his right to compensation is suspended until the examination has taken place, and no compensation is payable during or for the period of suspension.

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

**Sec. 12.** NRS 616C.225 is hereby amended to read as follows:

616C.225 1. Except as otherwise provided in this section, if an insurer determines that an employee has knowingly misrepresented or concealed a material fact to obtain any benefit or payment under the provisions of chapters 616A to 616D, inclusive, of NRS, the insurer may deduct from any benefits or payments due to the employee, the amount obtained by the employee because of the misrepresentation or concealment of a material fact. The employee shall reimburse the insurer for all benefits or payments received because of the willful misrepresentation or concealment of a material fact.

2. An employee who is aggrieved by a determination of an insurer made pursuant to subsection 1 may appeal that determination pursuant to NRS 616C.315 to 616C.385, inclusive ~~[.]~~ , ***and sections 6 to 9, inclusive, of this act.*** If the final decision by an appeals officer ***or an appeals panel*** is favorable to the employee, the administrator shall order the insurer to pay $2,000 to that employee, in addition to any benefits or payments the employee is entitled to receive, if the administrator determines that the insurer had no

reasonable basis for believing that the employee knowingly misrepresented or concealed a material fact to obtain any benefit or payment.

3. If an employee elects to receive his award for a permanent partial disability in a lump sum pursuant to NRS 616C.495 and a criminal action is brought against the employee for an alleged violation of NRS 616D.300, the insurer shall, upon receiving notice of the action and until a judgment is entered in the action, pay reasonable portions of the lump-sum award in monthly installments. If the employee is not convicted of the alleged violation, the insurer shall pay the employee the balance of the award in a lump sum. The provisions of subsection 2 do not apply to require any additional payment at the conclusion of a criminal action.

4. This section does not preclude an insurer from making an investigation pursuant to, or pursuing the remedies provided by, NRS 616D.300.

**Sec. 13.** NRS 616C.235 is hereby amended to read as follows:

616C.235 1. Except as otherwise provided in subsection 2:

(a) When the insurer determines that a claim should be closed before all benefits to which the claimant may be entitled have been paid, the insurer shall send a written notice of its intention to close the claim to the claimant by first-class mail addressed to the last known address of the claimant. The notice must include a statement that if the claimant does not agree with the determination, he has a right to request a resolution of the dispute pursuant to NRS 616C.305 and 616C.315 to 616C.385, inclusive ~~[.]~~ ***, and sections 6 to 9, inclusive, of this act.*** A suitable form for requesting a resolution of the dispute must

be enclosed with the notice. The closure of a claim is not effective unless notice is given as required by this subsection.

(b) If the insurer does not receive a request for the resolution of the dispute, it may close the claim.

(c) Notwithstanding the provisions of NRS 233B.125, if a hearing is conducted to resolve the dispute, the decision of the hearing officer may be served by first-class mail.

2. If the medical benefits required to be paid for a claim are less than $500, the claim closes automatically if the claimant does not receive medical treatment for the injury for at least 12 months. The claimant may not appeal the closing of such a claim.

**Sec. 14.** NRS 616C.295 is hereby amended to read as follows:

616C.295 The chief of the hearings division of the department of administration shall:

1. Prescribe by regulation ~~[the]~~ *:*

*(a) The* qualifications and training required before a person may, pursuant to chapters 616A to 616D, inclusive, or chapter 617 of NRS, serve as a hearing officer. Training for a hearing officer must include techniques of mediation.

*(b) The training and continuing education required of each person employed by the hearings division as an appeals officer.*

*(c) Standards for the performance of appeals officers in handling appeals and contested claims for compensation, including, without limitation, standards that require*

*an appeals officer to render a decision in each appeal and contested claim in a manner that is consistent with:*

*(1) Legal authority; and*

*(2) Other decisions, if any, rendered by that appeals officer with respect to appeals and contested claims in which the facts and issues were substantially similar.*

*(d) Procedures to improve the performance of an appeals officer whom the senior appeals officer determines by evaluation pursuant to section 7 of this act to be performing in a substandard manner.*

2. Provide for the expediting of the hearing of cases that involve the termination or denial of compensation.

*3. At least once each year, compile the following information with respect to each appeals officer employed by the hearings division of the department of administration:*

*(a) The number of hearings on the merits in contested claims for compensation that the appeals officer has conducted in each month during his term of office;*

*(b) The number of final decisions of the appeals officer for which judicial review is sought pursuant to NRS 616C.370, including notations that identify specifically for each such decision:*

*(1) The court in which judicial review is sought; and*

*(2) The action taken by the court in which judicial review is sought, including, without limitation, whether the matter is still pending or whether the court affirmed, modified or reversed the decision of the appeals officer; and*

*(c) The evaluations pertaining to the appeals officer that have been conducted by the senior appeals officer pursuant to section 7 of this act.*

**Sec. 15.** NRS 616C.305 is hereby amended to read as follows:

616C.305 1. Except as otherwise provided in subsection 3, any person who is aggrieved by a decision concerning accident benefits made by an organization for managed care which has contracted with an insurer must, within 14 days of the decision and before requesting a resolution of the dispute pursuant to NRS 616C.345 to 616C.385, inclusive, ***and sections 8 and 9 of this act,*** appeal that decision in accordance with the procedure for resolving complaints established by the organization for managed care.

2. The procedure for resolving complaints established by the organization for managed care must be informal and must include, but is not limited to, a review of the appeal by a qualified physician or chiropractor who did not make or otherwise participate in making the decision.

3. If a person appeals a final determination pursuant to a procedure for resolving complaints established by an organization for managed care and the dispute is not resolved within 14 days after it is submitted, he may request a resolution of the dispute pursuant to NRS 616C.345 to 616C.385, inclusive ~~.~~ , ***and sections 8 and 9 of this act.***

**Sec. 16.** NRS 616C.325 is hereby amended to read as follows:

616C.325 1. It is unlawful for any person to represent an employee before a ~~[hearings]~~ ***hearing*** officer, or in any negotiations, settlements, hearings or other meetings with an insurer concerning the employee's claim or possible claim, unless he is:

(a) Employed full time by the employee's labor organization;

(b) Admitted to practice law in this state;

(c) Employed full time by and under the supervision of an attorney admitted to practice law in this state; or

(d) Appearing without compensation on behalf of the employee.

It is unlawful for any person who is not admitted to practice law in this state to represent the employee before an appeals officer ~~[.]~~ ***or an appeals panel.***

2. It is unlawful for any person to represent an employer at hearings of contested cases unless that person is:

(a) Employed full time by the employer or a trade association to which the employer belongs that is not formed solely for the purpose of providing representation at hearings of contested cases;

(b) An employer's representative licensed pursuant to subsection 3 who is not licensed as a third-party administrator;

(c) Admitted to practice law in this state; or

(d) A licensed third-party administrator.

3. The director of the department of administration shall adopt regulations which include the:

(a) Requirements for licensure of employers' representatives, including:

(1) The registration of each representative; and

(2) The filing of a copy of each written agreement for the compensation of a representative;

(b) Procedure for such licensure; and

(c) Causes for revocation of such a license, including any applicable action listed in NRS 616D.120 or a violation of this section.

4. Any person who is employed by or contracts with an employer to represent the employer at hearings regarding contested claims is an agent of the employer. If the employer's representative violates any provision of this chapter or chapter 616A, 616B or 616D of NRS, the employer is liable for any penalty assessed because of that violation.

5. An employer shall not make the compensation of any person representing him contingent in any manner upon the outcome of any contested claim.

6. The director of the department of administration shall collect in advance and deposit with the state treasurer for credit to the state general fund the following fees for licensure as an employer's representative:

(a) Application and license ..... $78

(b) Triennial renewal of each license ..... 78

**Sec. 17.** NRS 616C.340 is hereby amended to read as follows:

616C.340 1. The ~~[governor]~~ ***director of the department of administration, in his capacity as the chief of the hearings division,*** shall appoint one or more appeals officers

to conduct hearings in contested claims for compensation pursuant to NRS 616C.360. Each appeals officer ~~[shall hold]~~ ***holds*** office for 2 years ~~[from]~~ ***after*** 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 and is in the unclassified service of the state.

2. Each appeals officer must be an attorney who has been licensed to practice law before all the courts of this state for at least 2 years ~~[.]~~ ***and who has at least 2 years of experience practicing law in actions related to claims for compensation.*** Except as otherwise provided in NRS 7.065, an appeals officer shall not engage in the private practice of law.

3. 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 ~~[,]~~ ***or an appeals panel of which he is a member,*** he shall disqualify himself from hearing the case.

4. The ~~[governor]~~ ***director of the department of administration, in his capacity as the chief of the hearings division,*** may appoint one or more special appeals officers to conduct hearings in contested claims for compensation pursuant to NRS 616C.360. The ~~[governor]~~ ***director*** shall not appoint an attorney who represents persons in actions related to claims for compensation to serve as a special appeals officer.

5. A special appeals officer appointed pursuant to subsection 4 is vested with the same powers as a regular appeals officer. A special appeals officer may hear any case in which a regular appeals officer has a conflict, or any case assigned to him by the senior

appeals officer to assist with a backlog of cases. A special appeals officer is entitled to be paid at an hourly rate, as determined by the department of administration.

6. ~~[The]~~ ***Except as otherwise provided in this subsection, the*** decision of an appeals officer is the final and binding administrative determination of a claim for compensation ~~[under]~~ ***pursuant to*** chapters 616A to 616D, inclusive, 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. ***If an aggrieved party appeals the decision of an appeals officer to an appeals panel pursuant to section 8 of this act, the decision of the appeals panel is the final and binding administrative determination as set forth in subsection 8 of section 9 of this act.***

**Sec. 18.** NRS 616C.350 is hereby amended to read as follows:

616C.350 1. Any physician or chiropractor who attends an employee within the provisions of chapters 616A to 616D, inclusive, or chapter 617 of NRS in a professional capacity, may be required to testify before an appeals officer ~~[.]~~ ***or an appeals panel.*** A physician or chiropractor who testifies is entitled to receive the same fees as witnesses in civil cases and, if the appeals officer ***or the appeals panel*** so orders at ~~[his]~~ ***its*** own discretion, a fee equal to that authorized for a consultation by the appropriate schedule of fees for physicians or chiropractors. These fees must be paid by the insurer.

2. Information gained by the attending physician or chiropractor while in attendance on the injured employee is not a privileged communication if:

(a) Required by an appeals officer ***or an appeals panel*** for a proper understanding of the case and a determination of the rights involved; or

(b) The information is related to any fraud that has been or is alleged to have been committed in violation of the provisions of this chapter or chapter 616A, 616B or 616D of NRS.

**Sec. 19.** NRS 616C.355 is hereby amended to read as follows:

616C.355 At any time 10 or more days before a scheduled hearing before an appeals officer, ***an appeals panel,*** the administrator, the manager or the manager's designee, a party shall mail or deliver to the opposing party any affidavit or declaration which he proposes to introduce into evidence and notice to the effect that unless the opposing party, within 7 days after the mailing or delivery of such affidavit or declaration, mails or delivers to the proponent a request to cross-examine the affiant or declarant, his right to cross-examine the affiant or declarant is waived and the affidavit or declaration, if introduced into evidence, will have the same effect as if the affiant or declarant had given sworn testimony before the appeals officer, ***the appeals panel,*** the administrator, the manager or the manager's designee.

**Sec. 20.** NRS 616C.360 is hereby amended to read as follows:

616C.360 1. A stenographic or electronic record must be kept of the hearing before the appeals officer and the rules of evidence applicable to contested cases under chapter 233B of NRS apply to the hearing.

2. The appeals officer must hear any matter raised before him on its merits, including new evidence bearing on the matter.

3. If necessary to resolve a medical question concerning an injured employee's condition, the appeals officer may refer the employee to a physician or chiropractor chosen by the appeals officer. If the medical question concerns the rating of a permanent disability, the appeals officer may refer the employee to a rating physician or chiropractor. The rating physician or chiropractor must be selected in rotation from the list of qualified physicians or chiropractors maintained by the administrator pursuant to subsection 2 of NRS 616C.490, unless the insurer and the injured employee otherwise agree to a rating physician or chiropractor. The insurer shall pay the costs of any examination requested by the appeals officer.

4. Any party to the appeal or the appeals officer may order a transcript of the record of the hearing at any time before the seventh day after the hearing. The transcript must be filed within 30 days after the date of the order unless the appeals officer otherwise orders.

5. The appeals officer shall render his decision:

(a) If a transcript is ordered within 7 days after the hearing, within 30 days after the transcript is filed; or

(b) If a transcript has not been ordered, within 30 days after the date of the hearing.

6. The appeals officer may affirm, modify or reverse any decision made by the hearing officer and issue any necessary and proper order to give effect to his decision.

*7. The appeals officer shall give notice of his decision to each party by mail. He shall include with the notice of his decision the necessary forms for appealing from the decision to an appeals panel.*

**Sec. 21.** NRS 616C.365 is hereby amended to read as follows:

616C.365 1. If an employer or insurer requests a hearing before a hearing officer , ~~[or]~~ appeals officer ***or appeals panel*** relating to a claim for compensation, and the hearing results in a decision favorable to the employee, the employee is entitled to receive reimbursement from the insurer for:

(a) His actual expenses necessarily incurred for travel to and from the hearing, if he is required to travel more than 20 miles one way from his residence or place of employment to the hearing; and

(b) Any regular wages lost as a result of his attending the hearing.

2. The division shall adopt regulations governing the procedure and forms to be used for the reimbursement provided by subsection 1.

**Sec. 22.** NRS 616C.370 is hereby amended to read as follows:

616C.370 1. No judicial proceedings may be instituted for compensation for an injury or death under chapters 616A to 616D, inclusive, of NRS unless:

(a) A claim for compensation is filed as provided in NRS 616C.020; and

(b) A final decision ~~[of an appeals officer has been rendered]~~ on such *a* claim ~~[.]~~ ***has been rendered by:***

*(1) An appeals officer; or*

*(2) An appeals panel, if the decision of an appeals officer was appealed to the appeals panel pursuant to section 8 of this act.*

2. Judicial proceedings instituted for compensation for an injury or death, under chapters 616A to 616D, inclusive, of NRS are limited to judicial review of the decision of ~~[an]~~ *:*

*(a) An* appeals officer ~~[.]~~ *; or*

*(b) An appeals panel, if the decision of an appeals officer was appealed to the appeals panel pursuant to section 8 of this act.*

**Sec. 23.** NRS 616C.375 is hereby amended to read as follows:

616C.375 If an insurer, employer or claimant, or the representative of an insurer, employer or claimant, appeals the decision of an appeals officer ~~[,]~~ *or an appeals panel,* that decision is not stayed unless a stay is granted by the appeals officer *, the appeals panel* or the district court within 30 days after the date on which the decision was rendered.

**Sec. 24.** NRS 616C.380 is hereby amended to read as follows:

616C.380 1. If a hearing officer, appeals officer *, appeals panel* or district court renders a decision on a claim for compensation and the insurer or employer appeals that decision, but is unable to obtain a stay of the decision:

(a) Payment of that portion of an award for a permanent partial disability which is contested must be made in installment payments until the claim reaches final resolution.

(b) Payment of the award must be made in monthly installments of 66 2/3 percent of the average wage of the claimant until the claim reaches final resolution if the claim is for more than 3 months of past benefits for a temporary total disability or rehabilitation, or for a payment in lump sum related to past benefits for rehabilitation, such as costs for purchasing a business or equipment.

2. If the final resolution of the claim is in favor of the claimant, the remaining amount of compensation to which the claimant is entitled may be paid in a lump sum if the claimant is otherwise eligible for such a payment pursuant to NRS 616C.495 and any regulations adopted pursuant thereto. If the final resolution of the claim is in favor of the insurer or employer, any amount paid to the claimant in excess of the uncontested amount must be deducted from any future benefits related to that claim, other than medical benefits, to which the claimant is entitled. The deductions must be made in a reasonable manner so as not to create an undue hardship to the claimant.

**Sec. 25.** NRS 616C.385 is hereby amended to read as follows:

616C.385 If a party petitions the district court for judicial review of a final decision of an appeals officer, ***an appeals panel,*** the manager or the manager's designee, and the petition is found by the district court to be frivolous or brought without reasonable grounds, the district court may order costs and a reasonable attorney's fee to be paid by the petitioner.

**Sec. 26.** NRS 616C.585 is hereby amended to read as follows:

616C.585 1. Except as otherwise provided in subsection 2, vocational rehabilitation services ordered by an insurer, a hearing officer , ~~[or]~~ an appeals officer ***or an appeals panel*** must not include the following goods and services:

(a) A motor vehicle.

(b) Repairs to an injured employee's motor vehicle.

(c) Tools and equipment normally provided to the injured employee by his employer during the course of his employment.

(d) Care for the injured employee's children.

2. An injured employee is entitled to receive the goods and services set forth in subsection 1 only if his insurer determines that such goods and services are reasonably necessary.

3. Vocational rehabilitation services ordered by an insurer may include the formal education of the injured employee only if:

(a) The priorities set forth in NRS 616C.530 for returning an injured employee to work are followed;

(b) The education is recommended by a plan for a program of vocational rehabilitation developed pursuant to NRS 616C.555; and

(c) A written proposal concerning the probable economic benefits to the employee and the necessity of the education is submitted to the insurer.

**Sec. 27.** NRS 616C.600 is hereby amended to read as follows:

616C.600 1. A hearing officer ~~[or]~~ , *an* appeals officer *or an appeals panel* shall not order self-employment for an injured employee or the payment of compensation in a lump sum for vocational rehabilitation.

2. An insurer, an employer and an injured employee may execute an agreement concerning self-employment.

**Sec. 28.** NRS 616D.050 is hereby amended to read as follows:

616D.050 1. Appeals officers, *appeals panels,* the administrator, the manager and the manager's designee, in conducting hearings or other proceedings pursuant to the provisions of chapters 616A to 616D, inclusive, of NRS or regulations adopted pursuant to those chapters may:

(a) Issue subpoenas requiring the attendance of any witness or the production of books, accounts, papers, records and documents.

(b) Administer oaths.

(c) Certify to official acts.

(d) Call and examine under oath any witness or party to a claim.

(e) Maintain order.

(f) Rule upon all questions arising during the course of a hearing or proceeding.

(g) Permit discovery by deposition or interrogatories.

(h) Initiate and hold conferences for the settlement or simplification of issues.

(i) Dispose of procedural requests or similar matters.

(j) Generally regulate and guide the course of a pending hearing or proceeding.

2. Hearing officers, in conducting hearings or other proceedings pursuant to the provisions of chapters 616A to 616D, inclusive, of NRS or regulations adopted pursuant to those chapters, may:

(a) Issue subpoenas requiring the attendance of any witness or the production of books, accounts, papers, records and documents that are relevant to the dispute for which the hearing or other proceeding is being held.

(b) Maintain order.

(c) Permit discovery by deposition or interrogatories.

(d) Initiate and hold conferences for the settlement or simplification of issues.

(e) Dispose of procedural requests or similar matters.

(f) Generally regulate and guide the course of a pending hearing or proceeding.

**Sec. 29.** NRS 616D.065 is hereby amended to read as follows:

616D.065 1. An appeals officer ~~[,]~~ ***or an appeals panel,*** in conducting hearings or other proceedings pursuant to the provisions of chapters 616A to 616D, inclusive, of NRS or regulations adopted pursuant to those chapters, may order the attorney or representative of a party to pay any costs that are incurred by the hearings division of the department of administration for a court reporter or an interpreter.

2. Before ordering the payment of such costs, the appeals officer ***or the appeals panel*** must find that the costs were incurred because the attorney or representative of a party caused a continuance or delay in a scheduled hearing by his failure, without good

cause, to comply with an order of the appeals officer , ***the appeals panel*** or a regulation adopted pursuant to chapters 616A to 616D, inclusive, of NRS.

**Sec. 30.** NRS 616D.070 is hereby amended to read as follows:

616D.070 If any person:

1. Disobeys an order of an appeals officer, ***an appeals panel,*** a hearing officer, the administrator, the manager or the manager's designee, or a subpoena issued by the manager, manager's designee, administrator, appeals officer, ***appeals panel,*** hearing officer, inspector or examiner;

2. Refuses to permit an inspection; or

3. As a witness, refuses to testify to any matter for which he may be lawfully interrogated,

the district judge of the county in which the person resides, on application of the appeals officer, ***the appeals panel,*** the hearing officer, the administrator, the manager or the manager's designee, shall compel obedience by attachment proceedings as for contempt, as in the case of disobedience of the requirements of subpoenas issued from the court on a refusal to testify therein.

**Sec. 31.** NRS 616D.080 is hereby amended to read as follows:

616D.080 1. Each officer who serves a subpoena is entitled to receive the same fees as a sheriff.

2. Each witness who appears, in obedience to a subpoena which has been issued pursuant to this chapter or chapter 616A, 616B or 616C of NRS, before an appeals

officer, ***an appeals panel,*** a hearing officer, the administrator, the manager or the manager's designee, is entitled to receive for his attendance the fees and mileage provided for witnesses in civil cases in courts of record.

3. The appeals officer, ***appeals panel,*** hearing officer, administrator, manager or manager's designee shall:

(a) Authorize payment from his administrative budget of the fees and mileage due to such a witness; or

(b) Impose those costs upon the party at whose instance the witness was subpoenaed or, for good cause shown, upon any other party.

**Sec. 32.** NRS 616D.100 is hereby amended to read as follows:

616D.100 1. A transcribed copy of the evidence and proceedings, or any specific part thereof, of any final hearing or investigation, made by a stenographer appointed by an appeals officer, ***an appeals panel,*** a hearing officer, the administrator, the manager or the manager's designee, being certified by that stenographer to be a true and correct transcript of the testimony in the final hearing or investigation, or of a particular witness, or of a specific part thereof, and carefully compared by him with his original notes, and to be a correct statement of the evidence and proceedings had on the final hearing or investigation so purporting to be taken and transcribed, may be received in evidence with the same effect as if the stenographer had been present and testified to the facts so certified.

2. A copy of the transcript must be furnished on demand to any party upon the payment of the fee required for transcripts in courts of record.

**Sec. 33.** NRS 616D.120 is hereby amended to read as follows:

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

(a) Through fraud, coercion, duress or undue influence:

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

(2) Persuaded a claimant to settle for an amount which is less than reasonable;

(3) Persuaded a claimant to settle for an amount which is less than reasonable while a hearing or an appeal is pending; or

(4) Persuaded a claimant to accept less than the compensation found to be due him by a hearing officer, appeals officer, ***appeals panel,*** court of competent jurisdiction, written settlement agreement, written stipulation or the division when carrying out its duties pursuant to chapters 616A to 617, inclusive, of NRS;

(b) Refused to pay or unreasonably delayed payment to a claimant of compensation found to be due him by a hearing officer, appeals officer, ***appeals panel,*** court of competent jurisdiction, written settlement agreement, written stipulation or the division when carrying out its duties pursuant to chapters 616A to 616D, inclusive, or chapter 617 of NRS, if the refusal or delay occurs:

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

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

(3) Later than 10 days after a stay of the decision of a court, hearing officer, appeals officer , ***appeals panel*** or division has been lifted;

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

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

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

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

(g) Intentionally failed to comply with any provision of, or regulation adopted pursuant to, this chapter or chapter 616A, 616B, 616C or 617 of NRS,

the administrator shall impose an administrative fine of $1,000 for each initial violation, or a fine of $10,000 for a second or subsequent violation.

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

(a) Issue a notice of correction for:

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

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

The notice of correction must set forth with particularity the violation committed and the manner in which the violation may be corrected. ~~[Nothing in this section authorizes]~~ ***The provisions in this section do not authorize*** the administrator to modify or negate in any manner a determination or any portion of a determination made by a hearing officer, appeals officer , ***appeals panel*** or court of competent jurisdiction or a provision contained in a written settlement agreement or written stipulation.

(b) Impose an administrative fine for:

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

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

The fine imposed may not be greater than $250 for an initial violation, or more than $1,000 for any second or subsequent violation.

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

3. If the administrator determines that a violation of any of the provisions of paragraphs (a) to (d), inclusive, of subsection 1 has occurred, the administrator shall order the insurer, organization for managed care, health care provider, third-party administrator or employer to pay to the claimant a benefit penalty in an amount equal to 50 percent of the compensation due or $10,000, whichever is less. In no event may a benefit penalty be less than $500. The benefit penalty is for the benefit of the claimant and must be paid directly to him within 10 days after the date of the administrator's determination. Proof of the payment of the benefit penalty must be submitted to the administrator within 10 days after the date of his determination unless an appeal is filed pursuant to NRS 616D.140. Any compensation to which the claimant may otherwise be entitled pursuant to chapters 616A to 616D, inclusive, or chapter 617 of NRS must not be reduced by the amount of any benefit penalty received pursuant to this subsection.

4. In addition to any fine or benefit penalty imposed pursuant to this section, the administrator may assess against an insurer who violates any regulation concerning the

reporting of claims expenditures used to calculate an assessment an administrative penalty of up to twice the amount of any underpaid assessment.

5. If:

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

(b) The fraud control unit for industrial insurance established pursuant to NRS 228.420 notifies the administrator that the unit will not prosecute the person for that violation,

the administrator shall impose an administrative fine of not more than $10,000.

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

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

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

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

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

**Sec. 34.** NRS 617.370 is hereby amended to read as follows:

617.370 1. Any employee who is entitled to receive compensation under this chapter shall, if:

(a) Requested by the insurer; or

(b) Ordered by an appeals officer, ***an appeals panel*** or a hearing officer,

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 division.

2. If the insurer has reasonable cause to believe that an injured employee who is receiving compensation for a permanent total disability is no longer disabled, the insurer may request the employee to submit to an annual medical examination to determine whether the disability still exists. The insurer shall pay the costs of the examination.

3. The request or order for an examination must fix a time and place therefor, ***with*** due regard ~~[being had to]~~ ***for*** the nature of the medical examination, the convenience of the employee, his physical condition and ability to attend at the time and place fixed.

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

5. If the employee refuses to submit to an examination ordered or requested pursuant to subsection 1 or 2 or obstructs the examination, his right to compensation is suspended until the examination has taken place, and no compensation is payable during or for the period of suspension.

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

**Sec. 35.** NRS 617.402 is hereby amended to read as follows:

617.402 1. If an insurer determines that an employee has knowingly misrepresented or concealed a material fact to obtain any benefit or payment under the provisions of this chapter, the insurer may deduct from any benefits or payments due to the employee, the amount obtained by the employee because of the misrepresentation or concealment of a material fact. The employee shall reimburse the insurer for all benefits or payments received because of the knowing misrepresentation or concealment of a material fact.

2. An employee who is aggrieved by a determination of an insurer made pursuant to subsection 1 may appeal that determination pursuant to NRS 616C.315 to 616C.385, inclusive ~~[.]~~ , ***and sections 6 to 9, inclusive, of this act.*** If the final decision by an appeals officer ***or an appeals panel*** is favorable to the employee, the administrator shall order the insurer to pay $2,000 to that employee, in addition to any benefits or payments the employee is entitled to receive, if:

(a) The final decision is favorable to the employee; and

(b) The administrator determines that the insurer had no reasonable basis for believing that the employee knowingly misrepresented or concealed a material fact to obtain any benefit or payment.

3. This section does not preclude an insurer from making an investigation pursuant to, or pursuing the remedies provided by, NRS 616D.300.

**Sec. 36.** NRS 617.405 is hereby amended to read as follows:

617.405 1. No judicial proceedings may be instituted for benefits for an occupational disease under this chapter, unless:

(a) A claim is filed within the time limits prescribed in NRS 617.344; and

(b) A final decision by an appeals officer ***or an appeals panel*** has been rendered on the claim.

2. Judicial proceedings instituted for benefits for an occupational disease under this chapter are limited to judicial review of that decision.

**Sec. 37.** Chapter 232 of NRS is hereby amended by adding thereto a new section to read as follows:

***The director, in his capacity as the chief of the hearings division, shall adopt regulations governing the conduct of the hearing and appeals officers. The regulations must include:***

***1. And be no less stringent than, the standards set forth in the Nevada code of judicial conduct adopted by the supreme court.***

***2. A procedure for a person who believes that a hearing or appeals officer has violated the standards for conduct to make a complaint to the director.***

***3. Rules of practice pursuant to which the director will hear complaints made pursuant to subsection 2.***

*4. The penalties that may be imposed against a hearing or appeals officer if the director determines, pursuant to the rules of practice adopted pursuant to subsection 3, that a hearing or appeals officer has violated a standard for conduct.*

**Sec. 38.** NRS 232.212 is hereby amended to read as follows:

232.212 As used in NRS 232.212 to 232.2195, inclusive, ***and section 37 of this act,*** unless the context requires otherwise:

1. "Department" means the department of administration.

2. "Director" means the director of the department.

**Sec. 39.** NRS 232.215 is hereby amended to read as follows:

232.215 The director:

1. Shall appoint a chief of the:

(a) Risk management division;

(b) Buildings and grounds division;

(c) Purchasing division;

(d) State printing division;

(e) Administrative services division; and

(f) Motor pool division if separately established.

2. Shall appoint a chief of the budget division, or may serve in this position if he has the qualifications required by NRS 353.175.

3. Shall serve as chief of the hearings division and ~~[shall]~~ appoint the hearing officers , ***appeals officers*** and compensation officers. The director may designate one of

the appeals officers in the division ~~[to]~~ ***as the senior appeals officer. The senior appeals officer shall*** supervise the administrative, technical and procedural activities of the division. ***The senior appeals officer shall perform such additional duties as the director, serving as chief of the hearings division, may require.***

4. Shall serve as chairman of the state public works board.

5. Is responsible for the administration, through the divisions of the department, of the provisions of chapters 331, 333, 336 and 344 of NRS, NRS 353.150 to 353.246, inclusive, and all other provisions of law relating to the functions of the divisions of the department.

6. Is responsible for the administration of the laws of this state relating to the negotiation and procurement of medical services and other benefits for state agencies.

7. Has such other powers and duties as are provided by law.

**Sec. 40.** 1. This section and sections 1, 2, 3, 5 to 9, inclusive, 12 to 17, inclusive, 19 to 25, inclusive, and 27 to 39, inclusive, of this act become effective on July 1, 1999.

2. Sections 4, 10, 11, 18 and 26 of this act become effective at 12:01 a.m. on July 1, 1999.

SUMMARY—Revises provisions governing payment of workers' compensation for subsequent injuries from subsequent injury funds. (BDR 53-389)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: No.

AN ACT relating to industrial insurance; revising the provisions regarding those subsequent injuries for which the account of an employer who is insured by the state industrial insurance system will be charged; limiting the subsequent injuries for which workers' compensation is payable from the subsequent injury fund for self-insured employers and the subsequent injury fund for associations of self-insured public or private employers; repealing the provisions creating and governing a subsequent injury fund for private carriers of industrial insurance; 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.** NRS 616B.540 is hereby amended to read as follows:

616B.540 1. If an employee of an employer who is insured by the system has a permanent physical impairment from any cause or origin and , ***before July 1, 1999,*** incurs a subsequent disability by injury arising out of and in the course of his employment which entitles him to compensation for a 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 compensation due must not be charged to the employer's account if:

(a) The employee knowingly made a false representation as to his physical condition at the time he was hired by the employer;

(b) The employer relied upon the false representation and this reliance formed a substantial basis of the employment; and

(c) A causal connection existed between the false representation and the subsequent disability.

2. If the subsequent injury of the employee ***that occurred before July 1, 1999,*** results in his death and it is determined that the death would not have occurred except for the preexisting permanent physical impairment, the compensation due must not be charged to the employer's account.

3. To qualify for the removal of a charge from his account pursuant to this section, the employer must establish by written records that he had knowledge of the permanent physical impairment at the time the employee was hired or that the employee was retained in employment after the employer acquired that knowledge.

4. The employer shall notify the manager of any possible claim pursuant to this section as soon as practicable, but not later than 100 weeks after the subsequent injury or death.

5. The manager shall take such actions as are necessary to carry out the requirements of this section.

6. An appeal of any decision made concerning a charge or removal of a charge pursuant to this section must be submitted directly to an appeals officer. The appeals officer shall hear the appeal within 45 days after the appeal is submitted to him.

7. As used in this section, "permanent physical impairment" means any permanent condition, whether congenital or caused by injury or disease, of such seriousness as to constitute a hindrance or obstacle to obtaining employment or to obtaining reemployment if the employee is unemployed. For the purposes of this section, a condition is not a "permanent physical impairment" unless it would support a rating of permanent impairment of 6 percent or more of the whole man if evaluated according to the American Medical Association's Guides to the Evaluation of Permanent Impairment as adopted and supplemented pursuant to NRS 616C.110.

**Sec. 2.** NRS 616B.557 is hereby amended to read as follows:

616B.557 Except as otherwise provided in NRS 616B.560:

1. If an employee of a self-insured employer has a permanent physical impairment from any cause or origin and ***before July 1, 1999,*** incurs a subsequent disability by injury arising out of and in the course of his employment which entitles him to

compensation 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 compensation due must be charged to the subsequent injury fund for self-insured employers in accordance with regulations adopted by the board.

2. If the subsequent injury of ~~[such an]~~ ***the*** employee ***that occurred before July 1, 1999,*** results in his death and it is determined that the death would not have occurred except for the preexisting permanent physical impairment, the compensation due must be charged to the subsequent injury fund for self-insured employers in accordance with regulations adopted by the board.

3. As used in this section, "permanent physical impairment" means any permanent condition, whether congenital or caused by injury or disease, of such seriousness as to constitute a hindrance or obstacle to obtaining employment or to obtaining reemployment if the employee is unemployed. For the purposes of this section, a condition is not a "permanent physical impairment" unless it would support a rating of permanent impairment of 6 percent or more of the whole man if evaluated according to the American Medical Association's Guides to the Evaluation of Permanent Impairment as adopted and supplemented by the division pursuant to NRS 616C.110.

4. To qualify under this section for reimbursement from the subsequent injury fund for self-insured employers, the self-insured employer must establish by written records that the self-insured employer had knowledge of the "permanent physical impairment" at

the time the employee was hired or that the employee was retained in employment after the self-insured employer acquired such knowledge.

5. A self-insured employer shall notify the board of any possible claim against the subsequent injury fund for self-insured employers as soon as practicable, but not later than 100 weeks after the injury or death.

6. The board shall adopt regulations establishing procedures for submitting claims against the subsequent injury fund for self-insured employers. The board shall notify the self-insured employer of ~~[his]~~ ***its*** decision on ~~[such a]~~ ***the*** claim within 90 days after the claim is received.

7. An appeal of any decision made concerning a claim against the subsequent injury fund for self-insured employers must be submitted directly to the district court.

**Sec. 3.** NRS 616B.560 is hereby amended to read as follows:

616B.560 1. A self-insured employer who pays compensation due to an employee who has a permanent physical impairment from any cause or origin and ***who, before July 1, 1999,*** incurs a subsequent disability by injury arising out of and in the course of his employment which entitles him to compensation 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 is entitled to be reimbursed from the subsequent injury fund for self-insured employers if:

(a) The employee knowingly made a false representation as to his physical condition at the time he was hired by the self-insured employer;

(b) The self-insured employer relied upon the false representation and this reliance formed a substantial basis of the employment; and

(c) A causal connection existed between the false representation and the subsequent disability.

If the subsequent injury of the employee ***that occurred before July 1, 1999,*** results in his death and it is determined that the death would not have occurred except for the preexisting permanent physical impairment, any compensation paid is entitled to be reimbursed from the subsequent injury fund for self-insured employers.

2. A self-insured employer shall notify the board of any possible claim against the subsequent injury fund for self-insured employers pursuant to this section ~~[no]~~ ***not*** later than 60 days after the date of the subsequent injury or the date the self-insured employer learns of the employee's false representation, whichever is later.

**Sec. 4.** NRS 616B.578 is hereby amended to read as follows:

616B.578 Except as otherwise provided in NRS 616B.581:

1. If an employee of a member of an association of self-insured public or private employers has a permanent physical impairment from any cause or origin and ***before July 1, 1999,*** incurs a subsequent disability by injury arising out of and in the course of his employment which entitles him to compensation 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

compensation due must be charged to the subsequent injury fund for associations of self-insured public or private employers in accordance with regulations adopted by the board.

2. If the subsequent injury of ~~[such an]~~ ***the*** employee ***that occurred before July 1, 1999,*** results in his death and it is determined that the death would not have occurred except for the preexisting permanent physical impairment, the compensation due must be charged to the subsequent injury fund for associations of self-insured public or private employers in accordance with regulations adopted by the board.

3. As used in this section, "permanent physical impairment" means any permanent condition, whether congenital or caused by injury or disease, of such seriousness as to constitute a hindrance or obstacle to obtaining employment or to obtaining reemployment if the employee is unemployed. For the purposes of this section, a condition is not a "permanent physical impairment" unless it would support a rating of permanent impairment of 6 percent or more of the whole man if evaluated according to the American Medical Association's Guides to the Evaluation of Permanent Impairment as adopted and supplemented by the division pursuant to NRS 616C.110.

4. To qualify under this section for reimbursement from the subsequent injury fund for associations of self-insured public or private employers, the association of self-insured public or private employers must establish by written records that the employer had knowledge of the "permanent physical impairment" at the time the employee was hired or that the employee was retained in employment after the employer acquired such knowledge.

5. An association of self-insured public or private employers shall notify the board of any possible claim against the subsequent injury fund for associations of self-insured public or private employers as soon as practicable, but not later than 100 weeks after the injury or death.

6. The board shall adopt regulations establishing procedures for submitting claims against the subsequent injury fund for associations of self-insured public or private employers. The board shall notify the association of self-insured public or private employers of its decision on ~~[such a]~~ ***the*** claim within 90 days after the claim is received.

7. An appeal of any decision made concerning a claim against the subsequent injury fund for associations of self-insured public or private employers must be submitted directly to the district court.

**Sec. 5.** NRS 616B.581 is hereby amended to read as follows:

616B.581 1. An association of self-insured public or private employers that pays compensation due to an employee who has a permanent physical impairment from any cause or origin and ***who, before July 1, 1999,*** incurs a subsequent disability by injury arising out of and in the course of his employment which entitles him to compensation 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 is entitled to be reimbursed from the subsequent injury fund for associations of self-insured public or private employers if:

(a) The employee knowingly made a false representation as to his physical condition at the time he was hired by the member of the association of self-insured public or private employers;

(b) The employer relied upon the false representation and this reliance formed a substantial basis of the employment; and

(c) A causal connection existed between the false representation and the subsequent disability.

If the subsequent injury of the employee ***that occurred before July 1, 1999,*** results in his death and it is determined that the death would not have occurred except for the preexisting permanent physical impairment, any compensation paid is entitled to be reimbursed from the subsequent injury fund for associations of self-insured public or private employers.

2. An association of self-insured public or private employers shall notify the board of any possible claim against the subsequent injury fund for associations of self-insured public or private employers pursuant to this section ~~[no]~~ ***not*** later than 60 days after the date of the subsequent injury or the date the employer learns of the employee's false representation, whichever is later.

**Sec. 6.** NRS 616B.584, 616B.587 and 616B.590 are hereby repealed.

**Sec. 7.** 1. This section and sections 1 to 5, inclusive, of this act become effective on July 1, 1999.

2. Section 6 of this act becomes effective upon passage and approval.

## TEXT OF REPEALED SECTIONS

**616B.584** 1. There is hereby established as a special revenue fund in the state treasury the subsequent injury fund for private carriers, which may be used only to make payments in accordance with the provisions of NRS 616B.587 and 616B.590. The administrator shall administer the fund.

2. All assessments, penalties, bonds, securities and all other properties received, collected or acquired by the administrator for the subsequent injury fund for private carriers must be delivered to the custody of the state treasurer.

3. All money and securities in the fund must be held by the state treasurer as custodian thereof to be used solely for workers' compensation for employees whose employers are insured by private carriers.

4. The state treasurer may disburse money from the fund only upon written order of the state controller.

5. The state treasurer shall invest money of the fund in the same manner and in the same securities in which he is authorized to invest state general funds which are in his custody. Income realized from the investment of the assets of the fund must be credited to the fund.

6. The administrator shall adopt regulations for the establishment and administration of assessment rates, payments and penalties. Assessment rates must reflect the relative hazard of the employments covered by private carriers and must be based upon expected annual expenditures for claims for payments from the subsequent injury fund for private carriers. The system must not be required to pay any assessments, payments or penalties into the subsequent injury fund for private carriers, or any costs associated with the fund.

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

**616B.587** Except as otherwise provided in NRS 616B.590:

1. If an employee of an employer who is insured by a private carrier has a permanent physical impairment from any cause or origin and incurs a subsequent disability by injury arising out of and in the course of his employment which entitles him to compensation 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 compensation due must be charged to the subsequent injury fund for private carriers in accordance with regulations adopted by the administrator.

2. If the subsequent injury of such an employee results in his death and it is determined that the death would not have occurred except for the preexisting permanent

physical impairment, the compensation due must be charged to the subsequent injury fund for private carriers in accordance with regulations adopted by the administrator.

3. As used in this section, "permanent physical impairment" means any permanent condition, whether congenital or caused by injury or disease, of such seriousness as to constitute a hindrance or obstacle to obtaining employment or to obtaining reemployment if the employee is unemployed. For the purposes of this section, a condition is not a "permanent physical impairment" unless it would support a rating of permanent impairment of 6 percent or more of the whole man if evaluated according to the American Medical Association's Guides to the Evaluation of Permanent Impairment as adopted and supplemented by the division pursuant to NRS 616C.110.

4. To qualify under this section for reimbursement from the subsequent injury fund for private carriers, the private carrier must establish by written records that the employer had knowledge of the "permanent physical impairment" at the time the employee was hired or that the employee was retained in employment after the employer acquired such knowledge.

5. A private carrier shall notify the administrator of any possible claim against the subsequent injury fund for private carriers as soon as practicable, but not later than 100 weeks after the injury or death.

6. The administrator shall adopt regulations establishing procedures for submitting claims against the subsequent injury fund for private carriers. The administrator shall

notify the private carrier of his decision on such a claim within 90 days after the claim is received.

7. An appeal of any decision made concerning a claim against the subsequent injury fund for private carriers must be submitted directly to the appeals officer. The appeals officer shall hear such an appeal within 45 days after the appeal is submitted to him.

**616B.590** 1. A private carrier who pays compensation due to an employee who has a permanent physical impairment from any cause or origin and incurs a subsequent disability by injury arising out of and in the course of his employment which entitles him to compensation 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 is entitled to be reimbursed from the subsequent injury fund for private carriers if:

(a) The employee knowingly made a false representation as to his physical condition at the time he was hired by the employer insured by a private carrier;

(b) The employer relied upon the false representation and this reliance formed a substantial basis of the employment; and

(c) A causal connection existed between the false representation and the subsequent disability.

If the subsequent injury of the employee results in his death and it is determined that the death would not have occurred except for the preexisting permanent physical impairment,

any compensation paid is entitled to be reimbursed from the subsequent injury fund for private carriers.

2. A private carrier shall notify the administrator of any possible claim against the subsequent injury fund for private carriers pursuant to this section no later than 60 days after the date of the subsequent injury or the date the employer learns of the employee's false representation, whichever is later

SUMMARY—Revises provisions governing administration of state industrial insurance system. (BDR 53-393)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: Yes.

AN ACT relating to the state industrial insurance system; creating a board of directors for the system; establishing the powers, duties and membership of the board; establishing provisions relating to the conduct of the business of the board; providing for the compensation of the members of the board; 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 616A of NRS is hereby amended by adding thereto a new section to read as follows:

***"Board" means the board of directors of the state industrial insurance system created pursuant to section 4 of this act.***

**Sec. 2.** NRS 616A.025 is hereby amended to read as follows:

616A.025 As used in chapters 616A to 616D, inclusive, of NRS, unless the context otherwise requires, the words and terms defined in NRS 616A.030 to 616A.360, inclusive, ***and section 1 of this act,*** have the meanings ascribed to them in those sections.

**Sec. 3.** Chapter 616B of NRS is hereby amended by adding thereto the provisions set forth as sections 4 to 11, inclusive, of this act.

**Sec. 4.** *1. **The board of directors of the state industrial insurance system is hereby created. The board consists of nine members who are appointed as follows:***

***(a) Three members appointed by the majority leader of the senate, in consultation with the minority leader of the senate.***

***(b) Three members appointed by the speaker of the assembly, in consultation with the minority leader of the assembly.***

***(c) Three members appointed by the governor.***

***2. Each person who is appointed to serve as a member of the board:***

***(a) Must be a policyholder of the system or an employee of a policyholder; and***

***(b) Must not be a legislator or an officer, employee or agent of the judicial branch of this state.***

***3. In addition to the requirements set forth in subsection 2, at least one of the three persons appointed to serve as a member of the board by the majority leader of the senate, the speaker of the assembly and the governor, respectively, must have previous experience in investments, risk management, occupational safety, casualty insurance or law.***

*4. After the initial terms, members shall serve terms of 4 years, except when appointed to fill unexpired terms. A person may not serve as a member of the board more than two full terms consecutively.*

*5. A vacancy in the membership of the board must be filled for the remainder of the unexpired term in the following manner:*

*(a) If the member who vacated the seat was appointed by the majority leader of the senate or the speaker of the assembly:*

*(1) If the legislature is in session, by appointment of the majority leader of the senate or the speaker of the assembly, as applicable; or*

*(2) If the legislature is not in session, by appointment of the legislative commission.*

*(b) If the member who vacated the seat was appointed by the governor, by appointment of the governor.*

**Sec. 5.** *1. The board shall elect a chairman from among its members.*

*2. The chairman shall hold office for a term of 1 year beginning on July 1 of each year.*

*3. A chairman may not serve more than two full terms consecutively.*

*4. If a vacancy occurs in the chairmanship, the members of the board shall elect a chairman from among its members for the remainder of the unexpired term.*

**Sec. 6.** *The chairman of the board shall:*

*1. Schedule the meetings of the board; and*

*2. Ensure that the meetings of the board are conducted in an efficient manner.*

Sec. 7. *1. The board shall meet at least quarterly and may meet by a call of the chairman or a majority of the members of the board.*

*2. Five members of the board constitute a quorum to transact all business, and a majority of those present must concur on any decision.*

Sec. 8. *Each member of the board is entitled to receive for his attendance at meetings of the board:*

*1. Compensation of at least $80 per day, as fixed by the board; and*

*2. The per diem allowance and travel expenses provided for state officers and employees generally.*

Sec. 9. *The board shall:*

*1. Approve annual and biennial budgets of the system.*

*2. Approve investment policies of the system.*

*3. Appoint an independent certified accountant who shall provide an annual audit of the state insurance fund and report to the board.*

*4. Before each legislative session, report to the legislature on any recommendation for legislation that the board deems appropriate.*

Sec. 10. *The board may adopt regulations:*

*1. Necessary and proper for the governance and operation of the board; and*

*2. To carry out the powers and duties of the board set forth in this chapter.*

**Sec. 11.** *There is no liability in a private capacity on the part of the board or any member thereof while carrying out the duties of the board.*

**Sec. 12.** NRS 616B.014 is hereby amended to read as follows:

616B.014 1. Except as otherwise provided in this section and in NRS 616B.006, 616B.012 and 616B.021, the following records of the system are confidential:

(a) Files of individual claimants and policyholders of the system.

(b) Any reports that contain information that would identify individual claimants and policyholders of the system.

(c) Any proprietary information of the system.

2. The system may disclose such confidential information:

(a) To the governor and any member of his staff authorized to receive such information;

(b) To a member of the legislature and any member of his staff authorized to receive such information;

(c) To the administrative director of an executive agency who is otherwise authorized to receive such information pursuant to specific statute or administrative regulation; or

(d) Pursuant to a lawful order issued by a court of competent jurisdiction.

3. A person who obtains such confidential information pursuant to subsection 2 shall not disclose:

(a) The identity of an individual claimant or policyholder of the system; or

(b) Any proprietary information of the system,

except pursuant to a lawful order of a court of competent jurisdiction.

4. As used in this section, "proprietary information" means any information which, if disclosed to the general public, may result in a competitive disadvantage to the system, including, without limitation:

(a) Rules, criteria and standards for underwriting policies that are applied by the system.

(b) Plans or other documents concerning the marketing or strategic planning of the system.

(c) Data, studies and reports concerning the development of new products or services.

(d) Data that identify the share of the market of the system within each class of risk.

(e) Any worksheets relating to the financial condition of the system, except a financial statement resulting from an audit of the system conducted pursuant to ~~[NRS 616B.056]~~ ***section 9 of this act*** and a final report of an audit conducted by the legislative auditor.

(f) The annual actuarial valuation and report of the soundness of the system prepared pursuant to NRS 616B.056.

**Sec. 13.** NRS 616B.056 is hereby amended to read as follows:

616B.056 The manager shall:

1. ~~[Approve annual and biennial budgets of the system.~~

~~2. Approve investment policies of the system.~~

~~3.~~] Approve the appointment of investment counselors and custodians of investments.

~~[4.]~~ *2.* Approve the designation of banks as collection depositories.

~~[5.]~~ *3.* Approve the appointment of an independent actuary and arrange for an annual actuarial valuation and report of the soundness of the system and the state insurance fund as prepared by the independent actuary.

~~[6. Appoint an independent certified accountant who shall provide an annual audit of the state insurance fund and report to the manager.~~

~~7.~~] *4.* Before each legislative session, report to the legislature on the operation of the system . ~~[and any recommendation for legislation which he deems appropriate.]~~

**Sec. 14.** NRS 616B.062 is hereby amended to read as follows:

616B.062 1. The ~~[governor]~~ ***board*** shall appoint a manager to be in charge of the operation of the system.

2. The manager is the chief executive officer of the system and , ***in consultation with the board,*** is responsible for all duties of the system.

3. The manager shall serve at the pleasure of the ~~[governor.]~~ ***board.***

4. The manager must:

(a) Be a graduate of a 4-year college or university with a degree in business administration or public administration or equivalent degree; and

(b) Possess at least 5 years' experience in a high level administrative or executive capacity, with responsibility for a variety of administrative functions such as retirement, insurance, investment or fiscal operations.

5. Before undertaking the duties of the office, the manager shall qualify by giving an official bond in an amount and with sureties approved by the ~~[governor.]~~ ***board.*** The manager shall file the bond with the secretary of state. The premium for the bond must be paid by the system.

**Sec. 15.** NRS 616B.065 is hereby amended to read as follows:

616B.065 1. The manager shall select assistant managers ~~[who]~~ ***whose appointments are effective upon confirmation by the board. Assistant managers*** are in the unclassified service of the state and are entitled to receive annual salaries fixed by the ~~[manager.]~~ ***board.***

2. The assistant managers shall serve at the pleasure of the manager ~~[.]~~ , ***subject to the review of the board.***

3. The assistant managers must be graduates of a 4-year college or university with a degree in business administration or public administration or an equivalent degree.

**Sec. 16.** NRS 616B.068 is hereby amended to read as follows:

616B.068 The manager is in the unclassified service of the state but is entitled to receive an annual salary fixed by the ~~[governor.]~~ ***board.***

**Sec. 17.** NRS 616B.167 is hereby amended to read as follows:

616B.167 The manager:

1. ~~[Has]~~ ***Subject to the authority of the board, has*** full power, authority and jurisdiction over the system.

2. May perform all acts necessary or convenient in the exercise of any power, authority or jurisdiction over the system, either in the administration of the system or in connection with the business of insurance to be carried on by the system ~~[under]~~ ***pursuant to*** the provisions of chapters 616A to 616D, inclusive, of NRS, including , ***without limitation,*** the establishment of premium rates ~~[.]~~ ***and the adoption of regulations.***

3. May appoint in the unclassified service of the state no more than five persons, engaged in management, who report directly to the manager or an assistant manager. The ~~[manager]~~ ***board*** shall designate these positions, and may not change them without the approval of the personnel commission. These persons are entitled to receive annual salaries fixed by the ~~[manager.]~~ ***board.***

**Sec. 18.** As soon as is practicable after July 1, 1999:

1. The majority leader of the senate shall, in consultation with the minority leader of the senate, appoint to the board of directors of the state industrial insurance system:

(a) One person to a term that expires on June 30, 2001.

(b) One person to a term that expires on June 30, 2003.

(c) One person to a term that expires on June 30, 2005.

2. The speaker of the assembly shall, in consultation with the minority leader of the assembly, appoint to the board of directors of the state industrial insurance system:

(a) One person to a term that expires on June 30, 2001.

(b) One person to a term that expires on June 30, 2003.

(c) One person to a term that expires on June 30, 2005.

3. The governor shall appoint to the board of directors of the state industrial insurance system:

(a) One person to a term that expires on June 30, 2001.

(b) One person to a term that expires on June 30, 2003.

(c) One person to a term that expires on June 30, 2005.

**Sec. 19.** This act becomes effective on July 1, 1999.

SUMMARY—Makes various changes concerning applicability of insurance code to state industrial insurance system and private carriers of industrial insurance. (BDR 53-396)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: Yes.

AN ACT relating to industrial insurance; authorizing the commissioner of insurance to suspend the authority of the state industrial insurance system to provide industrial insurance; making certain provisions of the insurance code applicable to the state industrial insurance system; prohibiting the commissioner from applying certain provisions of the insurance code to the state industrial insurance system; exempting certain private carriers of industrial insurance from making an additional deposit of cash or securities with the commissioner of insurance for purposes of transacting industrial insurance in this state; clarifying the regulatory authority of the commissioner of insurance and the administrator of the division of industrial relations of the department of business and industry concerning trade practices of insurers; 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 616B of NRS is hereby amended by adding thereto a new section to read as follows:

*1. The commissioner shall issue an order suspending the authority of the system to provide industrial insurance for 1 year if the commissioner finds that the system has intentionally or repeatedly failed to comply with the provisions of chapters 616A to 616D, inclusive, or chapter 617 of NRS or the regulations of the division.*

*2. Before the commissioner issues an order pursuant to subsection 1, he must:*

*(a) Arrange an informal meeting with the system to discuss and seek correction of any conduct that would be grounds for suspension; and*

*(b) If the system fails to correct the conduct after the informal meeting, give written notice to the system by certified mail or electronic transmission that an order will be issued to suspend its authority to provide industrial insurance within 10 days after it receives the notice unless within that time, the system:*

*(1) Corrects the conduct set forth in the notice as the reason for the suspension; or*

*(2) Submits a written request for a hearing to the commissioner.*

*3. If the system requests a hearing:*

*(a) The commissioner shall set a date for a hearing within 20 days after receiving the system's written request and shall give the system at least 10 business 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 system. The cost of transcription must be charged to the system.*

*4. Within 5 days after the hearing, the commissioner shall:*

*(a) Affirm or deny his decision to issue an order to suspend the authority of the system to provide industrial insurance;*

*(b) Notify the system of his decision; and*

*(c) If the commissioner affirms his decision, issue an order to suspend the authority of the system to provide industrial insurance.*

*5. If the system does not comply with the order of the commissioner issued pursuant to subsection 4 during the period of suspension, the commissioner shall issue another order prohibiting the system from issuing new policies until the order has expired as specified in the order itself. A copy of the order issued pursuant to this subsection must be sent by certified mail or electronic transmission to the system.*

**Sec. 2.** NRS 616B.197 is hereby amended to read as follows:

616B.197 1. The system shall comply with ~~[:]~~ *and is subject to:*

(a) Those provisions of Title 57 of NRS designated by regulations adopted by the commissioner ~~[;]~~ and *those provisions of Title 57 of NRS made applicable to the system by a specific statute;*

(b) Any orders issued to the system by the commissioner [.

~~2. Such~~] ;

*(c) Those provisions of NRS 683A.090 to 683A.360, inclusive, that require an insurer or an authorized insurer to perform certain duties as a result of its relationship with an agent, broker or solicitor, including, without limitation, NRS 683A.280 and 683A.290; and*

*(d) Those provisions of NRS 686A.010 to 686A.280, inclusive, and 686A.310 that regulate the trade practices of persons or insurers.*

2. *The* regulations and orders *adopted or issued pursuant to subsection 1* must comply with the provisions of chapters 616A to 617, inclusive, of NRS, including, but not limited to, those provisions governing the investments and operations of the system.

3. The commissioner shall not require the system to *:*

*(a) Obtain a certificate of authority to transact industrial insurance;*

*(b) Appoint the commissioner and his successors in office as its attorney to receive service of legal process issued against it in this state;*

*(c) Except as otherwise provided in subsection 1, make any deposits or* pay any licensing fees, *continuation fees,* assessments or taxes *required to be deposited through the commissioner or* paid to the division of insurance of the department of business and industry by insurers licensed pursuant to Title 57 of NRS [.] *; or*

*(d) Register with the commissioner as a member of an insurance holding company system.*

4. The system shall pay the costs of any examination of the system conducted by the commissioner, as required by NRS 679B.290, upon presentation by the commissioner of a reasonably detailed written statement of the expenses of the examination.

***5. An agent of the system shall comply with NRS 683A.090 to 683A.360, inclusive. As used in this subsection, "agent of the system" means any person who is associated, directly or indirectly, with the system to solicit and enroll policyholders with the system and negotiate contracts of industrial insurance issued by the system, and includes, without limitation, a person who qualifies as an "agent," "broker" or "solicitor" as those terms are defined in chapter 683A of NRS.***

**Sec. 3.** NRS 679B.130 is hereby amended to read as follows:

679B.130 1. The commissioner may adopt reasonable regulations for the administration of any provision of this code or chapters 616A to 617, inclusive, of NRS.

2. A person who willfully violates any regulation of the commissioner is subject to such suspension or revocation of a certificate of authority ~~[or license,]~~ ***, license or other authority to transact insurance,*** or administrative fine in lieu of such suspension or revocation, as may be applicable ~~[under]~~ ***pursuant to*** this code or chapter 616A, 616B, 616C, 616D or 617 of NRS for violation of the provision to which the regulation relates. No penalty applies to any act done or omitted in good faith in conformity with any ~~[such]~~ regulation, notwithstanding that the regulation may, after the act or omission, be amended, rescinded or determined by a judicial or other authority to be invalid for any reason.

**Sec. 4.** NRS 679B.157 is hereby amended to read as follows:

679B.157 An insurer, employee or representative of an insurer, ***the state industrial insurance system, an employee of the state industrial insurance system, an*** official of an investigative or law enforcement agency, employee of the division or the commissioner is not subject to a criminal penalty or subject to civil liability for libel, slander or any similar cause of action in tort if he, without malice, discloses information on a fraudulent claim or suspicious fire.

**Sec. 5.** NRS 679B.158 is hereby amended to read as follows:

679B.158 1. The special investigative account is hereby established in the state general fund for use by the commissioner. The commissioner shall deposit all money received pursuant to this section with the state treasurer for credit to the account. Money remaining in the account at the end of any year does not lapse and may be used by the commissioner in any subsequent year.

2. The commissioner shall authorize expenditures from the special investigative account to pay the expenses of the program established pursuant to NRS 679B.153 and of any unit established in the office of the attorney general which investigates and prosecutes insurance fraud.

3. All of the costs of the program established pursuant to NRS 679B.153 must be paid by the insurers authorized to transact insurance in this state ~~[.]~~ , ***including the state industrial insurance system.*** The commissioner shall annually determine the total cost and equally divide that amount among the insurers. The annual amount so assessed must

not exceed $500 per authorized insurer. The commissioner may adopt regulations regarding the calculation and collection of the assessment.

**Sec. 6.** NRS 680A.140 is hereby amended to read as follows:

680A.140 1. ~~[The]~~ ***Except as otherwise provided in subsections 4 and 5, the*** commissioner shall not authorize an insurer to transact insurance in this state, other than an alien insurer or a title insurer, unless it makes and thereafter continuously maintains on deposit in this state, through the commissioner, cash or securities eligible for such deposit under the laws of this state of a fair market value not less than its minimum required capital stock , ~~[(]~~ if a stock insurer , ~~D~~] or minimum required basic surplus , ~~[(]~~ if a mutual or reciprocal insurer , ~~D,~~] for the protection of the insurer's policyholders or of its policyholders and creditors in the United States of America. The commissioner may adopt regulations which allow the use of securities as a deposit without delivery of the securities to the commissioner.

2. The commissioner shall not so authorize a title insurer unless it so deposits and maintains such cash or securities of fair market value not less than its minimum required capital stock as a guaranty fund for the security and protection of the holders of, or beneficiaries under, the title insurance contracts issued by the insurer.

3. The commissioner shall not so authorize an alien insurer unless it so makes and thereafter continuously maintains such a deposit, representing money in excess of all the insurer's liabilities under insurance contracts in force in the United States of America, of a fair market value of not less than that required under subsection 1, as to a like foreign

insurer. The deposit must be held in trust for the protection of all the insurer's policyholders, or policyholders and creditors, in the United States of America.

4. In lieu of such a deposit made or maintained in this state, the commissioner shall accept the certificate in proper form of the public officer having general supervision of insurers in any other state to the effect that a deposit of like quality and amount, or part thereof, by an insurer is being maintained for like purposes in public custody or control pursuant to the laws of that state, if the commissioner is satisfied as to the like quality and amount of the deposit.

5. ***The commissioner shall not require an insurer that is not domiciled in this state to make or maintain a deposit of cash or securities in this state to qualify for authority to transact industrial insurance in this state unless the commissioner determines that the insurer is not maintaining in at least one state a deposit that is alike in quality and amount to the deposit otherwise required pursuant to subsection 1.***

***6.*** All ~~[such]~~ deposits ***maintained*** in this state ***pursuant to this section*** are subject to the applicable provisions of chapter 682B of NRS.

**Sec. 7.** NRS 682B.015 is hereby amended to read as follows:

682B.015 1. ~~[In]~~ ***Except as otherwise provided in subsection 5 of NRS 680A.140, in*** addition to the deposits authorized by NRS 682B.010, the commissioner may by regulation require as a condition of transacting the business of insurance in this state that a special deposit be maintained in this state by an authorized insurer who is subject to the

provisions of chapter 680A of NRS or by an eligible insurer who is subject to the provisions of chapter 685A of NRS.

2. A deposit pursuant to this section:

(a) Must be held for the sole benefit and protection of policyholders residing in this state and any risk that is resident, located or to be performed in this state that is the subject of insurance; and

(b) Is subject to the provisions of NRS 682B.030 to 682B.120, inclusive.

**Sec. 8.** Chapter 683A of NRS is hereby amended by adding thereto a new section to read as follows:

***As used in NRS 683A.090 to 683A.360, inclusive, the terms "authorized insurer" and "insurer" include the state industrial insurance system.***

**Sec. 9.** Chapter 686A of NRS is hereby amended by adding thereto a new section to read as follows:

***As used in NRS 686A.010 to 686A.280, inclusive, and 686A.310, the terms "insurer" and "person" include the state industrial insurance system.***

**Sec. 10.** NRS 686A.010 is hereby amended to read as follows:

686A.010 The purpose of NRS 686A.010 to 686A.310, inclusive, ***and section 9 of this act*** is to regulate trade practices in the business of insurance in accordance with the intent of Congress as expressed in the Act of Congress approved March 9, 1945, being c. 20, 59 Stat. 33, also designated as 15 U.S.C. §§ 1011 to 1015, inclusive, by defining, or providing for the determination of, all such practices in this state which constitute unfair

methods of competition or unfair or deceptive acts or practices and by prohibiting the trade practices so defined or determined.

**Sec. 11.** NRS 686A.015 is hereby amended to read as follows:

686A.015 1. Notwithstanding any other provision of law ~~[,]~~ ***and except as otherwise provided in subsection 3,*** the commissioner has exclusive jurisdiction in regulating the subject of trade practices in the business of insurance in this state.

2. The commissioner shall establish a program within the division to investigate any act or practice which constitutes an unfair or deceptive trade practice in violation of the provisions of NRS 686A.010 to 686A.310, inclusive.

***3. The provisions of subsection 1 do not preempt the authority of the administrator of the division of industrial relations of the department of business and industry to exercise all authority granted to him pursuant to the provisions of chapters 616A to 616D, inclusive, and chapter 617 of NRS to regulate, audit, impose fines and conduct investigations of insurers who provide industrial insurance to ensure the proper provision of workers' compensation to claimants. As used in this subsection, "insurers who provide industrial insurance" has the meaning ascribed to the term "insurer" in NRS 616A.270.***

**Sec. 12.** NRS 686A.183 is hereby amended to read as follows:

686A.183 1. After the hearing provided for in NRS 686A.160, the commissioner shall issue his order on hearing pursuant to NRS 679B.360. If the commissioner determines that the person charged has engaged in an unfair method of competition or an

unfair or deceptive act or practice in violation of NRS 686A.010 to 686A.310, inclusive, he shall order him to cease and desist from engaging in that method of competition, act or practice, and may order one or both of the following:

(a) If the person knew or reasonably should have known that he was in violation of NRS 686A.010 to 686A.310, inclusive, payment of an administrative fine of not more than $5,000 for each act or violation, except that as to licensed agents, brokers, solicitors and adjusters, the administrative fine must not exceed $500 for each act or violation.

(b) Suspension or revocation of the person's license ***or the person's authority to transact insurance*** if he knew or reasonably should have known that he was in violation of NRS 686A.010 to 686A.310, inclusive.

2. Until the expiration of the time allowed for taking an appeal, pursuant to NRS 679B.370, if no petition for review has been filed within that time, or, if a petition for review has been filed within that time, until the official record in the proceeding has been filed with the court, the commissioner may, at any time, upon such notice and in such manner as he deems proper, modify or set aside, in whole or in part, any order issued by him under this section.

3. After the expiration of the time allowed for taking an appeal, if no petition for review has been filed, the commissioner may at any time, after notice and opportunity for hearing, reopen and alter, modify or set aside, in whole or in part, any order issued by him under this section whenever in his opinion conditions of fact or of law have so changed as to require such action or if the public interest so requires.

**Sec. 13.** NRS 686A.187 is hereby amended to read as follows:

686A.187 Any person who violates a cease and desist order of the commissioner issued under NRS 686A.183, except one issued with respect to NRS 686A.170, is subject, in the discretion of the commissioner, after notice and hearing and upon order of the commissioner, to one or both of the following:

1. Payment of an administrative fine of not more than $5,000 for each and every violation.

2. Suspension or revocation of ~~[the license.]~~ ***his license or his authority to transact insurance.***

**Sec. 14.** NRS 686A.260 is hereby amended to read as follows:

686A.260 The commissioner may revoke or suspend the license ***or the authority to transact insurance*** of any person domiciled or resident in Nevada and licensed ***, certified or otherwise authorized*** to transact insurance in Nevada as insurer, agent, broker or otherwise, upon a hearing and proof that such person, as the result of a hearing before the commissioner, director or superintendent of insurance or insurance department of another state, or in a judicial proceeding in another state, has been found to have violated the insurance laws of that state relating to unfair methods of competition or unfair or deceptive acts or practices in the conduct of the business of insurance, and as a result thereof either has had his license ***or other authority to transact insurance*** revoked or suspended in that state or has been found guilty of failing to comply with any order, decree or judgment issued pursuant to such hearing or judicial proceeding in that state.

**Sec. 15.** 1. This section and sections 1, 2 and 4 to 14, inclusive, of this act become effective on July 1, 1999.

2. Section 3 of this act becomes effective at 12:01 a.m. on July 1, 1999.

SUMMARY—Requires administrator of division of industrial relations of department of business and industry to provide certain information to department of taxation upon request. (BDR 53-694)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: No.

AN ACT relating to industrial insurance; requiring the administrator of the division of industrial relations of the department of business and industry to provide to the department of taxation certain information upon request; 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.** NRS 616B.012 is hereby amended to read as follows:

616B.012 1. Except as otherwise provided in this section and in NRS 616B.015, 616B.021 and 616C.205, information obtained from any insurer, employer or employee is confidential and may not be disclosed or be open to public inspection in any manner which would reveal the person's identity.

2. Any claimant or his legal representative is entitled to information from the records of the insurer, to the extent necessary for the proper presentation of a claim in any proceeding under chapters 616A to 616D, inclusive, of NRS.

3. The division and administrator are entitled to information from the records of the insurer which is necessary for the performance of their duties. The administrator may, by regulation, prescribe the manner in which otherwise confidential information may be made available to:

(a) Any agency of this or any other state charged with the administration or enforcement of laws relating to industrial insurance, unemployment compensation, public assistance or labor law and industrial relations;

(b) Any state or local agency for the enforcement of child support;

(c) The Internal Revenue Service of the Department of the Treasury;

(d) The department of taxation; and

(e) The state contractors' board in the performance of its duties to enforce the provisions of chapter 624 of NRS.

Information obtained in connection with the administration of a program of industrial insurance may be made available to persons or agencies for purposes appropriate to the operation of a program of industrial insurance.

4. Upon written request made by a public officer of a local government, an insurer shall furnish from its records, the name, address and place of employment of any person listed in its records. The request must set forth the social security number of the person

about whom the request is made and contain a statement signed by proper authority of the local government certifying that the request is made to allow the proper authority to enforce a law to recover a debt or obligation owed to the local government. The information obtained by the local government is confidential and may not be used or disclosed for any purpose other than the collection of a debt or obligation owed to that local government. The insurer may charge a reasonable fee for the cost of providing the requested information.

5. To further a current criminal investigation, the chief executive officer of any law enforcement agency of this state may submit to the administrator a written request for the name, address and place of employment of any person listed in the records of an insurer. The request must set forth the social security number of the person about whom the request is made and contain a statement signed by the chief executive officer certifying that the request is made to further a criminal investigation currently being conducted by the agency. Upon receipt of a request, the administrator shall instruct the insurer to furnish the information requested. Upon receipt of such an instruction, the insurer shall furnish the information requested. The insurer may charge a reasonable fee to cover any related administrative expenses.

6. ~~[The]~~ ***Upon request by the department of taxation, the*** administrator shall provide ~~[lists]~~ ***:***

***(a) Lists*** containing the names and addresses of employers ~~[, the number of employees employed by each employer and the total wages paid by each employer]~~ ***; and***

*(b) Other information concerning employers collected and maintained by the administrator or the division to carry out the purposes of chapters 616A to 616D, inclusive, or chapter 617 of NRS,*

to the department ~~[of taxation, upon request,]~~ for its use in verifying returns for the business tax. The administrator may charge a reasonable fee to cover any related administrative expenses.

7. Any person who, in violation of this section, discloses information obtained from files of claimants or policyholders, or obtains a list of claimants or policyholders under chapters 616A to 616D, inclusive, of NRS and uses or permits the use of the list for any political purposes, is guilty of a gross misdemeanor.

8. All letters, reports or communications of any kind, oral or written, from the insurer, or any of its agents, representatives or employees are privileged and must not be the subject matter or basis for any lawsuit if the letter, report or communication is written, sent, delivered or prepared pursuant to the requirements of chapters 616A to 616D, inclusive, of NRS.

**Sec. 2.** This act becomes effective on July 1, 1999.

SUMMARY—Specifies information administrator of division of industrial relations of department of business and industry can require certain insurers to provide on claims the insurers process. (BDR 53-696)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: No.

AN ACT relating to the division of industrial relations of department of business and industry; specifying the information that the administrator of the division can require insurers who provide industrial insurance to provide on claims those insurers process; 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 616B of NRS is hereby amended by adding thereto a new section to read as follows:

*1. Except as otherwise provided by any provision that authorizes the administrator to receive specific notification or requires him to collect specific information from*

*insurers, the administrator may require an insurer to submit, on each claim the insurer processes, only:*

*(a) The first name, last name, middle initial, date of birth and social security number of the injured employee;*

*(b) The name, phone number and tax identification number of the employer of the injured employee;*

*(c) If the employer of the injured employee is a member of an association of self-insured public or private employers, the name and tax identification number of that association;*

*(d) The name and tax identification number of the insurer;*

*(e) Whether the insurer is a private carrier, an association of self-insured public or private employers, a self-insured employer or the system;*

*(f) The date upon which the employer's policy of industrial insurance that covers the claim became effective and the date upon which it will expire or must be renewed;*

*(g) The number assigned to the claim by the insurer;*

*(h) The date of the injury or of the sustaining of the occupational disease;*

*(i) The part of the body that was injured or the occupational disease that was sustained by the injured employee;*

*(j) The percentage of disability as determined by the rating physician or chiropractor;*

*(k) Whether the claim concerns accident benefits or compensation for a disability, or both;*

*(l) Which part of the body was permanently impaired, if any;*

*(m) What type of accident or occupational disease is the subject of the claim;*

*(n) The date, if any, that the claim was closed; and*

*(o) If the claim has been closed, whether the closure was:*

*(1) Automatic pursuant to the provisions of subsection 2 of NRS 616C.235; or*

*(2) Pursuant to the provisions of subsection 1 of NRS 616C.235,*

*and what type of compensation was provided for the claim.*

*2. The administrator may:*

*(a) Develop a list of codes to correspond to the information that may be reported pursuant to paragraphs (e), (k), (l), (m) and (o) of subsection 1; and*

*(b) Require that the codes be used to report the information specified in paragraphs (e), (k), (l), (m) and (o) of subsection 1.*

*3. Any information that the administrator requires to be submitted pursuant to subsection 1 must be required:*

*(a) Of each insurer; and*

*(b) By the same deadline.*

*The administrator may not require an insurer to submit more or different information than another insurer.*

*4. The provisions of this section must not be construed to prevent the administrator from:*

*(a) Conducting audits pursuant to the provisions of NRS 616B.003 and collecting information from such audits; or*

*(b) Receiving and collecting information from the reports that insurers must submit to the administrator pursuant to the provisions of NRS 616B.009.*

*5. As used in this section, the term "tax identification number" means the number assigned by the Internal Revenue Service of the United States Department of the Treasury for identification.*

Sec. 2. This act becomes effective on July 1, 1999.

SUMMARY—Revises provisions governing benefits for industrial insurance for certain police officers and firemen. (BDR 53-925)

FISCAL NOTE: Effect on Local Government: Yes.

Effect on the State or on Industrial Insurance: Yes.

AN ACT relating to industrial insurance; providing in skeleton form for the availability of benefits for industrial insurance to certain police officers for exposure to a contagious disease; limiting the availability of benefits for industrial insurance for certain retired police officers and firemen; 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.** NRS 616A.035 is hereby amended to read as follows:

616A.035 1. "Accident benefits" means medical, surgical, hospital or other treatments, nursing, medicine, medical and surgical supplies, crutches and apparatuses, including prosthetic devices.

2. The term includes ~~[medical]~~ *:*

*(a) Medical* benefits as defined by NRS 617.130 ~~[and any preventive]~~ *;*

*(b) Preventive* treatment administered as a precaution to an employee who is exposed to a contagious disease while providing medical services, including emergency medical care, in the course and scope of his employment ~~[.]~~ *; and*

*(c) Preventive treatment administered as a precaution to an employee of the department of prisons or an employee of the mental hygiene and mental retardation division of the department of human resources who:*

*(1) Qualifies as a police officer pursuant to subsection 7 or 9 of NRS 617.135, as appropriate; and*

*(2) Was exposed to a contagious disease when battered by an offender or when responding to a physical altercation between offenders at an institution or facility of the department of prisons or at a facility for mentally disordered offenders, as appropriate, in the course and scope of his employment,*

*if the battery or employee's response to the altercation is documented by the creation and maintenance of a report concerning the battery or altercation by the department of prisons or the mental hygiene and mental retardation division of the department of human resources, as appropriate.*

3. The term does not include:

(a) Exercise equipment, a hot tub or a spa for an employee's home;

(b) Membership in an athletic or health club;

(c) Except as otherwise provided in NRS 616C.245, a motor vehicle; or

(d) The costs of operating a motor vehicle provided pursuant to NRS 616C.245, fees related to the operation or licensing of the motor vehicle or insurance for the motor vehicle.

***4. As used in this section, the term:***

***(a) "Battery" includes, without limitation, the intentional propelling or placing, or the causing to be propelled or placed, of any human excrement or bodily fluid upon the person of an employee.***

***(b) "Preventive treatment" includes, without limitation, tests to determine if an employee has contracted the contagious disease to which he was exposed.***

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

616A.065 1. Except as otherwise provided in subsection 3, "average monthly wage" means the lesser of:

(a) The monthly wage actually received or deemed to have been received by the employee on the date of the accident or injury to the employee, ***or, in the case of a fireman or police officer who is entitled to compensation pursuant to NRS 617.455 or 617.457 and who is no longer employed as such a fireman or police officer, the date of the termination of his employment,*** excluding remuneration from employment:

(1) Not subject to the Nevada Industrial Insurance Act or the Nevada Occupational Diseases Act; and

(2) For which coverage is elective, but has not been elected; or

(b) One hundred fifty percent of the state average weekly wage as most recently computed by the employment security division of the department of employment, training and rehabilitation during the fiscal year preceding the date of the injury or accident, multiplied by 4.33.

2. For the purposes of subsection 1:

(a) The date of the accident or injury to the employee must be determined pursuant to NRS 616C.425.

(b) ***The wage received by a fireman or police officer who is entitled to compensation pursuant to NRS 617.455 or 617.457 and who is no longer employed as such a fireman or police officer is the average wage received by the fireman or police officer over the last 12 weeks of his employment.***

***(c)*** "Wage":

(1) Does not include any amount paid by an employer for health insurance that covers an employee or his dependents, or both.

(2) Is increased by the amount of tips reported by an employee to his employer pursuant to 26 U.S.C. § 6053(a), except:

(I) Tips in a form other than cash; and

(II) Tips in cash which total less than $20 per month.

3. For the purpose of increasing compensation for permanent total disability pursuant to NRS 616C.465 or increasing death benefits pursuant to NRS 616C.520, "average monthly wage" has the meaning shown in the following schedule:

| Effective Date | Average Monthly Wage for Prior Fiscal Year |
|---|---|
| July 1, 1973 | $688.60 |
| July 1, 1974 | 727.48 |
| July 1, 1975 | 1,142.21 |
| July 1, 1976 | 1,211.00 |
| July 1, 1977 | 1,287.44 |
| July 1, 1978 | 1,377.08 |
| July 1, 1979 | 1,488.46 |
| July 1, 1980 | 1,591.86 |

**Sec. 3.** NRS 616A.265 is hereby amended to read as follows:

616A.265 1. "Injury" or "personal injury" means a sudden and tangible happening of a traumatic nature, producing an immediate or prompt result which is established by medical evidence, including injuries to prosthetic devices. Any injury sustained by an employee while engaging in an athletic or social event sponsored by his employer shall be

deemed not to have arisen out of or in the course of employment unless the employee received remuneration for participation in the event.

2. For the purposes of chapters 616A to 616D, inclusive, of NRS:

(a) Coronary thrombosis, coronary occlusion, or any other ailment or disorder of the heart, and any death or disability ensuing therefrom, shall be deemed not to be an injury by accident sustained by an employee arising out of and in the course of his employment.

(b) The exposure of an employee to a contagious disease while providing medical services, including emergency medical care, in the course and scope of his employment shall be deemed to be an injury by accident sustained by the employee arising out of and in the course of his employment.

***(c) The exposure to a contagious disease of an employee of the department of prisons or an employee of the mental hygiene and mental retardation division of the department of human resources who:***

***(1) Qualifies as a police officer pursuant to subsection 7 or 9 of NRS 617.135, as appropriate; and***

***(2) Was exposed to the contagious disease when battered by an offender or when responding to a physical altercation between offenders at an institution or facility of the department of prisons or at a facility for mentally disordered offenders, as appropriate, in the course and scope of his employment,***

***shall be deemed to be an injury by accident sustained by the employee arising out of and in the course of his employment if the battery or employee's response to the***

*altercation is documented by the creation and maintenance of a report concerning the battery or altercation by the department of prisons or the mental hygiene and mental retardation division of the department of human resources, as appropriate. As used in this paragraph, the term "battery" includes, without limitation, the intentional propelling or placing, or the causing to be propelled or placed, of any human excrement or bodily fluid upon the person of an employee.*

**Sec. 4.** Chapter 616C of NRS is hereby amended by adding thereto a new section to read as follows:

*1. If an employee of the department of prisons or an employee of the mental hygiene and mental retardation division of the department of human resources, who qualifies as a police officer pursuant to subsection 7 or 9 of NRS 617.135, as appropriate, is battered by an offender or responds to a physical altercation between offenders at an institution or facility of the department of prisons or at a facility for mentally disordered offenders, in the course and scope of his employment, the department of prisons or the mental hygiene and mental retardation division of the department of human resources, as appropriate, shall create and maintain a report concerning the battery or altercation that includes, without limitation, the name of each employee who was a victim of the battery or responded to the altercation and the name of each offender involved in the battery or altercation.*

*2. A person who:*

*(a) Was employed as a police officer, as that term is defined in subsection 7 or 9 of NRS 617.135; and*

*(b) After his employment is terminated, voluntarily or involuntarily, is diagnosed with a contagious disease to which he was exposed in the course and scope of his employment with the department of prisons or the mental hygiene and mental retardation division of the department of human resources,*

*may not receive compensation for that contagious disease pursuant to chapters 616A to 616D, inclusive, or chapter 617 of NRS, unless the diagnosis occurs within a period that begins with the last date the person actually worked as such a police officer and extends for a period calculated by multiplying 4 months by the number of full years of his employment.*

*3. As used in this section, the term "battery" includes, without limitation, the intentional propelling or placing, or the causing to be propelled or placed, of any human excrement or bodily fluid upon the person of an employee.*

**Sec. 5.** NRS 616C.160 is hereby amended to read as follows:

616C.160 If, after a claim for compensation is filed pursuant to NRS 616C.020:

1. The injured employee seeks treatment from a physician or chiropractor for a newly developed injury or disease; and

2. The employee's medical records for the injury reported do not include a reference to the injury or disease for which treatment is being sought, or there is no documentation

indicating that there was possible exposure to an injury described in paragraph (b) ***or (c)*** of subsection 2 of NRS 616A.265,

the injury or disease for which treatment is being sought must not be considered part of the employee's original claim for compensation unless the physician or chiropractor establishes by medical evidence a causal relationship between the injury or disease for which treatment is being sought and the original accident.

**Sec. 6.** Chapter 617 of NRS is hereby amended by adding thereto a new section to read as follows:

***1. To determine the insurer who is responsible for the compensation that is payable to a person who:***

***(a) Is eligible for compensation for a disease of the lungs or the heart pursuant to the provisions of NRS 617.455 or 617.457; and***

***(b) At the time of diagnosis of the disease of the lungs or the heart, is no longer working as such a fireman or police officer,***

***the rule stated in subsection 2 must be applied.***

***2. The required compensation must be provided by:***

***(a) If the disease is a new disease of the lungs or the heart or an aggravation of a previously diagnosed disease of the lungs or heart, the insurer of the employer of the fireman or police officer at the most recent time of exposure to conditions that bear a causal relation to the:***

*(1) New disease; or*

*(2) Aggravation of the previously diagnosed disease; or*

*(b) If the disease of the lungs or the heart is a recurrence of a previously diagnosed disease of the lungs or the heart, the insurer of the employer of the fireman or police officer at the most recent time of exposure to conditions that bear a causal relation to the previously diagnosed disease of the lungs or heart.*

**Sec. 7.** NRS 617.455 is hereby amended to read as follows:

617.455 1. Notwithstanding any other provision of this chapter ~~[,]~~ *and except as otherwise provided in subsections 8 and 9,* diseases of the lungs, resulting in either temporary or permanent disability or death, are occupational diseases and compensable as such under the provisions of this chapter if caused by exposure to heat, smoke, fumes, tear gas or any other noxious gases, arising out of and in the course of the employment of a person who, for 2 years or more, has been:

(a) Employed in this state in a full-time salaried occupation of fire fighting for the benefit or safety of the public;

(b) Acting as a volunteer fireman in this state and is entitled to the benefits of chapters 616A to 616D, inclusive, of NRS pursuant to the provisions of NRS 616A.145; or

(c) Employed in a full-time salaried occupation as a police officer in this state.

2. Except as provided in subsection 3, each employee who is to be covered for diseases of the lungs pursuant to the provisions of this section shall submit to a physical examination, including a thorough test of the functioning of his lungs and the making of

an X-ray film of his lungs, upon employment, upon commencement of the coverage, once every even-numbered year until he is 40 years of age or older and thereafter on an annual basis . ~~[during his employment.]~~ ***Failure to submit to the physical examinations required by this subsection excludes the employee from the benefits of this section if submitting to the examinations is within the ability of the employee.***

3. A thorough test of the functioning of the lungs is not required for a volunteer fireman.

4. All physical examinations required pursuant to subsection 2 must be paid for by the employer.

5. ~~[A disease of the lungs is conclusively presumed to have arisen out of and in the course of the employment of a person who has been employed in a full time continuous, uninterrupted and salaried occupation as a police officer or fireman for 5 years or more before the date of disablement.~~

~~6.]~~ Failure to correct predisposing conditions which lead to lung disease when so ordered in writing by the examining physician after the annual examination excludes the employee from the benefits of this section if the correction is within the ability of the employee.

~~[7. A]~~

***6. Except as otherwise provided in subsections 8 and 9, a*** person who is determined to be:

(a) Partially disabled from an occupational disease pursuant to the provisions of this section; and

(b) Incapable of performing, with or without remuneration, work as a fireman or police officer,

may elect to receive the benefits provided under NRS 616C.440 for a permanent total disability.

*7. A disease of the lungs is conclusively presumed to have arisen out of and in the course of the employment of a person who has been employed in a full-time continuous, uninterrupted and salaried occupation as a police officer or fireman for 5 years or more before the date of disablement. This presumption applies to a disease of the lungs diagnosed when the person is no longer employed in the qualifying capacity if the diagnosis occurs within a period which begins with the last date the employee actually worked in the qualifying capacity and extends for a period calculated by multiplying 4 months by the number of full years of his employment.*

*8. A person who, when diagnosed with a disease of the lungs:*

*(a) Has satisfied the criteria for eligibility for compensation set forth in this section;*

*(b) Is not employed in the qualifying capacity; and*

*(c) Is receiving retirement benefits,*

*is entitled to receive medical benefits for the disease of the lungs but is not entitled to receive compensation for temporary or permanent disability.*

*9. A person who begins receiving retirement benefits while receiving compensation for temporary or permanent disability pursuant to this section:*

*(a) Is not entitled to continue receiving compensation for the disability; and*

*(b) Shall immediately notify the insurer who is providing the compensation that he has elected to receive retirement benefits.*

**Sec. 8.** NRS 617.457 is hereby amended to read as follows:

617.457 1. Notwithstanding any other provision of this chapter ~~[,]~~ *and except as otherwise provided in subsections 8 and 9,* diseases of the heart of a person who, for 5 years or more, has been employed in a full-time continuous, uninterrupted and salaried occupation as a fireman or police officer in this state before the date of disablement are conclusively presumed to have arisen out of and in the course of the employment. *This presumption applies to a disease of the heart diagnosed after the termination of the person's employment if the diagnosis occurs within a period which begins with the last date the employee actually worked in the qualifying capacity and extends for a period calculated by multiplying 4 months by the number of full years of his employment.*

2. Notwithstanding any other provision of this chapter, diseases of the heart, resulting in either temporary or permanent disability or death, are occupational diseases and compensable as such under the provisions of this chapter if caused by extreme overexertion in times of stress or danger and a causal relationship can be shown by competent evidence that the disability or death arose out of and was caused by the performance of duties as a volunteer fireman by a person entitled to the benefits of

chapters 616A to 616D, inclusive, of NRS pursuant to the provisions of NRS 616A.145 and who, for 5 years or more, has served continuously as a volunteer fireman in this state and who has not reached the age of 55 years before the onset of the disease.

3. Except as otherwise provided in subsection 4, each employee who is to be covered for diseases of the heart pursuant to the provisions of this section shall submit to a physical examination, including an examination of the heart, upon employment, upon commencement of coverage and thereafter on an annual basis . ~~[during his employment.]~~ ***Failure to submit to the physical examinations required by this subsection excludes the employee from the benefits of this section if submitting to the examinations is within the ability of the employee.***

4. A physical examination is not required for a volunteer fireman more than once every 3 years after an initial examination.

5. All physical examinations required pursuant to subsection 3 must be paid for by the employer.

6. Failure to correct predisposing conditions which lead to heart disease when so ordered in writing by the examining physician subsequent to the annual examination excludes the employee from the benefits of this section if the correction is within the ability of the employee.

7. ~~[A]~~ ***Except as otherwise provided in subsections 8 and 9, a*** person who is determined to be:

(a) Partially disabled from an occupational disease pursuant to the provisions of this section; and

(b) Incapable of performing, with or without remuneration, work as a fireman or police officer,

may elect to receive the benefits provided under NRS 616C.440 for a permanent total disability.

8. ***A person who, when diagnosed with a disease of the heart:***

***(a) Has satisfied the criteria for eligibility for compensation set forth in this section;***

***(b) Is not employed in the qualifying capacity; and***

***(c) Is receiving retirement benefits,***

***is entitled to receive medical benefits for the disease of the heart but is not entitled to receive compensation for temporary or permanent disability.***

***9. A person who begins receiving retirement benefits while receiving compensation for temporary or permanent disability pursuant to this section:***

***(a) Is not entitled to continue receiving compensation for the disability; and***

***(b) Shall immediately notify the insurer who is providing the compensation that he has elected to receive retirement benefits.***

***10.*** Claims filed under this section may be reopened at any time during the life of the claimant for further examination and treatment of the claimant upon certification by a physician of a change of circumstances related to the occupational disease which would warrant an increase or rearrangement of compensation.

**Sec. 9.** The provisions of this act do not apply to an employee who, before July 1, 1999, is receiving compensation pursuant to the provisions of chapters 616A to 616D, inclusive, or chapter 617 of NRS.

**Sec. 10.** This act becomes effective on July 1, 1999.

SUMMARY—Authorizes certain associations of self-insured private employers to determine certain requirements that employer must meet to become member of association. (BDR 53-934)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: No.

AN ACT relating to industrial insurance; authorizing certain associations of self-insured private employers to determine the amount of tangible net worth and manual premium that an employer must have to become a member of the association; authorizing certain associations of self-insured private employers to determine the documentation demonstrating solvency that an employer must provide to become a member of the association; specifying that under certain circumstances the addition of an employer to the membership of an association of self-insured private employers is not a change in the information that the association submitted to the commissioner of insurance in its application for certification; 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.** NRS 616B.386 is hereby amended to read as follows:

616B.386 1. If an employer wishes to become a member of an association of self-insured public or private employers, the employer must:

(a) Submit an application for membership to the board of trustees or third-party administrator of the association; and

(b) Enter into an indemnity agreement as required by NRS 616B.353.

2. The membership of the applicant becomes effective when each member of the association approves the application or on a later date specified by the association. The application for membership and the action taken on the application must be maintained as permanent records of the board of trustees.

3. Each member who is a member of an association during the 12 months immediately following the formation of the association must:

(a) Have a tangible net worth of at least $500,000; or

(b) Have had a reported payroll for the previous 12 months which would have resulted in a manual premium ~~[calculated according to the regulations adopted pursuant to NRS 616B.206]~~ of at least $15,000 ~~[.~~

~~Any]~~ *, calculated in accordance with a manual prepared pursuant to subsection 4 of NRS 686B.1765.*

*4. An* employer who seeks to become a member of the association ~~[subsequently]~~ *after the 12 months immediately following the formation of the association* must meet

the requirement set forth in paragraph (a) or (b) ***of subsection 3*** unless the commissioner adjusts the requirement for membership in the association after conducting an annual review of the actuarial solvency of the association pursuant to subsection 1 of NRS 616B.353.

~~[4.]~~ ***5. An association of self-insured private employers may apply to the commissioner for authority to determine the amount of tangible net worth and manual premium that an employer must have to become a member of the association. The commissioner shall approve the application if the association:***

***(a) Has been certified to act as an association for at least the 3 consecutive years immediately preceding the date on which the association filed the application with the commissioner;***

***(b) Has a combined tangible net worth of all members in the association of at least $5,000,000;***

***(c) Has at least 15 members; and***

***(d) Has not been required to meet informally with the commissioner pursuant to subsection 1 of NRS 616B.431 during the 18-month period immediately preceding the date on which the association filed the application with the commissioner or, if the association has been required to attend such a meeting during that period, has not had its certificate withdrawn before the date on which the association filed the application.***

***6. An association of self-insured private employers may apply to the commissioner for authority to determine the documentation demonstrating solvency that an employer***

*must provide to become a member of the association. The commissioner shall approve the application if the association:*

*(a) Has been certified to act as an association for at least the 3 consecutive years immediately preceding the date on which the association filed the application with the commissioner;*

*(b) Has a combined tangible net worth of all members in the association of at least $5,000,000; and*

*(c) Has at least 15 members.*

*7. The commissioner may withdraw his approval of an application submitted pursuant to subsection 5 or 6 if he determines the association has ceased to comply with any of the requirements set forth in subsection 5 or 6, as applicable.*

*8.* Except as otherwise provided in NRS 616B.389, a member of an association may terminate his membership at any time. To terminate his membership, a member must submit to the association's administrator a notice of intent to withdraw from the association at least 120 days before the effective date of withdrawal. The association's administrator shall, within 10 days after receipt of the notice, notify the commissioner of the employer's intent to withdraw from the association.

~~[5.]~~ *9.* The members of an association may cancel the membership of any member of the association in accordance with the bylaws of the association.

~~[6.]~~ *10.* The association shall:

(a) Notify the commissioner and the administrator of the termination or cancellation of the membership of any member of the association within 10 days after the termination or cancellation; and

(b) At the expense of the member whose membership is terminated or canceled, maintain coverage for that member for 30 days after notice is given pursuant to paragraph (a), unless the association first receives notice from the administrator that the member has:

(1) Become insured by the system;

(2) Been certified as a self-insured employer pursuant to NRS 616B.312;

(3) Become a member of another association of self-insured public or private employers; or

(4) Become insured by a private carrier.

~~[7.]~~ *11.* If a member of an association changes his name or form of organization, the member remains liable for any obligations incurred or any responsibilities imposed pursuant to chapters 616A to 617, inclusive, of NRS under his former name or form of organization.

~~[8.]~~ *12.* An association is liable for the payment of any compensation required to be paid by a member of the association pursuant to chapters 616A to 616D, inclusive, or chapter 617 of NRS during his period of membership. The insolvency or bankruptcy of a member does not relieve the association of liability for the payment of the compensation.

**Sec. 2.** NRS 616B.389 is hereby amended to read as follows:

616B.389 1. Except as otherwise provided in subsection 2, if the membership of an employer who was a member of an association of self-insured public or private employers has been terminated or canceled and the system subsequently insures that employer:

(a) The employer shall remain insured by the system for at least 2 years before it may join an association of self-insured public or private employers.

(b) The system shall determine the amount of premium that such an employer must pay based on:

(1) The premium rate for the standard industrial classification of that employer which the system may deviate from not more than 15 percent; and

(2) An adjustment based on the experience of the employer for the 3 previous years,

in accordance with ~~[the regulations adopted]~~ ***rates approved by the commissioner*** pursuant to NRS ~~[616B.206.]~~ ***686B.177.***

2. A member of an association who terminates his membership in the association pursuant to subsection ~~[4]~~ *8* of NRS 616B.386 may not, before July 1, 1998, obtain industrial insurance from the system.

**Sec. 3.** NRS 616B.392 is hereby amended to read as follows:

616B.392 *1.* An association of self-insured public or private employers shall notify the commissioner of any change in the information submitted in its application for

certification or in the manner of its compliance with NRS 616B.353 not later than 30 days after the change.

*2. For the purposes of this section, the addition of an employer to the membership of an association of self-insured private employers is not a change in the information that the association submitted in its application for certification.*

**Sec. 4.** 1. This section and sections 2 and 3 of this act become effective on July 1, 1999.

2. Section 1 of this act becomes effective at 12:01 a.m. on July 1, 1999.

SUMMARY—Provides formula for distribution among injured employee or dependents, attorney and certain other persons of damages recovered by injured employee in tort action against third party. (BDR 53-1076)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: No.

AN ACT relating to industrial insurance; providing a formula for the distribution among an injured employee or his dependents, his attorney and certain other persons of damages recovered under certain circumstances from a party other than the employer when that party is legally liable for the industrial injury of the employee; 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.** NRS 616C.215 is hereby amended to read as follows:

616C.215 1. If an injured employee or, in the event of his death, his dependents, bring an action in tort against his employer to recover payment for an injury which is compensable ~~[under]~~ ***pursuant to the provisions of*** chapters 616A to 616D, inclusive, or

chapter 617 of NRS and, notwithstanding the provisions of NRS 616A.020, receive payment from the employer for that injury:

(a) The amount of compensation the injured employee or his dependents are entitled to receive pursuant to the provisions of chapters 616A to 616D, inclusive, of NRS, including any future compensation, must be reduced by the amount paid by the employer.

(b) The insurer, or in the case of claims involving the uninsured employer's claim fund or a subsequent injury fund the administrator, has a lien upon the total amount paid by the employer if the injured employee or his dependents receive compensation pursuant to the provisions of chapters 616A to 616D, inclusive, of NRS.

This subsection is applicable whether the money paid to the employee or his dependents by the employer is classified as a gift, a settlement or otherwise. The provisions of this subsection do not grant to an injured employee any right of action in tort to recover damages from his employer for his injury.

2. When an employee receives an injury for which compensation is payable pursuant to the provisions of chapters 616A to 616D, inclusive, of NRS and which 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 the injured employee or his dependents are entitled to receive pursuant to the provisions of chapters 616A to 616D, inclusive, of NRS, including any future compensation, 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 pursuant to the provisions of chapters 616A to 616D, inclusive, of NRS, the insurer, or in case of claims involving the uninsured employers' claim fund or a subsequent injury fund the administrator, 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.

3. When an injured employee incurs an injury for which compensation is payable pursuant to the provisions of chapters 616A to 616D, inclusive, of NRS and which was caused under circumstances entitling him, or in the case of death his dependents, to receive proceeds under his employer's policy of uninsured or underinsured vehicle coverage:

(a) The injured employee, or in the case of death his dependents, may take proceedings to recover those proceeds, but the amount of compensation the injured employee or his dependents are entitled to receive pursuant to the provisions of chapters 616A to 616D, inclusive, of NRS, including any future compensation, must be reduced by the amount of proceeds received.

(b) If an injured employee, or in the case of death his dependents, receive compensation pursuant to the provisions of chapters 616A to 616D, inclusive, of NRS,

the insurer, or in the case of claims involving the uninsured employers' claim fund or a subsequent injury fund the administrator, is subrogated to the rights of the injured employee or his dependents to recover proceeds under the employer's policy of uninsured or underinsured vehicle coverage. The insurer and the administrator are not subrogated to the rights of an injured employee or his dependents under a policy of uninsured or underinsured vehicle coverage purchased by the employee.

4. In any action or proceedings taken by the insurer or the administrator pursuant to this section, evidence of the amount of compensation, accident benefits and other expenditures which the insurer, the uninsured employers' claim fund or a subsequent injury fund have 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 insurer or the administrator recovers more than those amounts, the excess must be paid to the injured employee or his dependents.

5. In any case where the insurer or the administrator is subrogated to the rights of the injured employee or of his dependents as provided in subsection 2 or 3, the insurer or the administrator 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.

6. The lien provided for ~~[under]~~ *pursuant to* subsection 1 or 5 includes the total compensation expenditure incurred by the insurer, the uninsured employers' claim fund or a subsequent injury fund for the injured employee and his dependents.

7. *Unless the parties have agreed otherwise, if an injured employee, or in the case of his death his dependents, have initiated a proceeding or action pursuant to subsection 2 or 3 and the insurer, or in the case of claims involving the uninsured employer's claim fund or a subsequent injury fund the administrator, has not intervened in such proceeding or action, out of the damages recovered or the proceeds received:*

*(a) The injured employee is entitled to at least one-third, regardless of the amount of the lien of:*

*(1) The insurer; or*

*(2) In the case of claims involving the uninsured employer's claim fund or a subsequent injury fund, the administrator.*

*(b) The remainder after allocating the amount set forth in paragraph (a) or the amount of the lien of the insurer or the administrator, whichever is less, must be paid to the insurer or the administrator, as applicable.*

*(c) If the lien of the insurer or administrator is for an amount that equals less than two-thirds of the damages recovered or the proceeds received, the injured employee is also entitled to the difference between that amount and the amount of the lien.*

***(d) Costs and attorney's fees must not be apportioned in a manner inconsistent with the provisions of this subsection.***

*8.* An injured employee, or in the case of death his dependents, shall notify the insurer, or in the case of claims involving the uninsured employers' claim fund or a subsequent injury fund the administrator, in writing before initiating a proceeding or action pursuant to this section.

~~[8.]~~ *9.* Within 15 days after the date of recovery by way of actual receipt of the proceeds of the judgment, settlement or otherwise:

(a) The injured employee or his dependents, or the attorney or representative of the injured employee or his dependents; and

(b) The third-party insurer,

shall notify the insurer, or in the case of claims involving the uninsured employers' claim fund or a subsequent injury fund the administrator, of the recovery and pay to the insurer or the administrator, respectively, the amount due ~~[under]~~ ***pursuant to*** this section together with an itemized statement showing the distribution of the total recovery. The attorney or representative of the injured employee or his dependents and the third-party insurer are jointly and severally liable for any amount to which an insurer is entitled pursuant to this section if the attorney, representative or third-party insurer has knowledge of the lien provided for in this section.

~~[9.]~~ *10.* An insurer shall not sell its lien to a third-party insurer unless the injured employee or his dependents, or the attorney or representative of the injured employee or

his dependents, refuses to provide to the insurer information concerning the action against the third party.

~~[10.]~~ *11.* 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 must receive proof of the amount of all payments made or to be made by the insurer or the administrator. The court shall instruct the jury substantially as follows:

> Payment of workmen's compensation benefits by the insurer, or in the case of claims involving the uninsured employers' claim fund or a subsequent injury fund the administrator, 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, the insurer or the administrator any amount paid to him or paid on his behalf by his employer, the insurer or the administrator.
>
> 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 any compensation benefits will be repaid from your award.

~~[11.]~~ *12.* For the purposes of calculating ~~[an employer's premium,]~~ ***the premium of an employer who is insured by the system,*** the employer's account with the system must be credited with an amount equal to that recovered by the system from a third party pursuant to this section, less the system's share of the expenses of litigation incurred in obtaining the recovery, except that the total credit must not exceed the amount of compensation actually paid or reserved by the system on the injured employee's claim.

~~[12.]~~ *13.* As used in this section ~~[, "third-party insurer"]~~ *:*

***(a) "Damages recovered" means the amount of money actually received from the person other than the employer or person in the same employ against whom a proceeding or action is initiated pursuant to subsection 2, less the costs and any attorney's fees incurred in obtaining such money.***

***(b) "Proceeds received" means the amount of money actually received from the employer's policy of uninsured or underinsured vehicle coverage, less the costs and any attorney's fees incurred in obtaining such money.***

***(c) "Third-party insurer"*** means an insurer that issued to a third party who is liable for damages pursuant to subsection 2, a policy of liability insurance the proceeds of which are recoverable pursuant to this section. The term includes an insurer that issued to an employer a policy of uninsured or underinsured vehicle coverage.

SUMMARY—Requires attorney of injured worker to notify injured worker of certain information concerning action for damages for industrial injury. (BDR 53-1077)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: No.

AN ACT relating to industrial insurance; requiring the attorney or representative of an injured worker to notify the injured worker of certain information concerning an action for damages for an industrial injury; 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.** NRS 616C.215 is hereby amended to read as follows:

616C.215 1. If an injured employee or, in the event of his death, his dependents, bring an action in tort against his employer to recover payment for an injury which is compensable ~~[under]~~ ***pursuant to the provisions of*** chapters 616A to 616D, inclusive, or

chapter 617 of NRS and, notwithstanding the provisions of NRS 616A.020, receive payment from the employer for that injury:

(a) The amount of compensation the injured employee or his dependents are entitled to receive pursuant to the provisions of chapters 616A to 616D, inclusive, of NRS, including any future compensation, must be reduced by the amount paid by the employer.

(b) The insurer, or in the case of claims involving the uninsured employer's claim fund or a subsequent injury fund the administrator, has a lien upon the total amount paid by the employer if the injured employee or his dependents receive compensation pursuant to the provisions of chapters 616A to 616D, inclusive, of NRS.

This subsection is applicable whether the money paid to the employee or his dependents by the employer is classified as a gift, a settlement or otherwise. The provisions of this subsection do not grant to an injured employee any right of action in tort to recover damages from his employer for his injury.

2. When an employee receives an injury for which compensation is payable pursuant to the provisions of chapters 616A to 616D, inclusive, of NRS and which 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 the injured employee or his dependents are entitled to receive pursuant to the provisions of chapters 616A to 616D, inclusive, of NRS, including any future compensation, 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 pursuant to the provisions of chapters 616A to 616D, inclusive, of NRS, the insurer, or in case of claims involving the uninsured employers' claim fund or a subsequent injury fund the administrator, 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.

3. When an injured employee incurs an injury for which compensation is payable pursuant to the provisions of chapters 616A to 616D, inclusive, of NRS and which was caused under circumstances entitling him, or in the case of death his dependents, to receive proceeds under his employer's policy of uninsured or underinsured vehicle coverage:

(a) The injured employee, or in the case of death his dependents, may take proceedings to recover those proceeds, but the amount of compensation the injured employee or his dependents are entitled to receive pursuant to the provisions of chapters 616A to 616D, inclusive, of NRS, including any future compensation, must be reduced by the amount of proceeds received.

(b) If an injured employee, or in the case of death his dependents, receive compensation pursuant to the provisions of chapters 616A to 616D, inclusive, of NRS,

the insurer, or in the case of claims involving the uninsured employers' claim fund or a subsequent injury fund the administrator, is subrogated to the rights of the injured employee or his dependents to recover proceeds under the employer's policy of uninsured or underinsured vehicle coverage. The insurer and the administrator are not subrogated to the rights of an injured employee or his dependents under a policy of uninsured or underinsured vehicle coverage purchased by the employee.

4. In any action or proceedings taken by the insurer or the administrator pursuant to this section, evidence of the amount of compensation, accident benefits and other expenditures which the insurer, the uninsured employers' claim fund or a subsequent injury fund have 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 insurer or the administrator recovers more than those amounts, the excess must be paid to the injured employee or his dependents.

5. In any case where the insurer or the administrator is subrogated to the rights of the injured employee or of his dependents as provided in subsection 2 or 3, the insurer or the administrator 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.

6. The lien provided for ~~[under]~~ ***pursuant to*** subsection 1 or 5 includes the total compensation expenditure incurred by the insurer, the uninsured employers' claim fund or a subsequent injury fund for the injured employee and his dependents.

7. An injured employee, or in the case of death his dependents, ***or the attorney or representative of the injured employee or his dependents,*** shall notify the insurer, or in the case of claims involving the uninsured employers' claim fund or a subsequent injury fund the administrator, in writing before initiating a proceeding or action pursuant to this section.

8. ***Before the attorney or representative of the injured employee or his dependents initiates a proceeding or action pursuant to this section on the behalf of the injured employee or his dependents, he shall notify the injured employee or his dependents in writing of:***

***(a) The right of the insurer, the uninsured employers' claim fund or a subsequent injury fund to recover on its lien;***

***(b) The probable amount of settlement; and***

***(c) The probable amount the injured employee or his dependents is likely to recover after paying attorney's fees, costs and the lien described in paragraph (a).***

***9.*** Within 15 days after the date of recovery by way of actual receipt of the proceeds of the judgment, settlement or otherwise:

(a) The injured employee or his dependents, or the attorney or representative of the injured employee or his dependents; and

(b) The third-party insurer,

shall notify the insurer, or in the case of claims involving the uninsured employers' claim fund or a subsequent injury fund the administrator, of the recovery and pay to the insurer or the administrator, respectively, the amount due ~~[under]~~ ***pursuant to*** this section together with an itemized statement showing the distribution of the total recovery. The attorney or representative of the injured employee or his dependents and the third-party insurer are jointly and severally liable for any amount to which an insurer is entitled pursuant to this section if the attorney, representative or third-party insurer has knowledge of the lien provided for in this section.

~~[9.]~~ ***10.*** An insurer shall not sell its lien to a third-party insurer unless the injured employee or his dependents, or the attorney or representative of the injured employee or his dependents, refuses to provide to the insurer information concerning the action against the third party.

~~[10.]~~ ***11.*** 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 must receive proof of the amount of all payments made or to be made by the insurer or the administrator. The court shall instruct the jury substantially as follows:

Payment of workmen's compensation benefits by the insurer, or in the case of claims involving the uninsured employers' claim fund or a subsequent injury fund

the administrator, 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, the insurer or the administrator any amount paid to him or paid on his behalf by his employer, the insurer or the administrator.

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 any compensation benefits will be repaid from your award.

~~[11.]~~ *12.* For the purposes of calculating an employer's premium, the employer's account with the system must be credited with an amount equal to that recovered by the system from a third party pursuant to this section, less the system's share of the expenses of litigation incurred in obtaining the recovery, except that the total credit must not exceed the amount of compensation actually paid or reserved by the system on the injured employee's claim.

~~[12.]~~ *13.* As used in this section, "third-party insurer" means an insurer that issued to a third party who is liable for damages pursuant to subsection 2, a policy of liability insurance the proceeds of which are recoverable pursuant to this section. The term

includes an insurer that issued to an employer a policy of uninsured or underinsured vehicle coverage.

SUMMARY—Clarifies applicability of provisions governing occupational diseases to various provisions governing industrial insurance. (BDR 53-1078)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: No.

AN ACT relating to industrial insurance; clarifying the applicability of the provisions governing occupational diseases to various provisions governing industrial insurance; 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.** NRS 608.150 is hereby amended to read as follows:

608.150 1. Every original contractor making or taking any contract in this state for the erection, construction, alteration or repair of any building or structure, or other work, shall assume and is liable for the indebtedness for labor incurred by any subcontractor or any contractors acting under, by or for the original contractor in performing any labor, construction or other work included in the subject of the original contract, for labor, and

for the requirements imposed by chapters 616A to 616D, inclusive, ***and chapter 617*** of NRS.

2. It is unlawful for any contractor or any other person to fail to comply with the provisions of subsection 1, or to attempt to evade the responsibility imposed thereby, or to do any other act or thing tending to render nugatory the provisions of this section.

3. The district attorney of any county wherein the defendant may reside or be found shall institute civil proceedings against any such original contractor failing to comply with the provisions of this section in a civil action for the amount of all wages and damage that may be owing or have accrued as a result of the failure of any subcontractor acting under the original contractor, and any property of the original contractor, not exempt by law, is subject to attachment and execution for the payment of any judgment that may be recovered in any action under the provisions of this section.

**Sec. 2.** NRS 612.530 is hereby amended to read as follows:

612.530 1. Within 10 days after the decision of the board of review has become final, any party aggrieved thereby or the administrator may secure judicial review thereof by commencing an action in the district court of the county wherein the appealed claim or claims were filed against the administrator for the review of the decision, in which action any other party to the proceedings before the board of review must be made a defendant.

2. In such action, a petition which need not be verified, but which must state the grounds upon which a review is sought, must be served upon the administrator, unless he is the appellant, or upon such person as he may designate, and such service shall be

deemed completed service on all parties, but there must be left with the party so served as many copies of the petition as there are defendants, and the administrator shall forthwith mail one such copy to each such defendant.

3. With his answer or petition, the administrator shall certify and file with the court originals or true copies of all documents and papers and a transcript of all testimony taken in the matter, together with the board of review's findings of fact and decision therein. The administrator may also, in his discretion, certify to the court questions of law involved in any decision.

4. In any judicial proceedings under this section, the finding of the board of review as to the facts, if supported by evidence and in the absence of fraud, is conclusive, and the jurisdiction of the court is confined to questions of law.

5. Such actions, and the questions so certified, must be heard in a summary manner and must be given precedence over all other civil cases except cases arising under chapters 616A to 616D, inclusive, ***or chapter 617*** of NRS.

6. An appeal may be taken from the decision of the district court to the supreme court of Nevada, in the same manner, but not inconsistent with the provisions of this chapter, as is provided in civil cases.

7. It is not necessary, in any judicial proceeding under this section, to enter exceptions to the rulings of the board of review, and no bond may be required for entering such appeal.

8. Upon the final determination of such judicial proceeding, the board of review shall enter an order in accordance with the determination.

9. A petition for judicial review does not act as a supersedeas or stay unless the board of review so orders.

**Sec. 3.** NRS 616A.410 is hereby amended to read as follows:

616A.410 1. The administrator may prosecute, defend and maintain actions in the name of the administrator for the enforcement of the provisions of chapters 616A to 616D, inclusive, ***or chapter 617*** of NRS and is entitled to all extraordinary writs provided by the constitution of the State of Nevada, the statutes of this state and the Nevada Rules of Civil Procedure in connection therewith for the enforcement thereof.

2. Verification of any pleading, affidavit or other paper required may be made by the administrator.

3. In any action or proceeding or in the prosecution of any appeal by the administrator, no bond or undertaking need be furnished by the administrator.

**Sec. 4.** NRS 616A.420 is hereby amended to read as follows:

616A.420 1. The administrator may enter into agreements or compacts with appropriate agencies, bureaus, boards or commissions of other states concerning matters of mutual interest, extraterritorial problems in the administration of chapters 616A to 616D, inclusive, ***or chapter 617*** of NRS, and ~~[for the purpose of eliminating]~~ ***to eliminate*** duplicate claims or benefits.

2. The insurer may provide liability insurance coverage against any risks of double liability on the part of employers subject to chapters 616A to 616D, inclusive, ***or chapter 617*** of NRS, for the same accident or injury.

**Sec. 5.** NRS 616A.475 is hereby amended to read as follows:

616A.475 1. Every employer insured by the system shall furnish the system or the administrator, upon request, all information required to carry out the purposes of chapters 616A to 616D, inclusive, ***or chapter 617*** of NRS. The administrator, or any person employed by the administrator for that purpose, may examine, under oath, any employer or officer, agent or employee thereof.

2. Every self-insured employer, association of self-insured public or private employers or private carrier shall furnish to the administrator, upon request, all information required to carry out the purposes of chapters 616A to 616D, inclusive, ***or chapter 617*** of NRS. The administrator or any person employed by him for that purpose, may examine, under oath, any employer or officer, agent or employee thereof.

3. Every insured employer shall keep on hand constantly a sufficient supply of blank forms furnished by the insurer.

**Sec. 6.** NRS 616B.012 is hereby amended to read as follows:

616B.012 1. Except as otherwise provided in this section and in NRS 616B.015, 616B.021 and 616C.205, information obtained from any insurer, employer or employee is confidential and may not be disclosed or be open to public inspection in any manner which would reveal the person's identity.

2. Any claimant or his legal representative is entitled to information from the records of the insurer, to the extent necessary for the proper presentation of a claim in any proceeding under chapters 616A to 616D, inclusive, ***or chapter 617*** of NRS.

3. The division and administrator are entitled to information from the records of the insurer which is necessary for the performance of their duties. The administrator may, by regulation, prescribe the manner in which otherwise confidential information may be made available to:

(a) Any agency of this or any other state charged with the administration or enforcement of laws relating to industrial insurance, unemployment compensation, public assistance or labor law and industrial relations;

(b) Any state or local agency for the enforcement of child support;

(c) The Internal Revenue Service of the Department of the Treasury;

(d) The department of taxation; and

(e) The state contractors' board in the performance of its duties to enforce the provisions of chapter 624 of NRS.

Information obtained in connection with the administration of a program of industrial insurance may be made available to persons or agencies for purposes appropriate to the operation of a program of industrial insurance.

4. Upon written request made by a public officer of a local government, an insurer shall furnish from its records ~~[,]~~ the name, address and place of employment of any person listed in its records. The request must set forth the social security number of the

person about whom the request is made and contain a statement signed by proper authority of the local government certifying that the request is made to allow the proper authority to enforce a law to recover a debt or obligation owed to the local government. The information obtained by the local government is confidential and may not be used or disclosed for any purpose other than the collection of a debt or obligation owed to that local government. The insurer may charge a reasonable fee for the cost of providing the requested information.

5. To further a current criminal investigation, the chief executive officer of any law enforcement agency of this state may submit to the administrator a written request for the name, address and place of employment of any person listed in the records of an insurer. The request must set forth the social security number of the person about whom the request is made and contain a statement signed by the chief executive officer certifying that the request is made to further a criminal investigation currently being conducted by the agency. Upon receipt of a request, the administrator shall instruct the insurer to furnish the information requested. Upon receipt of such an instruction, the insurer shall furnish the information requested. The insurer may charge a reasonable fee to cover any related administrative expenses.

6. The administrator shall provide lists containing the names and addresses of employers, the number of employees employed by each employer and the total wages paid by each employer to the department of taxation, upon request, for its use in

verifying returns for the business tax. The administrator may charge a reasonable fee to cover any related administrative expenses.

7. Any person who, in violation of this section, discloses information obtained from files of claimants or policyholders ~~[,]~~ or obtains a list of claimants or policyholders under chapters 616A to 616D, inclusive, *or chapter 617* of NRS and uses or permits the use of the list for any political purposes, is guilty of a gross misdemeanor.

8. All letters, reports or communications of any kind, oral or written, from the insurer, or any of its agents, representatives or employees are privileged and must not be the subject matter or basis for any lawsuit if the letter, report or communication is written, sent, delivered or prepared pursuant to the requirements of chapters 616A to 616D, inclusive, *or chapter 617* of NRS.

**Sec. 7.** NRS 616B.015 is hereby amended to read as follows:

616B.015 1. Except as otherwise provided in subsection 2, the records and files of the division concerning self-insured employers and associations of self-insured public or private employers are confidential and may be revealed in whole or in part only in the course of the administration of the provisions of chapters 616A to 616D, inclusive, *or chapter 617* of NRS relating to those employers or upon the lawful order of a court of competent jurisdiction.

2. The records and files specified in subsection 1 are not confidential in the following cases:

(a) Testimony by an officer or agent of the division and the production of records and files on behalf of the division in any action or proceeding conducted pursuant to the provisions of chapters 616A to 616D, inclusive, ***or chapter 617*** of NRS if that testimony or the records and files, or the facts shown thereby, are involved in the action or proceeding.

(b) Delivery to a self-insured employer or an association of self-insured public or private employers of a copy of any document filed by the employer with the division pursuant to the provisions of chapters 616A to 616D, inclusive, ***or chapter 617*** of NRS.

(c) Publication of statistics if classified so as to prevent:

(1) Identification of a particular employer or document; or

(2) Disclosure of the financial or business condition of a particular employer or insurer.

(d) Disclosure in confidence, without further distribution or disclosure to any other person, to:

(1) The governor or his agent in the exercise of the governor's general supervisory powers;

(2) Any person authorized to audit the accounts of the division in pursuance of an audit;

(3) The attorney general or other legal representative of the state in connection with an action or proceeding conducted pursuant to the provisions of chapters 616A to 616D, inclusive, ***or chapter 617*** of NRS;

(4) Any agency of this or any other state charged with the administration or enforcement of the laws relating to workers' compensation or unemployment compensation; or

(5) Any federal, state or local law enforcement agency.

(e) Disclosure in confidence by a person who receives information pursuant to paragraph (d) to a person in furtherance of the administration or enforcement of the laws relating to workers' compensation or unemployment compensation.

3. As used in this section:

(a) "Division" means the division of insurance of the department of business and industry.

(b) "Records and files" means:

(1) All credit reports, references, investigative records, financial information and data pertaining to the net worth of a self-insured employer or association of self-insured public or private employers; and

(2) All information and data required by the division to be furnished to it pursuant to chapters 616A to 616D, inclusive, ***or chapter 617*** of NRS or which may be otherwise obtained relative to the finances, earnings, revenue, trade secrets or the financial condition of any self-insured employer or association of self-insured public or private employers.

**Sec. 8.** NRS 616B.059 is hereby amended to read as follows:

616B.059 There is no liability in a private capacity on the part of the manager while carrying out his duties pursuant to chapters 616A to 616D, inclusive, ***or chapter 617*** of NRS.

**Sec. 9.** NRS 616B.074 is hereby amended to read as follows:

616B.074 Subject to the limitations of chapters 616A to 616D, inclusive, ***and chapter 617*** of NRS and the budget prescribed by the manager, the system must be administered by the manager, assistant managers, and a staff appointed by the manager.

**Sec. 10.** NRS 616B.089 is hereby amended to read as follows:

616B.089 The State of Nevada is not liable for the payment of any compensation or any salaries or expenses in the administration of chapters 616A to 616D, inclusive, ***or chapter 617*** of NRS, but is responsible for the safety and preservation of the state insurance fund.

**Sec. 11.** NRS 616B.095 is hereby amended to read as follows:

616B.095 If the provisions of NRS 616B.218, 616B.224 and 616B.230 for the creation of a state insurance fund, or the provisions of chapters 616A to 616D, inclusive, ***or chapter 617*** of NRS making the compensation to the workman provided in those chapters exclusive of any other remedy on the part of the workman, ~~[shall be]~~ ***are*** held invalid, each of those chapters ~~[shall]~~ ***must*** be thereby invalidated, except the provisions of NRS 616B.101, and an accounting according to the justice of the case ~~[shall]~~ ***must*** be had on ~~[moneys]~~ ***money*** received. In other respects an adjudication of invalidity of any

part of this chapter or chapter 616A, 616C , ~~[or]~~ 616D *or 617* of NRS ~~[shall]~~ *must* not affect the validity of any of those chapters as a whole or any part thereof.

**Sec. 12.** NRS 616B.167 is hereby amended to read as follows:

616B.167 The manager:

1. Has full power, authority and jurisdiction over the system.

2. May perform all acts necessary or convenient in the exercise of any power, authority or jurisdiction over the system, either in the administration of the system or in connection with the business of insurance to be carried on by the system under the provisions of chapters 616A to 616D, inclusive, *or chapter 617* of NRS, including the establishment of premium rates.

3. May appoint in the unclassified service of the state no more than five persons ~~[,]~~ engaged in management ~~[,]~~ who report directly to the manager or an assistant manager. The manager shall designate these positions ~~[,]~~ and may not change them without the approval of the personnel commission. These persons are entitled to receive annual salaries fixed by the manager.

**Sec. 13.** NRS 616B.191 is hereby amended to read as follows:

616B.191 In addition to any other agreements authorized by the provisions of chapters 616A to 616D, inclusive, *or chapter 617* of NRS, the manager may contract with private persons for the provision of any services necessary or appropriate to carry out the functions and duties of the system. The contracts must be awarded pursuant to reasonable competitive bidding procedures as established by the manager.

**Sec. 14.** NRS 616B.194 is hereby amended to read as follows:

616B.194 Each insurer shall cooperate with the commissioner in the performance of his duties pursuant to chapters 616A to 616D, inclusive, ***or chapter 617*** of NRS. Each private carrier and the system shall provide the commissioner with any information, statistics or data in its records which pertain to any employer who is making an application to become self-insured or who is self-insured, or who is becoming or who is a member of an association of self-insured public or private employers.

**Sec. 15.** NRS 616B.224 is hereby amended to read as follows:

616B.224 1. Every employer who is not a self-insured employer or a member of an association of self-insured public or private employers shall, at intervals established by his insurer, furnish the insurer with a true and accurate payroll showing:

(a) The total amount paid to employees for services performed;

(b) The amount of tips reported to him by every employee pursuant to 26 U.S.C. § 6053(a) whose tips in cash totaled $20 or more; and

(c) A segregation of employment in accordance with the requirements of the commissioner,

together with the premium due thereon. The payroll and premium must be furnished to the insurer on or before the date established by the insurer for the receipt of the payroll and premium.

2. Any employer by agreement in writing with the insurer may arrange for the payment of premiums in advance at an interval established by the insurer.

3. Failure of any employer to comply with the provisions of this section and NRS 616B.218 operates as a rejection of chapters 616A to 616D, inclusive, ***and chapter 617*** of NRS, effective at the expiration of the period covered by his estimate. The insurer shall notify the administrator of each such rejection.

4. If an audit of the accounts or actual payroll of an employer shows that the actual premium earned exceeds the estimated premium paid in advance, the insurer may require the payment of money sufficient to cover the deficit, together with such amount as in his judgment constitutes an adequate advance premium for the period covered by the estimate.

5. The insurer shall notify any employer or his representative by first-class mail of any failure on his part to comply with the provisions of this section. The notice or its omission does not modify or waive the requirements or effective rejection of chapters 616A to 616D, inclusive, ***and chapter 617*** of NRS as otherwise provided in those chapters.

6. The system may impose a penalty not to exceed 10 percent of the premiums which are due for the failure of an employer insured by the system to submit the information and premium required in subsection 1 within the time allowed, unless the employer has applied for and been granted an extension of that time by the manager.

7. To the extent permitted by federal law, the insurer shall vigorously pursue the collection of premiums that are due under the provisions of chapters 616A to 616D,

inclusive, ***and chapter 617*** of NRS even if an employer's debts have been discharged in a bankruptcy proceeding.

**Sec. 16.** NRS 616B.227 is hereby amended to read as follows:

616B.227 1. An employer shall:

(a) Make a copy of each report that an employee files with the employer pursuant to 26 U.S.C. § 6053(a) to report the amount of his tips to the United States Internal Revenue Service;

(b) Submit the copy to the system or private carrier upon request and retain another copy for his records or, if the employer is self-insured or a member of an association of self-insured public or private employers, retain the copy for his records; and

(c) If he is not self-insured or a member of an association of self-insured public or private employers, pay the system or private carrier the premiums for the reported tips at the same rate as he pays on regular wages.

2. The division shall adopt regulations specifying the form of the declaration required pursuant to subsection 1.

3. The system, private carrier, self-insured employer or association shall calculate compensation for an employee on the basis of wages paid by the employer plus the amount of tips reported by the employee pursuant to 26 U.S.C. § 6053. Reports made after the date of injury may not be used for the calculation of compensation.

4. An employer shall notify his employees of the requirement to report income from tips ~~[for the purposes of calculating]~~ ***to calculate*** his federal income tax and ~~[for~~

~~including~~] *to include* the income in the computation of benefits pursuant to chapters 616A to 616D, inclusive, *and chapter 617* of NRS.

5. The administrator shall adopt such regulations as are necessary to carry out the provisions of this section.

**Sec. 17.** NRS 616B.239 is hereby amended to read as follows:

616B.239 1. At any time within 3 years after:

(a) Any premium or any amount of a premium required by chapters 616A to 616D, inclusive, *or chapter 617* of NRS becomes due;

(b) The delinquency of any premium or any amount of a premium required by chapters 616A to 616D, inclusive, or chapter 617 of NRS; or

(c) The recording of a certificate pursuant to NRS 616B.257,

the manager or his authorized representative may bring an action in the courts of this state, or any other state, or of the United States, in the name of the system, to collect the amount delinquent together with penalties and interest.

2. In the action a writ of attachment may issue, and no bond or affidavit previous to the issuing of the attachment is required.

3. In the action, a certificate by the manager showing the delinquency is prima facie evidence of the determination of the premium due, of the delinquency of the amounts set forth, and of the compliance by the manager with all the provisions of chapters 616A to 616D, inclusive, *and chapter 617* of NRS in relation to the computation and determination of the amounts.

**Sec. 18.** NRS 616B.248 is hereby amended to read as follows:

616B.248 1. Whenever the manager finds that the collection of any premium computed pursuant to the provisions of chapters 616A to 616D, inclusive, ***or chapter 617*** of NRS will be jeopardized by delay, he may immediately assess the premium and all penalties and interest which may have accrued, whether or not the final date otherwise prescribed for making the premium has arrived. Upon assessment, the premium is immediately due, the premium and all penalties and interest which may have accrued are immediately payable ~~[,]~~ and notice of demand for payment must be made upon the employer. If the employer fails or refuses to pay the assessed premium, penalties and interest, collection of the payment may be enforced according to the provisions of law applicable to the collection of unpaid premiums.

2. When a jeopardy assessment has been made as provided in subsection 1, the employer may stay its collection until such time as the premiums for the period in question would normally become due ~~[,]~~ by filing a bond with the manager which is executed by the employer as principal ~~[,]~~ and by an insurer authorized pursuant to chapter 680A of NRS as surety ~~[,]~~ payable to the system and conditioned on the payment of the premium at the proper time. The amount of the required security must be equal to the amount of the assessment ~~[,]~~ rounded off to the next larger integral multiple of $100.

3. In lieu of a bond, the employer may deposit with the manager a like amount of lawful money of the United States or any other form of security authorized by NRS 100.065. If security is provided in the form of a savings certificate, certificate of deposit

or investment certificate, the certificate must state that the amount is not available for withdrawal except upon order of the manager.

**Sec. 19.** NRS 616B.254 is hereby amended to read as follows:

616B.254 1. As used in this section, "person" includes this state ~~[,]~~ and any county, municipality, district or other political subdivision thereof.

2. If any employer is delinquent in the payment of the amount of any premium, penalty or interest required by chapters 616A to 616D, inclusive, ***or chapter 617*** of NRS or a determination has been made against him which remains unpaid, the manager may, not later than 3 years after the payment became delinquent or within 6 years after the recording of a judgment pursuant to NRS 616B.266, give notice of the amount of the delinquency personally or by registered or certified mail to any person having in his possession or under his control any money, credits or other personal property belonging to the delinquent employer ~~[,]~~ or owing any debts to the delinquent employer at the time of the receipt of the registered or certified notice. In the case of any state officer, department or agency, the notice must be given to the officer, department or agency before it presents the claim of the delinquent employer to the state controller.

3. A state officer, department or agency which receives such a notice may satisfy any debt owed to it by that person before it honors the manager's notice.

4. After receiving the notice, a person so notified may not transfer or otherwise dispose of the money, credits, other personal property ~~[,]~~ or debts in his possession or under his control at the time he received the notice until the manager consents to a

transfer or other disposition in writing, or until 30 days after the receipt of the notice, whichever period expires earlier.

5. A person so notified shall, within 5 days after receipt of the notice, inform the manager of all money, credits, other personal property ~~[,]~~ or debts belonging to the delinquent employer in his possession, under his control or owing by him.

6. If the notice seeks to prevent the transfer or other disposition of a deposit in a bank or other credits or personal property in the possession or under the control of a bank, the notice must be delivered or mailed to the branch or office of the bank at which the deposit is carried or at which the credits or personal property is held.

7. If, during the effective period of the notice to withhold, any person so notified makes any transfer or other disposition of the property or debts required to be withheld, to the extent of the value of the property or the amount of the debts thus transferred or paid, he is liable to the state for any indebtedness due pursuant to chapters 616A to 616D, inclusive, ***or chapter 617*** of NRS from the person with respect to whose obligation the notice was given if solely by reason of the transfer or other disposition the state is unable to recover the indebtedness of the person with respect to whose obligation the notice was given.

8. Upon the demand of the manager, the person shall remit or deliver to the manager the money, credit or other personal property up to the amount owed by the delinquent employer.

**Sec. 20.** NRS 616B.257 is hereby amended to read as follows:

616B.257 If any amount required to be paid to the system pursuant to the provisions of chapters 616A to 616D, inclusive, ***or chapter 617*** of NRS is not paid when due, the manager may, within 3 years after the amount is due, file in the office of the clerk of any court of competent jurisdiction a certificate specifying the amount required to be paid, interest and penalties due, the name and address of the employer liable for the payment, as it appears on the records of the system, the manager's compliance with the applicable provisions of chapters 616A to 616D, inclusive, ***or chapter 617*** of NRS in relation to the determination of the amount required to be paid ~~[,]~~ and a request that judgment be entered against the employer in the amount required to be paid, including interest and penalties, as set forth in the certificate.

**Sec. 21.** NRS 616B.269 is hereby amended to read as follows:

616B.269 Except as otherwise provided in NRS 616D.210:

1. If any business which is liable for any amount required to be paid pursuant to chapters 616A to 616D, inclusive, ***or chapter 617*** of NRS sells out its business, or any portion of its business, or stock of goods, or quits the business, its successors or assigns shall withhold a sufficient portion of the purchase price to cover that amount until the former owner produces a receipt from the manager showing that it has been paid or a certificate stating that no amount is due.

2. If the purchaser of a business, or any portion of a business, or stock of goods fails to withhold from the purchase price the amount required by subsection 1, he becomes

personally liable for the payment of the amount required to be withheld by him to the extent of the purchase price, valued in money. Within 60 days after receiving a written request from the purchaser for a certificate, or within 60 days after the date the former owner's records are made available for audit, whichever period expires later, but not later than 90 days after receiving the request, the manager shall issue the certificate or mail a notice to the purchaser at his address as it appears on the records of the manager, of the amount that must be paid as a condition of issuing the certificate.

3. Failure of the manager to mail the notice releases the purchaser from any further obligation to withhold any portion of the purchase price.

4. The time within which the obligation of a successor may be enforced begins at the time the person or business sells out its business or stock of goods or at the time that the determination against the person or business becomes final, whichever occurs later.

**Sec. 22.** NRS 616B.318 is hereby amended to read as follows:

616B.318 1. The commissioner shall impose an administrative fine, not to exceed $1,000 for each violation, and:

(a) Shall withdraw the certification of a self-insured employer if:

(1) The deposit required pursuant to NRS 616B.300 is not sufficient and the employer fails to increase the deposit after he has been ordered to do so by the commissioner;

(2) The self-insured employer fails to provide evidence of excess insurance pursuant to NRS 616B.300 within 45 days after he has been so ordered; or

(3) The employer becomes insolvent, institutes any voluntary proceeding under the Bankruptcy Act or is named in any involuntary proceeding thereunder.

(b) May withdraw the certification of a self-insured employer if:

(1) The employer intentionally fails to comply with regulations of the commissioner regarding reports or other requirements necessary to carry out the purposes of chapters 616A to 616D, inclusive, ***and chapter 617*** of NRS;

(2) The employer violates the provisions of subsection 2 of NRS 616B.500 or any regulation adopted by the commissioner or the administrator concerning the administration of the employer's plan of self-insurance; or

(3) The employer makes a general or special assignment for the benefit of creditors or fails to pay compensation after an order for payment of any claim becomes final.

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 616B.650.

3. The commissioner may, upon the written request of an employer whose certification as a self-insured employer is withdrawn pursuant to subparagraph (3) of paragraph (a) of subsection 1, reinstate the employer's certificate for a reasonable period to allow the employer sufficient time to provide industrial insurance for his employees.

**Sec. 23.** NRS 616B.324 is hereby amended to read as follows:

616B.324 A person who is employed by or contracts with a self-insured employer to administer the plan of self-insurance is an agent of the self-insured employer , and if he

violates any provision of this chapter or chapter 616A, 616C , ~~[or]~~ 616D *or 617* of NRS, the self-insured employer is liable for any penalty assessed because of that violation.

**Sec. 24.** NRS 616B.362 is hereby amended to read as follows:

616B.362 1. An association certified as an association of self-insured public or private employers directly assumes the responsibility for providing compensation due the employees of the members of the association and their beneficiaries under chapters 616A to 617, inclusive, of NRS.

2. An association is not required to pay the premiums required of other employers pursuant to chapters 616A to 617, inclusive, of NRS but is relieved from other liability for personal injury to the same extent as are other employers.

3. The claims of employees and their beneficiaries resulting from injuries while in the employment of a member of an association must be handled in the manner provided by chapters 616A to 616D, inclusive, of NRS, and the association is subject to the regulations of the division with respect thereto.

4. The security deposited pursuant to NRS 616B.353 does not relieve an association from responsibility for the administration of claims and payment of compensation under chapters 616A to ~~[616D,]~~ *617,* inclusive, of NRS.

**Sec. 25.** NRS 616B.428 is hereby amended to read as follows:

616B.428 1. The commissioner may impose an administrative fine for each violation of any provision of NRS 616B.350 to 616B.446, inclusive, or any regulation

adopted pursuant thereto. Except as otherwise provided in those sections, the amount of the fine may not exceed $1,000 for each violation or an aggregate amount of $10,000.

2. The commissioner may withdraw the certificate of an association of self-insured public or private employers if:

(a) The association's certificate was obtained by fraud;

(b) The application for certification contained a material misrepresentation;

(c) The association is found to be insolvent;

(d) The association fails to have five or more members;

(e) The association fails to pay the costs of any examination or any penalty, fee or assessment required by the provisions of chapters 616A to 616D, inclusive, ***or chapter 617*** of NRS;

(f) The association fails to comply with any of the provisions of this chapter or chapter 616A, 616C , ~~[or]~~ 616D ***or chapter 617*** of NRS, or any regulation adopted pursuant thereto;

(g) The association fails to comply with any order of the commissioner within the time prescribed by the provisions of chapters 616A to 616D, inclusive, ***or chapter 617*** of NRS or in the order of the commissioner; or

(h) The association or its third-party administrator misappropriates, converts, illegally withholds or refuses to pay any money to which a person is entitled and that was entrusted to the association in its fiduciary capacity.

3. If the commissioner withdraws the certification of an association of self-insured public or private employers, each employer who is a member of the association remains liable for his obligations incurred before and after the order of withdrawal.

4. Any employer who is a member of an association whose certification is withdrawn shall, on the effective date of the withdrawal, qualify as an employer pursuant to NRS 616B.650.

**Sec. 26.** NRS 616B.503 is hereby amended to read as follows:

616B.503 1. A person shall not act as a third-party administrator for an insurer without a certificate issued by the commissioner pursuant to NRS 683A.085.

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

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

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

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

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

**Sec. 27.** NRS 616B.506 is hereby amended to read as follows:

616B.506 The commissioner shall impose an administrative fine, not to exceed $1,000 for each violation, and may withdraw the certification of any third-party administrator who:

1. Fails to comply with regulations of the commissioner regarding reports or other requirements necessary to carry out the purposes of chapters 616A to 616D, inclusive, *or chapter 617* of NRS; or

2. Violates any provision of NRS 616B.503 or any regulation adopted by the commissioner or the administrator concerning the administration of the plan of insurance.

**Sec. 28.** NRS 616B.600 is hereby amended to read as follows:

616B.600 1. Except as limited in subsection 3, any employee who has been hired outside of this state and his employer are exempted from the provisions of chapters 616A to 616D, inclusive, *and chapter 617* of NRS while the employee is temporarily within this state doing work for his employer if his employer has furnished industrial insurance pursuant to the ~~[industrial insurance act]~~ *Nevada Industrial Insurance Act* or similar laws of a state other than Nevada so as to cover the employee's employment while in this state ~~[,]~~ if:

(a) The extraterritorial provisions of chapters 616A to 616D, inclusive, *and chapter 617* of NRS are recognized in the other state; and

(b) Employers and employees who are covered in this state are likewise exempted from the application of the ~~[industrial insurance act]~~ *Nevada Industrial Insurance Act* or similar laws of the other state.

The benefits provided in the ~~[industrial insurance act]~~ *Nevada Industrial Insurance Act* or similar laws of the other state are the exclusive remedy against the employer for any injury, whether resulting in death or not, received by the employee while working for the employer in this state.

2. A certificate from the administrator or similar officer of another state certifying that the employer of the other state is insured therein and has provided extraterritorial coverage insuring his employees while working within this state is prima facie evidence that the employer carried the industrial insurance.

3. The exemption provided for in this section does not apply to the employees of a contractor, as defined in NRS 624.020, operating within the scope of his license.

4. An employer is not required to maintain coverage for industrial insurance in this state for an employee who has been hired or is regularly employed in this state, but who is performing work exclusively in another state, if the other state requires the employer to provide coverage for the employee in the other state. If the employee receives personal injury by accident arising out of and in the course of his employment, any claim for compensation must be filed in the state in which the accident occurred, and such compensation is the exclusive remedy of the employee or his dependents. This subsection

does not prevent an employer from maintaining coverage for the employee pursuant to the provisions of chapters 616A to 616D, inclusive, ***and chapter 617*** of NRS.

**Sec. 29.** NRS 616B.662 is hereby amended to read as follows:

616B.662 An employer having come under chapters 616A to 616D, inclusive, ***or chapter 617*** of NRS who thereafter elects to reject the terms, conditions and provisions of those chapters is not relieved from the payment of premiums to the insurer before the time his notice of rejection becomes effective if any are due. The premiums may be recovered in an action at law.

**Sec. 30.** NRS 616C.070 is hereby amended to read as follows:

616C.070 1. A person is conclusively presumed to be totally dependent upon an injured or deceased employee if the person is a natural, posthumous or adopted child, whether legitimate or illegitimate, under the age of 18 years, or over that age if physically or mentally incapacitated from wage earning, and there is no surviving parent. Stepparents may be regarded in chapters 616A to 616D, inclusive, ***or chapter 617*** of NRS as parents if the fact of dependency is shown, and a stepchild or stepchildren may be regarded in chapters 616A to 616D, inclusive, ***or chapter 617*** of NRS as a natural child or children if the existence and fact of dependency are shown.

2. Except as otherwise provided in subsection 13 of NRS 616C.505, questions as to who constitute dependents and the extent of their dependency must be determined as of the date of the accident or injury to the employee, and their right to any benefit becomes fixed at that time, irrespective of any subsequent change in conditions, and the benefits

are directly recoverable by and payable to the dependent or dependents entitled thereto [,] or to their legal guardians or trustees.

3. The presumptions of this section do not apply in favor of aliens who are nonresidents of the United States at the time of the accident, injury to, or death of the employee.

**Sec. 31.** NRS 616C.090 is hereby amended to read as follows:

616C.090 1. The administrator shall establish a panel of physicians and chiropractors who have demonstrated special competence and interest in industrial health to treat injured employees under chapters 616A to 616D, inclusive, ***or chapter 617*** of NRS. Every employer whose insurer has not entered into a contract with an organization for managed care pursuant to NRS 616B.515 shall maintain a list of those physicians and chiropractors on the panel who are reasonably accessible to his employees.

2. An injured employee whose insurer has not entered into a contract with an organization for managed care may choose his treating physician or chiropractor from the panel of physicians and chiropractors. If the injured employee is not satisfied with the first physician or chiropractor he so chooses, he may make an alternative choice of physician or chiropractor from the panel if the choice is made within 90 days after his injury. The insurer shall notify the first physician or chiropractor in writing. The notice must be postmarked within 3 working days after the insurer receives knowledge of the change. The first physician or chiropractor must be reimbursed only for the services he rendered to the injured employee up to and including the date of notification. Any further

change is subject to the approval of the insurer, which must be granted or denied within 10 days after a written request for such a change is received from the injured employee. If no action is taken on the request within 10 days, the request shall be deemed granted. Any request for a change of physician or chiropractor must include the name of the new physician or chiropractor chosen by the injured employee.

3. An injured employee employed or residing in any county in this state whose insurer has entered into a contract with an organization for managed care must choose his treating physician or chiropractor pursuant to the terms of that contract. If the employee, after choosing his treating physician or chiropractor, moves to a county which is not served by the organization for managed care , and the insurer determines that it is impractical for the employee to continue treatment with the physician or chiropractor, the employee must choose a treating physician or chiropractor who has agreed to the terms of that contract unless the insurer authorizes the employee to choose another physician or chiropractor.

4. Except when emergency medical care is required and except as otherwise provided in NRS 616C.055, the insurer is not responsible for any charges for medical treatment or other accident benefits furnished or ordered by any physician, chiropractor 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, chiropractor or other person.

5. The administrator may order necessary changes in a panel of physicians and chiropractors and shall suspend or remove any physician or chiropractor from a panel for good cause shown.

6. An injured employee may receive treatment by more than one physician or chiropractor if the insurer provides written authorization for such treatment.

**Sec. 32.** NRS 616C.095 is hereby amended to read as follows:

616C.095 The physician or chiropractor shall inform the injured employee of his rights under chapters 616A to 616D, inclusive, ***or chapter 617*** of NRS and lend all necessary assistance in making application for compensation and such proof of other matters as required by the rules of the division, without charge to the employee.

**Sec. 33.** NRS 616C.120 is hereby amended to read as follows:

616C.120 ~~[No]~~ ***Any*** provision of this chapter or chapter 616A, 616B , ~~[or]~~ 616D ***or 617*** of NRS ~~[shall]~~ ***must not*** prevent an employee from providing for treatment for his injuries or disease through prayer or other spiritual means in accordance with the tenets and practices of a recognized church, which treatment is recognized in this state in lieu of medical treatment.

**Sec. 34.** NRS 616C.205 is hereby amended to read as follows:

616C.205 Except as otherwise provided in this section and NRS 31A.150 and 31A.330, compensation payable under chapters 616A to 616D, inclusive, ***or chapter 617*** of NRS, whether determined or due, or not, is not, before the issuance and delivery of the check, assignable, is exempt from attachment, garnishment and execution, and does

not pass to any other person by operation of law. In the case of the death of an injured employee covered by chapters 616A to 616D, inclusive, ***or chapter 617*** of NRS from causes independent from the injury for which compensation is payable, any compensation due the employee which was awarded or accrued but for which a check was not issued or delivered at the date of death of the employee is payable to his dependents as defined in NRS 616C.505.

**Sec. 35.** NRS 616C.210 is hereby amended to read as follows:

616C.210 1. The insurer shall notify a dependent of a deceased employee who is residing outside of the United States by certified mail at his last known address if compensation is due the decedent or beneficiary pursuant to chapters 616A to 616D, inclusive, ***or chapter 617*** of NRS. The dependent may request that payment be made directly to him within 90 calendar days after the notice was mailed. The insurer shall pay compensation which is due a beneficiary directly to the beneficiary if the beneficiary requests payment within 90 calendar days after the notice was mailed.

2. If the insurer does not receive a request that payment be made directly to a beneficiary within 90 days after the notice required by subsection 1 is mailed, payments to the consul general, vice consul general, consul or vice consul of the nation of which any dependent of a deceased employee is a resident or subject, or a representative of such consul general, vice consul general, consul or vice consul, of any compensation due under chapters 616A to 616D, inclusive, ***or chapter 617*** of NRS to any dependent residing outside of the United States, any power of attorney to receive or receipt for the

same to the contrary notwithstanding, are as full a discharge of the benefits or compensation payable under those chapters as if payments were made directly to the beneficiary.

**Sec. 36.** NRS 616C.215 is hereby amended to read as follows:

616C.215 1. If an injured employee or, in the event of his death, his dependents, bring an action in tort against his employer to recover payment for an injury which is compensable under chapters 616A to 616D, inclusive, or chapter 617 of NRS and, notwithstanding the provisions of NRS 616A.020, receive payment from the employer for that injury:

(a) The amount of compensation the injured employee or his dependents are entitled to receive pursuant to the provisions of chapters 616A to 616D, inclusive, ***or chapter 617*** of NRS, including any future compensation, must be reduced by the amount paid by the employer.

(b) The insurer, or in the case of claims involving the uninsured employer's claim fund or a subsequent injury fund the administrator, has a lien upon the total amount paid by the employer if the injured employee or his dependents receive compensation pursuant to the provisions of chapters 616A to 616D, inclusive, ***or chapter 617*** of NRS.

This subsection is applicable whether the money paid to the employee or his dependents by the employer is classified as a gift, a settlement or otherwise. The provisions of this subsection do not grant to an injured employee any right of action in tort to recover damages from his employer for his injury.

2. When an employee receives an injury for which compensation is payable pursuant to the provisions of chapters 616A to 616D, inclusive, ***or chapter 617*** of NRS and which 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 the injured employee or his dependents are entitled to receive pursuant to the provisions of chapters 616A to 616D, inclusive, ***or chapter 617*** of NRS, including any future compensation, 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 pursuant to the provisions of chapters 616A to 616D, inclusive, ***or chapter 617*** of NRS, the insurer, or in case of claims involving the uninsured employers' claim fund or a subsequent injury fund the administrator, 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.

3. When an injured employee incurs an injury for which compensation is payable pursuant to the provisions of chapters 616A to 616D, inclusive, ***or chapter 617*** of NRS and which was caused under circumstances entitling him, or in the case of death his

dependents, to receive proceeds under his employer's policy of uninsured or underinsured vehicle coverage:

(a) The injured employee, or in the case of death his dependents, may take proceedings to recover those proceeds, but the amount of compensation the injured employee or his dependents are entitled to receive pursuant to the provisions of chapters 616A to 616D, inclusive, ***or chapter 617*** of NRS, including any future compensation, must be reduced by the amount of proceeds received.

(b) If an injured employee, or in the case of death his dependents, receive compensation pursuant to the provisions of chapters 616A to 616D, inclusive, ***or chapter 617*** of NRS, the insurer, or in the case of claims involving the uninsured employers' claim fund or a subsequent injury fund the administrator, is subrogated to the rights of the injured employee or his dependents to recover proceeds under the employer's policy of uninsured or underinsured vehicle coverage. The insurer and the administrator are not subrogated to the rights of an injured employee or his dependents under a policy of uninsured or underinsured vehicle coverage purchased by the employee.

4. In any action or proceedings taken by the insurer or the administrator pursuant to this section, evidence of the amount of compensation, accident benefits and other expenditures which the insurer, the uninsured employers' claim fund or a subsequent injury fund have 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 insurer or the administrator

recovers more than those amounts, the excess must be paid to the injured employee or his dependents.

5. In any case where the insurer or the administrator is subrogated to the rights of the injured employee or of his dependents as provided in subsection 2 or 3, the insurer or the administrator 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.

6. The lien provided for under subsection 1 or 5 includes the total compensation expenditure incurred by the insurer, the uninsured employers' claim fund or a subsequent injury fund for the injured employee and his dependents.

7. An injured employee, or in the case of death his dependents, shall notify the insurer, or in the case of claims involving the uninsured employers' claim fund or a subsequent injury fund the administrator, in writing before initiating a proceeding or action pursuant to this section.

8. Within 15 days after the date of recovery by way of actual receipt of the proceeds of the judgment, settlement or otherwise:

(a) The injured employee or his dependents, or the attorney or representative of the injured employee or his dependents; and

(b) The third-party insurer,

shall notify the insurer, or in the case of claims involving the uninsured employers' claim fund or a subsequent injury fund the administrator, of the recovery and pay to the insurer or the administrator, respectively, the amount due under this section together with an itemized statement showing the distribution of the total recovery. The attorney or representative of the injured employee or his dependents and the third-party insurer are jointly and severally liable for any amount to which an insurer is entitled pursuant to this section if the attorney, representative or third-party insurer has knowledge of the lien provided for in this section.

9. An insurer shall not sell its lien to a third-party insurer unless the injured employee or his dependents, or the attorney or representative of the injured employee or his dependents, refuses to provide to the insurer information concerning the action against the third party.

10. 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 must receive proof of the amount of all payments made or to be made by the insurer or the administrator. The court shall instruct the jury substantially as follows:

Payment of workmen's compensation benefits by the insurer, or in the case of claims involving the uninsured employers' claim fund or a subsequent injury fund the administrator, 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, the insurer or the administrator any amount paid to him or paid on his behalf by his employer, the insurer or the administrator.

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 any compensation benefits will be repaid from your award.

11. ~~[For the purposes of calculating]~~ ***To calculate*** an employer's premium, the employer's account with the system must be credited with an amount equal to that recovered by the system from a third party pursuant to this section, less the system's share of the expenses of litigation incurred in obtaining the recovery, except that the total credit must not exceed the amount of compensation actually paid or reserved by the system on the injured employee's claim.

12. As used in this section, "third-party insurer" means an insurer that issued to a third party who is liable for damages pursuant to subsection 2, a policy of liability insurance the proceeds of which are recoverable pursuant to this section. The term

includes an insurer that issued to an employer a policy of uninsured or underinsured vehicle coverage.

**Sec. 37.** NRS 616C.230 is hereby amended to read as follows:

616C.230 1. Compensation is not payable pursuant to the provisions of chapters 616A to 616D, inclusive, ***or chapter 617*** of NRS 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) Proximately caused by the employee's intoxication. If the employee was intoxicated at the time of his injury, intoxication must be presumed to be a proximate cause unless rebutted by evidence to the contrary.

(d) Proximately caused by the employee's use of a controlled substance. If the employee had any amount of a controlled substance in his system at the time of his injury for which the employee did not have a current and lawful prescription issued in his name, the controlled substance must be presumed to be a proximate cause unless rebutted by evidence to the contrary.

2. For the purposes of paragraphs (c) and (d) of subsection 1:

(a) The affidavit or declaration of an expert or other person described in NRS 50.315 is admissible to prove the existence of any alcohol or the existence, quantity or identity of a controlled substance in an employee's system. If the affidavit or declaration is to be so used, it must be submitted in the manner prescribed in NRS 616C.355.

(b) When an examination requested or ordered includes testing for the use of alcohol or a controlled substance:

(1) If the laboratory that conducts the testing is located in a county whose population is 100,000 or more and the testing is of urine, the laboratory must be certified for forensic testing of urine for drugs by the College of American Pathologists or a successor organization or by the federal Department of Health and Human Services; and

(2) Any such testing of breath for alcohol must be performed pursuant to the regulations of the federal Department of Transportation.

3. No compensation is payable for the death, disability or treatment of an employee if his death is caused by, or insofar as his disability is 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.

4. If any employee persists in an unsanitary or injurious practice that imperils or retards his recovery, or refuses to submit to such medical or surgical treatment as is necessary to promote his recovery, his compensation may be reduced or suspended.

5. An injured employee's compensation, other than accident benefits, must be suspended if:

(a) A physician or chiropractor determines that the employee is unable to undergo treatment, testing or examination for the industrial injury solely because of a condition or injury that did not arise out of and in the course of his employment; and

(b) It is within the ability of the employee to correct the nonindustrial condition or injury.

The compensation must be suspended until the injured employee is able to resume treatment, testing or examination for the industrial injury. The insurer may elect to pay for the treatment of the nonindustrial condition or injury.

**Sec. 38.** NRS 616C.280 is hereby amended to read as follows:

616C.280 The administrator may withdraw his approval of an employer's providing accident benefits for his employees and require the employer to pay the premium collected pursuant to NRS 616C.255 if the employer intentionally:

1. Determines incorrectly that a claimed injury did not arise out of and in the course of the employee's employment;

2. Fails to advise an injured employee of his rights under chapters 616A to 616D, inclusive, ***or chapter 617*** of NRS;

3. Impedes the determination of disability or benefits by delaying a needed change of an injured employee's physician or chiropractor;

4. Causes an injured employee to file a legal action to recover any compensation or other medical benefits due him from the employer;

5. Violates any of his or the division's regulations regarding the provision of accident benefits by employers; or

6. Discriminates against an employee who claims benefits under chapters 616A to 616D, inclusive, ***or chapter 617*** of NRS.

**Sec. 39.** NRS 616C.325 is hereby amended to read as follows:

616C.325 1. It is unlawful for any person to represent an employee before a hearings officer, or in any negotiations, settlements, hearings or other meetings with an insurer concerning the employee's claim or possible claim, unless he is:

(a) Employed full time by the employee's labor organization;

(b) Admitted to practice law in this state;

(c) Employed full time by and under the supervision of an attorney admitted to practice law in this state; or

(d) Appearing without compensation on behalf of the employee.

It is unlawful for any person who is not admitted to practice law in this state to represent the employee before an appeals officer.

2. It is unlawful for any person to represent an employer at hearings of contested cases unless that person is:

(a) Employed full time by the employer or a trade association to which the employer belongs that is not formed solely ~~[for the purpose of providing]~~ ***to provide*** representation at hearings of contested cases;

(b) An employer's representative licensed pursuant to subsection 3 who is not licensed as a third-party administrator;

(c) Admitted to practice law in this state; or

(d) A licensed third-party administrator.

3. The director of the department of administration shall adopt regulations which include the:

(a) Requirements for licensure of employers' representatives, including:

(1) The registration of each representative; and

(2) The filing of a copy of each written agreement for the compensation of a representative;

(b) Procedure for such licensure; and

(c) Causes for revocation of such a license, including any applicable action listed in NRS 616D.120 or a violation of this section.

4. Any person who is employed by or contracts with an employer to represent the employer at hearings regarding contested claims is an agent of the employer. If the employer's representative violates any provision of this chapter or chapter 616A, 616B , ~~[or]~~ 616D *or 617* of NRS, the employer is liable for any penalty assessed because of that violation.

5. An employer shall not make the compensation of any person representing him contingent in any manner upon the outcome of any contested claim.

6. The director of the department of administration shall collect in advance and deposit with the state treasurer for credit to the state general fund the following fees for licensure as an employer's representative:

(a) Application and license ..... $78

(b) Triennial renewal of each license ..... 78

**Sec. 40.** NRS 616C.350 is hereby amended to read as follows:

616C.350 1. Any physician or chiropractor who attends an employee within the provisions of chapters 616A to 616D, inclusive, or chapter 617 of NRS in a professional capacity, may be required to testify before an appeals officer. A physician or chiropractor who testifies is entitled to receive the same fees as witnesses in civil cases and, if the appeals officer so orders at his own discretion, a fee equal to that authorized for a consultation by the appropriate schedule of fees for physicians or chiropractors. These fees must be paid by the insurer.

2. Information gained by the attending physician or chiropractor while in attendance on the injured employee is not a privileged communication if:

(a) Required by an appeals officer for a proper understanding of the case and a determination of the rights involved; or

(b) The information is related to any fraud that has been or is alleged to have been committed in violation of the provisions of this chapter or chapter 616A, 616B , ~~[or]~~ 616D *or 617* of NRS.

**Sec. 41.** NRS 616D.050 is hereby amended to read as follows:

616D.050 1. Appeals officers, the administrator, the manager and the manager's designee, in conducting hearings or other proceedings pursuant to the provisions of chapters 616A to 616D, inclusive, *or chapter 617* of NRS or regulations adopted pursuant to those chapters may:

(a) Issue subpoenas requiring the attendance of any witness or the production of books, accounts, papers, records and documents.

(b) Administer oaths.

(c) Certify to official acts.

(d) Call and examine under oath any witness or party to a claim.

(e) Maintain order.

(f) Rule upon all questions arising during the course of a hearing or proceeding.

(g) Permit discovery by deposition or interrogatories.

(h) Initiate and hold conferences for the settlement or simplification of issues.

(i) Dispose of procedural requests or similar matters.

(j) Generally regulate and guide the course of a pending hearing or proceeding.

2. Hearing officers, in conducting hearings or other proceedings pursuant to the provisions of chapters 616A to 616D, inclusive, ***or chapter 617*** of NRS or regulations adopted pursuant to those chapters, may:

(a) Issue subpoenas requiring the attendance of any witness or the production of books, accounts, papers, records and documents that are relevant to the dispute for which the hearing or other proceeding is being held.

(b) Maintain order.

(c) Permit discovery by deposition or interrogatories.

(d) Initiate and hold conferences for the settlement or simplification of issues.

(e) Dispose of procedural requests or similar matters.

(f) Generally regulate and guide the course of a pending hearing or proceeding.

**Sec. 42.** NRS 616D.065 is hereby amended to read as follows:

616D.065 1. An appeals officer, in conducting hearings or other proceedings pursuant to the provisions of chapters 616A to 616D, inclusive, ***or chapter 617*** of NRS or regulations adopted pursuant to those chapters, may order the attorney or representative of a party to pay any costs that are incurred by the hearings division of the department of administration for a court reporter or an interpreter.

2. Before ordering the payment of such costs, the appeals officer must find that the costs were incurred because the attorney or representative of a party caused a continuance or delay in a scheduled hearing by his failure, without good cause, to comply with an order of the appeals officer or a regulation adopted pursuant to chapters 616A to 616D, inclusive, ***or chapter 617*** of NRS.

**Sec. 43.** NRS 616D.080 is hereby amended to read as follows:

616D.080 1. Each officer who serves a subpoena is entitled to receive the same fees as a sheriff.

2. Each witness who appears, in obedience to a subpoena which has been issued pursuant to this chapter or chapter 616A, 616B , ~~[or]~~ 616C ***or 617*** of NRS, before an appeals officer, a hearing officer, the administrator, the manager or the manager's designee, is entitled to receive for his attendance the fees and mileage provided for witnesses in civil cases in courts of record.

3. The appeals officer, hearing officer, administrator, manager or manager's designee shall:

(a) Authorize payment from his administrative budget of the fees and mileage due to such a witness; or

(b) Impose those costs upon the party at whose instance the witness was subpoenaed or, for good cause shown, upon any other party.

**Sec. 44.** NRS 616D.110 is hereby amended to read as follows:

616D.110 1. In addition to any other remedy provided for by law, if any employer within the provisions of NRS 616B.633 fails to provide and secure compensation, or fails to maintain such compensation, under the terms of chapters 616A to 616D, inclusive, *or chapter 617* of NRS, the administrator may, in order to protect the employees of the employer from the effect of not having industrial insurance coverage and upon compliance with the requirements of subsection 2, order the immediate cessation of all business operations at the place of employment or jobsite until such time as the employer performs all acts and duties enjoined upon him by chapters 616A to 616D, inclusive, *or chapter 617* of NRS as determined necessary by the administrator in order to provide, secure and maintain compensation under those chapters.

2. The order must:

(a) Include a reference to the particular sections of the statutes or regulations alleged to have been violated, and a short, plain statement of the facts alleged to constitute the violation.

(b) Provide an opportunity for hearing to the employer on a date fixed in the order which must not be less than 5 nor more than 15 days after the date of the order, unless upon demand of the employer the date is advanced to the next business day after the demand is made to the administrator.

An order for summary suspension issued pursuant to this subsection must be endorsed with the date and hour of issuance and entered of record in the office of the administrator.

3. Immediately upon receiving an order to cease business operations under subsection 1, an employer shall order all employees or other persons to leave the place of employment or jobsite and shall cease all business operations thereat.

4. Upon request by the administrator, any law enforcement agency in this state shall render any assistance necessary to carry out the requirement of subsection 3, including but not limited to preventing any employee or other person from remaining at the place of employment or jobsite.

**Sec. 45.** NRS 616D.200 is hereby amended to read as follows:

616D.200 1. If the administrator finds that an employer within the provisions of NRS 616B.633 has failed to provide and secure compensation as required by the terms of chapters 616A to 616D, inclusive, ***or chapter 617*** of NRS or that the employer has provided and secured that compensation but has failed to maintain it, he shall make a determination thereon and may charge the employer an amount equal to the sum of:

(a) The premiums that would otherwise have been owed to the system pursuant to the terms of chapters 616A to 616D, inclusive, *or chapter 617* of NRS for the period that the employer was doing business in this state without providing, securing or maintaining that compensation, but not to exceed 6 years;

(b) The actual costs incurred by the system in reinstating the policy, but not to exceed 10 percent of the premiums owed by the employer; and

(c) Interest at a rate determined pursuant to NRS 17.130 computed from the time that the premiums should have been paid.

2. The administrator shall deliver a copy of his determination to the employer. An employer who is aggrieved by the determination of the administrator may appeal from the determination pursuant to subsection 2 of NRS 616D.220.

3. Any employer within the provisions of NRS 616B.633 who fails to provide, secure or maintain compensation as required by the terms of chapters 616A to 616D, inclusive, *or chapter 617* of NRS, is:

(a) For the first offense, guilty of a misdemeanor.

(b) For a second or subsequent offense committed within 7 years after the previous offense, guilty of a category C felony and shall be punished as provided in NRS 193.130. Any criminal penalty imposed must be in addition to the amount charged pursuant to subsection 1.

**Sec. 46.** NRS 616D.240 is hereby amended to read as follows:

616D.240 1. Any employer who makes any charge against any employee or who deducts from the wages of any employee any sum of money to meet the costs, in whole or in part, of the liability incurred by the employer by reason of his acceptance or rejection of chapters 616A to 616D, inclusive, ***or chapter 617*** of NRS is guilty of a gross misdemeanor.

2. An employer who is required to provide compensation pursuant to the provisions of chapters 616A to 616D, inclusive, or chapter 617 of NRS and who requires an employee to provide or secure such compensation on his own behalf is guilty of a gross misdemeanor.

3. Any employer violating any provision of this section must be prosecuted by the attorney general upon complaint of any employee who, as determined by the attorney general, submits proper evidence of a violation.

**Sec. 47.** NRS 616D.300 is hereby amended to read as follows:

616D.300 Unless a different penalty is provided pursuant to NRS 616D.370 to 616D.410, inclusive, a person who knowingly makes a false statement or representation, including, but not limited to, a false statement or representation relating to his identity or the identity of another person, or who knowingly conceals a material fact to obtain or attempt to obtain any benefit, including a controlled substance, or payment under the provisions of this chapter or chapter 616A, 616B , ~~[or]~~ 616C ***or 617*** of NRS, either for himself or for any other person, shall be punished as follows:

1. If the amount of the benefit or payment obtained or attempted to be obtained was less than $250, for a misdemeanor.

2. If the amount of the benefit or payment obtained or attempted to be obtained was $250 or more, for a category D felony as provided in NRS 193.130.

In addition to any other penalty, the court shall order the person to pay restitution.

**Sec. 48.** NRS 616D.310 is hereby amended to read as follows:

616D.310 A person who knowingly makes a false statement or representation concerning the employment of a person who is receiving benefits pursuant to chapters 616A to 616D, inclusive, ***or chapter 617*** of NRS is guilty of a category D felony and shall be punished as provided in NRS 193.130.

**Sec. 49.** NRS 616D.320 is hereby amended to read as follows:

616D.320 1. An employer shall not knowingly offer employment or continue to employ a person who is receiving payments for a temporary total disability in violation of the provisions of chapters 616A to 616D, inclusive, ***or chapter 617*** of NRS or NRS 281.390.

2. An employer who is convicted of violating the provisions of subsection 1 is guilty of a gross misdemeanor.

**Sec. 50.** NRS 616D.550 is hereby amended to read as follows:

616D.550 1. An insurer, organization for managed care, health care provider, employer, third-party administrator or public officer who believes, or has reason to believe, that:

(a) A fraudulent claim for benefits under a policy of insurance has been made, or is about to be made;

(b) An employer within the provisions of NRS 616B.633 has:

(1) Knowingly made a false statement or representation concerning the amount of payroll upon which a premium is based; or

(2) Failed to provide and secure compensation under the terms of chapters 616A to 616D, inclusive, ***or chapter 617*** of NRS or has failed to maintain that compensation;

(c) A provider of health care has submitted an invoice for payment for accident benefits that contains information which the provider knows is false; or

(d) A person has committed any other fraudulent practice under this chapter or chapter 616A, 616B, 616C or 617 of NRS,

shall report that belief to the fraud control unit for industrial insurance established pursuant to NRS 228.420.

2. The fraud control unit for industrial insurance established pursuant to NRS 228.420 may require a person who submits a report pursuant to subsection 1 to submit that report on a form prescribed by the unit.

**Sec. 51.** NRS 108.590 is hereby amended to read as follows:

108.590 1. Whenever any person receives hospitalization on account of any injury, and he, or his personal representative after his death, claims damages from the person responsible for causing the injury, the hospital has a lien upon any sum awarded the injured person or his personal representative by judgment or obtained by a settlement or

compromise to the extent of the amount due the hospital for the reasonable value of the hospitalization rendered before the date of judgment, settlement or compromise.

2. The lien provided by this section is:

(a) Not valid against anyone coming under the provisions of chapters 616A to 616D, inclusive, *or chapter 617* of NRS.

(b) In addition to the lien provided by NRS 108.662.

**Sec. 52.** NRS 239A.070 is hereby amended to read as follows:

239A.070 This chapter does not apply to any subpoena issued pursuant to Title 14 or chapters 616A to 616D, inclusive, *and chapter 617* of NRS or prohibit:

1. Dissemination of any financial information which is not identified with or identifiable as being derived from the financial records of a particular customer.

2. The attorney general, district attorney, department of taxation, public administrator, sheriff or a police department from requesting of a financial institution, and the institution from responding to the request, as to whether a person has an account or accounts with that financial institution and, if so, any identifying numbers of the account or accounts.

3. A financial institution, in its discretion, from initiating contact with and thereafter communicating with and disclosing the financial records of a customer to appropriate governmental agencies concerning a suspected violation of any law.

4. Disclosure of the financial records of a customer incidental to a transaction in the normal course of business of the financial institution if the director, officer, employee or

agent of the financial institution who makes or authorizes the disclosure has no reasonable cause to believe that such records will be used by a governmental agency in connection with an investigation of the customer.

5. A financial institution from notifying a customer of the receipt of a subpoena or a search warrant to obtain his financial records, except when ordered by a court to withhold such notification.

6. The examination by or disclosure to any governmental regulatory agency of financial records which relate solely to the exercise of its regulatory function if the agency is specifically authorized by law to examine, audit or require reports of financial records of financial institutions.

7. The disclosure to any governmental agency of any financial information or records whose disclosure to that particular agency is required by the tax laws of this state.

8. The disclosure of any information pursuant to NRS 425.393, 425.400 or 425.460.

9. A governmental agency from obtaining a credit report or consumer credit report from anyone other than a financial institution.

**Sec. 53.** NRS 244.33505 is hereby amended to read as follows:

244.33505 1. In a county in which a license to engage in a business is required, the board of county commissioners shall not issue such a license unless the applicant for the license signs an affidavit affirming that the business:

(a) Has received coverage by the state industrial insurance system or a private carrier as required pursuant to chapters 616A to 616D, inclusive, ***and chapter 617*** of NRS;

(b) Maintains a valid certificate of self-insurance pursuant to chapters 616A to 616D, inclusive, of NRS;

(c) Is a member of an association of self-insured public or private employers; or

(d) Is not subject to the provisions of chapters 616A to 616D, inclusive, ***or chapter 617*** of NRS.

2. In a county in which such a license is not required, the board of county commissioners shall require a business, when applying for a post office box, to submit to the board the affidavit required by subsection 1.

3. Each board of county commissioners shall submit to the administrator of the division of industrial relations of the department of business and industry monthly a list of the names of those businesses which have submitted an affidavit required by subsections 1 and 2.

4. Upon receiving an affidavit required by this section, a board of county commissioners shall provide the owner of the business with a document setting forth the rights and responsibilities of employers and employees to promote safety in the workplace, in accordance with regulations adopted by the division of industrial relations of the department of business and industry pursuant to NRS 618.376.

**Sec. 54.** NRS 245.211 is hereby amended to read as follows:

245.211 1. The board of county commissioners of any county may establish, by contract or otherwise, and administer a disability pension plan or disability insurance program for the benefit of the county sheriff, any sheriff's deputy or fireman who is disabled, to any degree, by an injury arising out of and in the course of his employment.

2. The board of county commissioners may adopt ordinances, rules, regulations, policies and procedures necessary to establish and administer the plan or program specified in subsection 1.

3. If a county elects to consider implementation of a plan or program specified in subsection 1, or to change the benefits provided by an existing plan or program, the persons affected by the proposed plan or program, or proposed change, may negotiate with the county concerning the nature and extent of such plan, program or change. Chapter 288 of NRS ~~[shall apply]~~ ***applies*** to negotiations for this purpose.

4. The plan or program authorized by this section ~~[shall]~~ ***must*** be supplemental or in addition to and not in conflict with the coverage, compensation, benefits or procedure established by or adopted pursuant to chapters 616A to 616D, inclusive, ***or chapter 617*** of NRS.

5. The benefits provided for in this section are supplemental to other benefits an employee is entitled to receive on account of the same disability. In no event shall the benefits provided for in this section, when added to benefits provided for or purchased by the expenditure of public ~~[moneys,]~~ ***money,*** exceed the maximum amount of benefits an

employee is entitled to receive if he has been a member of the department or agency for 10 years or more.

**Sec. 55.** NRS 268.0955 is hereby amended to read as follows:

268.0955 1. In an incorporated city in which a license to engage in a business is required, the city council or other governing body of the city shall not issue such a license unless the applicant for the license signs an affidavit affirming that the business:

(a) Has received coverage by the state industrial insurance system or a private carrier as required pursuant to chapters 616A to 616D, inclusive, ***and chapter 617*** of NRS;

(b) Maintains a valid certificate of self-insurance pursuant to chapters 616A to 616D, inclusive, of NRS;

(c) Is a member of an association of self-insured public or private employers; or

(d) Is not subject to the provisions of chapters 616A to 616D, inclusive, ***or chapter 617*** of NRS.

2. In an incorporated city in which such a license is not required, the city council or other governing body of the city shall require a business, when applying for a post office box, to submit to the governing body the affidavit required by subsection 1.

3. Each city council or other governing body of an incorporated city shall submit to the administrator of the division of industrial relations of the department of business and industry monthly a list of the names of those businesses which have submitted an affidavit required by subsections 1 and 2.

4. Upon receiving an affidavit required by this section, the city council or other governing body of an incorporated city shall provide the applicant with a document setting forth the rights and responsibilities of employers and employees to promote safety in the workplace ~~[,]~~ in accordance with regulations adopted by the division of industrial relations of the department of business and industry pursuant to NRS 618.376.

**Sec. 56.** NRS 268.406 is hereby amended to read as follows:

268.406 1. The governing board of any incorporated city may establish, by contract or otherwise, and administer a disability pension plan or disability insurance program for the benefit of any city police officer or fireman who is disabled, to any degree, by an injury arising out of and in the course of his employment.

2. The governing board may adopt ordinances, rules, regulations, policies and procedures necessary to establish and administer the plan or program specified in subsection 1.

3. If an incorporated city elects to consider implementation of a plan or program specified in subsection 1 ~~[,]~~ or to change the benefits provided by an existing plan or program, the persons affected by the proposed plan or program, or proposed change, may negotiate with the city concerning the nature and extent of such plan, program or change. Chapter 288 of NRS ~~[shall apply]~~ *applies* to negotiations for this purpose.

4. The plan or program authorized by this section ~~[shall]~~ *must* be supplemental or in addition to and not in conflict with the coverage, compensation, benefits or procedure

established by or adopted pursuant to chapters 616A to 616D, inclusive, ***or chapter 617*** of NRS.

5. The benefits provided for in this section are supplemental to other benefits an employee is entitled to receive on account of the same disability. In no event shall the benefits provided for in this section, when added to benefits provided for or purchased by the expenditure of public ~~[moneys,]~~ ***money,*** exceed the maximum amount of benefits an employee is entitled to receive if he has been a member of the department or agency for 10 years or more.

**Sec. 57.** NRS 280.305 is hereby amended to read as follows:

280.305 1. The committee may establish, by contract or otherwise, and administer a disability pension plan or disability insurance program for the benefit of any police officer of the department who is disabled, to any degree, by an injury arising out of and in the course of his employment. The cost of the plan or program may be charged, in whole or in part, against the annual operating budget for the department.

2. The committee may adopt rules, policies and procedures necessary to establish and administer the plan or program specified in subsection 1.

3. If the committee elects to consider implementation of a plan or program specified in subsection 1 ~~[,]~~ or to change the benefits provided by an existing plan or program, the persons affected by the proposed plan or program, or proposed change, may negotiate with:

(a) The committee or two or more persons designated by it; and

(b) The sheriff or a person designated by him,

concerning the nature and extent of the plan, program or change. Chapter 288 of NRS applies to negotiations for this purpose.

4. The plan or program authorized by this section must be supplemental or in addition to and not in conflict with the coverage, compensation, benefits or procedure established by or adopted pursuant to chapters 616A to 616D, inclusive, ***or chapter 617*** of NRS.

5. The benefits provided for in this section are supplemental to other benefits an employee is entitled to receive on account of the same disability. In no event may the benefits provided for in this section, when added to benefits provided for or purchased by the expenditure of public money, exceed the maximum amount of benefits an employee is entitled to receive if he has been a member of the department or agency for 10 years or more.

**Sec. 58.** NRS 333.020 is hereby amended to read as follows:

333.020 As used in this chapter, unless the context otherwise requires:

1. "Chief" means the chief of the purchasing division.

2. "Director" means the director of the department of administration.

3. "Proprietary information" means:

(a) Any trade secret or confidential business information that is contained in a bid submitted on a particular contract; or

(b) Any other trade secret or confidential business information submitted by a bidder and designated as proprietary by the chief.

As used in this subsection, "confidential business information" means any information relating to the amount or source of any income, profits, losses or expenditures of a person, including data relating to cost or price submitted in support of a bid or proposal. The term does not include the amount of a bid or proposal.

4. "Purchasing division" means the purchasing division of the department of administration.

5. "Purchasing officer" means a person who is authorized by the chief or a using agency to participate in:

(a) The evaluation of bids or proposals for a contract;

(b) Any negotiations concerning a contract; or

(c) The development, review or approval of a contract.

6. "Request for a proposal" means a statement which sets forth the requirements and specifications of a contract to be awarded by competitive selection.

7. "Trade secret" has the meaning ascribed to it in NRS 600A.030.

8. "Using agencies" means all officers, departments, institutions, boards, commissions and other agencies in the executive department of the state government which derive their support from public money in whole or in part, whether the money is provided by the State of Nevada, received from the Federal Government or any branch, bureau or agency thereof, or derived from private or other sources, except the Nevada

rural housing authority, local governments as defined in NRS 354.474, conservation districts, irrigation districts, the state industrial insurance system and the University and Community College System of Nevada.

9. "Volunteer fire department" means a volunteer fire department which pays premiums for industrial insurance pursuant to the provisions of chapters 616A to 616D, inclusive, ***or chapter 617*** of NRS.

**Sec. 59.** NRS 396.251 is hereby amended to read as follows:

396.251 1. The board of regents may establish policies and procedures for personnel which govern student employees, physicians engaged in a program for residency training and postdoctoral fellows of the system and which are separate from the policies and procedures established for the unclassified personnel of the system. Any such policy or procedure does not diminish the eligibility of those persons for coverage as employees under the provisions of chapters 616A to 616D, inclusive, ***or chapter 617*** of NRS.

2. In establishing policies and procedures pursuant to subsection 1, the board of regents is not bound by any of the other provisions of this chapter or the provisions of Title 23 of NRS. Those provisions do not apply to a student employee, a physician engaged in a program for residency training or a postdoctoral fellow of the system unless otherwise provided by the board of regents.

**Sec. 60.** NRS 412.142 is hereby amended to read as follows:

412.142 1. Except as otherwise provided in subsection 2:

(a) In all cases in which any member of the militia of the state is wounded, injured, disabled or killed while in the line of duty in the service of the state, the member or the dependents of the member are entitled to receive compensation from the State of Nevada, in accordance with the provisions of chapters 616A to 616D, inclusive, ***or chapter 617*** of NRS. If that wound, injury or disability is aggravated or recurs while the member is in the line of duty in the service of the state, the member or his dependents are also entitled to receive such compensation.

(b) In all cases, the disabled or deceased member shall be deemed to be an employee of the State of Nevada. The compensation to be awarded to the member or to the dependents of the member must be determined upon the basis of his average income from all sources during the year immediately preceding the date of his injury or death or the commencement of his disability, but the compensation must not exceed the maximum prescribed in chapters 616A to 616D, inclusive, ***or chapter 617*** of NRS.

2. The provisions of this section do not apply to a member of the militia of the state or any dependents of the member who is receiving or is entitled to receive compensation or benefits for an injury, wound, illness, disability or death described in this section pursuant to any law or regulation of the Federal Government, if:

(a) The federal compensation or benefits arise from military duties performed pursuant to Title 10 or Title 32 of the United States Code; and

(b) The wound, injury, illness or disability is not an aggravation or recurrence of a wound, injury, illness or disability that arose from previous duties performed pursuant to Title 10 or Title 32 of the United States Code.

**Sec. 61.** NRS 414.110 is hereby amended to read as follows:

414.110 1. All functions under this chapter and all other activities relating to emergency management are hereby declared to be governmental functions. Neither the state nor any political subdivision thereof nor other agencies of the state or political subdivision thereof, nor except in cases of willful misconduct, gross negligence, or bad faith, any worker complying with or reasonably attempting to comply with this chapter, or any order or regulation promulgated pursuant to the provisions of this chapter, or pursuant to any ordinance relating to black out or other precautionary measures enacted by any political subdivision of the state, is liable for the death of or injury to persons, or for damage to property, as a result of any such activity. The provisions of this section do not affect the right of any person to receive benefits to which he would otherwise be entitled under this chapter, or under the provisions of chapters 616A to 616D, inclusive, *or chapter 617* of NRS, or under any pension law, nor the right of any such person to receive any benefits or compensation ~~[under any Act]~~ *pursuant to any act* of Congress.

2. Any requirement for a license to practice any professional, mechanical or other skill does not apply to any authorized worker who, in the course of performing his duties as such, practices that professional, mechanical or other skill during an emergency.

3. As used in this section, the term "worker" includes any full-time or part-time paid, volunteer or auxiliary employee of this state, of any political subdivision thereof, of other states, territories, possessions or the District of Columbia, of the Federal Government, of any neighboring country, or of any political subdivision thereof, or of any agency or organization, performing services for emergency management at any place in this state subject to the order or control of, or pursuant to a request of, the state government or any political subdivision thereof.

**Sec. 62.** NRS 475.230 is hereby amended to read as follows:

475.230 1. Any fire department which engages in fighting a fire on property owned by the state within the jurisdictional limits of the fire department may submit a claim to the secretary of the state board of examiners to recover any direct expenses and losses incurred as a result of fighting that fire.

2. The claim must include:

(a) The name, address and jurisdictional limits of the fire department;

(b) The name, address and telephone number of the person making the claim on behalf of the fire department;

(c) The name and address, if known, of the state agency having jurisdiction over the property on which the fire occurred;

(d) The exact location of the fire;

(e) A description of the property burned;

(f) The number and classification of the personnel and the number and type of equipment used to fight the fire;

(g) A copy of the fire report; and

(h) An itemized list of direct expenses and losses incurred while fighting the fire including the purchase cost, estimated cost of repairs and a statement of depreciated value immediately preceding and after the damage to or destruction of any equipment and the extent of any insurance coverage.

3. As used in this section, "direct expenses and losses" means certain expenses and losses which were incurred while fighting a fire on property owned by the state. The term is limited to:

(a) The depreciated value, if any, of any equipment or vehicle which was damaged or destroyed; and

(b) If the employer maintains a plan which supplements coverage for workers' compensation provided pursuant to chapters 616A to 616D, inclusive, ***or chapter 617*** of NRS by the state industrial insurance system and , ***if*** the benefits are provided from public money and not by an insurer, any injury or death benefits which would have been paid by the employer from public money.

**Sec. 63.** NRS 624.256 is hereby amended to read as follows:

624.256 1. Before granting an original or renewal of a contractor's license to any applicant, the board shall require that the applicant submit to the board:

(a) Proof of industrial insurance and insurance for occupational diseases which covers his employees;

(b) A copy of his certificate of qualification as a self-insured employer which was issued by the commissioner of insurance;

(c) If the applicant is a member of an association of self-insured public or private employers, a copy of the certificate issued to the association by the commissioner of insurance; or

(d) An affidavit signed by the applicant affirming that he is not subject to the provisions of chapters 616A to 616D, inclusive, ***or chapter 617*** of NRS because:

(1) He has no employees;

(2) He is not or does not intend to be a subcontractor for a principal contractor; and

(3) He has not or does not intend to submit a bid on a job for a principal contractor or subcontractor.

2. The board shall notify the fraud control unit for industrial insurance established pursuant to NRS 228.420 whenever the board learns that an applicant or holder of a contractor's license has engaged in business as or acted in the capacity of a contractor within this state without having obtained industrial insurance or insurance for occupational diseases in violation of the provisions of chapters 616A to 617, inclusive, of NRS.

**Sec. 64.** NRS 624.322 is hereby amended to read as follows:

624.322 1. If, through no fault or act of a prime contractor or anyone employed by him, the owner fails to pay that contractor:

(a) Pursuant to their schedule for payments under the contract, or within a reasonable time after maturity and presentation of charges if no schedule is established;

(b) Any sum certified by the architect, engineer or other supervisory agent of the owner; or

(c) Such sum as is otherwise properly due,

or if the owner through his own act or neglect, excluding acts of God, floods, fires or strikes, causes the work to be stopped for a period of 5 working days or more, the contractor may, after 5 working days' written notice to the owner, stop work or terminate the contract and recover from the owner payment for all work executed.

2. If, through no fault of a subcontractor or anyone employed by him, the contractor fails to pay that subcontractor:

(a) Pursuant to the schedule for payments under the subcontract, or within a reasonable time after maturity and presentation of charges if no schedule is established;

(b) Any sum certified by the architect, engineer or other supervisory agent of the owner or contractor; or

(c) Such sum as is otherwise properly due,

or if the contractor through his own acts or neglect, excluding acts of God, floods, fires or strikes, causes the work to be stopped for a period of 5 working days or more, the

subcontractor may, after 5 working days' written notice to the owner and the contractor, stop work or terminate the subcontract and recover from the contractor payment for all work executed. The subcontractor may not be held liable for nonperformance of that subcontract and for the cost incurred by the contractor to complete the work.

3. The provisions of subsection 2 do not apply if the contractor's failure to pay is caused by his need to withhold money pursuant to an official notice from a state agency that he is liable to make payments or contributions for the subcontractor pursuant to chapter 608 or 612 or chapters 616A to 616D, inclusive, ***or chapter 617*** of NRS.