Legislative Committee
on
Workers' Compensation

January 2001

Legislative Counsel Bureau
Bulletin No. 01-19

LEGISLATIVE COMMITTEE ON
WORKERS' COMPENSATION

BULLETIN NO. 01-19

JANUARY 2001

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SUMMARY OF RECOMMENDATIONS

LEGISLATIVE COMMITTEE ON WORKERS' COMPENSATION
(*Nevada Revised Statutes* [NRS] 218.5375)

This summary presents the recommendations approved by the Legislative Committee on Workers' Compensation. The Committee submits these proposals to the 71st Session of the Nevada Legislature.

ADMINISTRATION AND REGULATION OF THE WORKERS' COMPENSATION SYSTEM

In-State Claims Handling

1. **Amend NRS to allow insurers to keep information pertaining to claims at a location outside of this state; further, allow that the file required to be accessible at an in-state office, pursuant to current state law, may be an electronic, digital, or micro-photographic version of all of its records relating to any claim filed in this state. Require that such information on an open claim be available within 24 hours of request. Information on closed claims must be available within 30 calendar days. The Administrator of the Division of Industrial Relations (DIR) may adopt regulations concerning the maintenance and preservation of files. (BDR 53-772)**

Workers' Compensation Assessment

2. **Amend the provisions of NRS related to the assessment for the Workers' Compensation and Safety Fund, the Uninsured Employers' Claim Fund, and the various subsequent injury funds (BDR 53-877):**

   (a) Require that the formula used to determine the equitable distribution among insurers of certain costs associated with the workers' compensation program must be based on: (1) expected annual premiums for private carriers, self-insured employers, and associations of self-insured public and private employers; and (2) expected annual expenses for "ex-med" employers.

   (b) Define expected annual premiums for self-insured employers and associations of self-insured public and private employers to mean 105 percent of the average claims costs for the preceding three years or the lowest of three quotes from a commercial carrier until such time as a three-year average claims cost can be calculated.

   (c) Delete the provision that currently authorizes the formula to "utilize actual expenditures for claims."

Audit of Insurers

3. Amend the provisions of NRS related to the audit of an insurer (BDR 53-772):

(a) Extend from at least every three years to at least every five years the time period in which the Administrator of the DIR must audit all insurers.

(b) Allow DIR to conduct an "abbreviated" audit at any time of insurers that have no history of prior violations of Chapters 616A to 616D, and Chapter 617 of NRS. The Administrator must establish procedures for "abbreviated" audits.

(c) Allow DIR, with the consultation of the Commissioner of Insurance, to perform its audit of an insurer in conjunction with an audit conducted by the Division of Insurance.

Investment of Associations of Self-Insured Public Employers

4. Amend NRS 616B.368 to clarify that associations of self-insured public employers may invest the money of the association not needed to pay the obligations of the association pursuant to Chapter 682A of NRS ("Investments") even though individual members of the association, who are public employers, are limited in their investments by Chapter 355 of NRS ("Public Investments"). (BDR 53-772)

Payment to Healthcare Providers

5. Amend NRS to provide that if an insurer denies payment of a medical bill, the insurer must provide notification of the denial to the employee. The notification must include the amount of the medical bill, the reason for the determination, and the forms necessary to appeal the determination pursuant to NRS 616C.315. An employee who elects not to appeal the determination is responsible for payment of the medical bill. Also, the employee who elects to appeal, but does not prevail upon appeal, is responsible for payment of the medical bill. (BDR 53-772)

BENEFITS/CLAIMS/EMPLOYEES

Medical Fee Schedule

6. Amend NRS 616C.260 concerning the maintenance of the medical fee schedule (BDR 53-773):

(a) Require the Administrator of the DIR to consider the amounts being charged and paid in the state for accident benefits when revising the medical fee schedule for accident benefits.

(b) Allow the Administrator to utilize Nevada data from a national medical fee data warehouse vendor when adjusting the medical fee schedule for accident benefits.

(c) Require the Administrator to adjust annually the medical fee schedule by an amount equivalent to the corresponding annual change in the Consumer Price Index, Medical Care Component.

(d) Require that any revisions to the medical fee schedule for accident benefits be completed in sufficient time to be considered by Nevada's advisory organization in its annual rate filing.

Reduction and Enhancement of Compensation

7. Amend NRS 616D.280 to provide that if an industrial injury occurs due to the absence of a safeguard or protection, the compensation of the injured employee must be reduced 25 percent. In addition, compensation of the injured employee must be increased 25 percent if the absence or removal of a safeguard or protection is done at the direction of the employer or superintendent or foreman of the employer. The provisions of NRS 616D.280 pertaining to the reduction of an employee's worker's compensation due the absence or removal of a safeguard or protection must be posted in an open and conspicuous area at the employer's place of business for employees to view. The posting of this information must be in English and Spanish. (BDR 53-773)

Reopening a Claim for Compensation

8. Amend NRS so that a request to reopen a claim that is made more than one year after the date on which the claim was closed must not be granted unless the claimant received an award for permanent partial disability and was off work for at least 5 consecutive days, or 5 cumulative days within a 20-day period, in addition to meeting the criteria under subsection 1 of NRS 616C.390. (BDR 53-773)

Contagious Disease Testing

9. Amend the provisions of NRS related to the report of exposure of a police officer or firefighter to a contagious disease (BDR 53-773):

(a) Clarify NRS 616C.052 to provide that when testing a police officer or firefighter for tuberculosis, as currently required by state law in certain situations, a "skin test," not a blood test, must be administered.

(b) Prohibit chiropractors from administering the tests to screen for contagious disease as required in NRS 616C.052.

SUBSEQUENT INJURY FUNDS

10. Retain Nevada's existing subsequent injury funds and continue to administer as currently provided in state law. (This recommendation does not require draft legislation.)

11. Require the DIR to create, maintain, and make publicly available an informational brochure on Nevada's subsequent injury funds. (BDR 53-770)

PROOF OF COVERAGE

Certificate of Insurance

12. Amend NRS to provide that a policy of industrial insurance, including the declaration page for privately insured employers, and a certificate of qualification for self-insured employers or associations of self-insured public and private employers, must be open to inspection by the Administrator of the DIR or his auditor or agent. An employer who fails to provide such access to this information is guilty of a misdemeanor. In addition, delete subsection 1(a) of NRS 616A.495 that requires the posting of a certificate of insurance at the employer's place of business and subsection 1(b) of NRS 616A.495 that requires the posting of a certificate of qualification for a self-insured employer. Repeal NRS 616B.026 that requires an insurer to provide each employer for whom the insurer provides industrial insurance, a certificate of insurance indicating the employer has obtained a workers' compensation policy. (BDR 53-769)

Notice of Cancellation of Coverage

13. Clarify the "proof of coverage" reporting requirements in NRS (BDR 53-769):

(a) Amend NRS 616B.033 to provide that an employer must give notice of the actual cancellation of its industrial insurance policy to the Administrator of the DIR only. The employer is not required to give such notice to the Administrator, if the employer's subsequent insurer has provided notice to the Administrator that a policy has been secured.

(b) Repeal NRS 616B.460(2) that allows an employer to change carriers for the purpose of securing workers' compensation insurance if he notifies the Administrator of the change and provides proof that subsequent coverage has been secured.

(c) Amend NRS to require private carriers to notify the Administrator in cases of the issuance of a new policy, the reinstatement of a policy, and the renewal or cancellation of an existing policy.

(d) Enact legislation to provide that if an error occurs when reporting the information specified in paragraph (c) above to the Administrator of the DIR, the insurer must investigate the error and submit corrected information or substantiate the prior submitted information within 30 calendar days, during which time the insurer is not subject to fines. If the discrepancy is due to incorrect information being submitted to the Administrator by the state's advisory organization, no fine or corrective action may be imposed against the insurer.

HEARINGS AND APPEALS PROCESS

Appeal to Administrator of the Division of Industrial Relations (DIR)

14. Amend the provisions of NRS 616B.215 and any other sections of NRS that allow an employer aggrieved by a determination regarding vocational rehabilitation of an injured employee to provide that such grievances must be appealed to the Hearings Division of the Department of Administration and not to the Administrator of the DIR, as currently provided in state law. Also, amend NRS 616C.170 to provide that matters concerning disputes between insurers if an injured employee claims benefits against more than one insurer must be appealed to the Hearings Division. (BDR 53-767)

Conduct of Appeals Officers

15. Enact legislation to require the Chief of the Hearings Division to adopt regulations governing the conduct of appeals officers. The regulations must include procedures for the filing of complaints against an appeals officer who is believed to be in violation of the regulations governing conduct, rules of practice for hearing such complaints, and applicable penalties. (BDR 53-767)

COVERAGE AND POLICY REQUIREMENTS

Policy of Coverage and Owner-Controlled Insurance Program (OCIP) Participants

16. Amend NRS to provide that an insurer is not required to provide an industrial insurance policy covering each employee of an insured employer if certain employees are covered under the industrial insurance policy of a contractor or subcontractor participating in a consolidated insurance program and are working exclusively at the site of the construction project covered by the consolidated insurance program. (BDR 53-768)

Reporting of Tip Income

17. Amend NRS 616B.227 to allow employers to utilize computerized payroll records, that summarize allocated tips, to meet the existing provisions of state law which require an employer to copy each form its employees must file with the United States Internal Revenue Service concerning tip income and forward each copy to its insurer. (BDR 53-768)

Interest Due on Unpaid Premiums

18. Repeal NRS 616B.236 that requires the accrual of interest at a rate of 1 percent per month on industrial insurance premiums unpaid by an employer. (BDR 53-768)

"Policy Year" Language

19. Amend NRS 616B.624(1) and NRS 617.207(1) to change the phrase "year the policy of industrial insurance for the employer is effective" to "policy year." (BDR 53-768)

Physical Examination of a Sole Proprietor

20. Amend NRS 616B.659(2) and NRS 617.225(2) to provide that an insurer may request rather than require that a sole proprietor who elects industrial insurance coverage, submit to a physical examination before coverage commences. (BDR 53-768)

MISCELLANEOUS

Reemployment Rights of Employees of Employers Insurance Company of Nevada (EICON)

21. Enact legislation to clarify that the provisions of Section 132 of Senate Bill 37 (Chapter 388, *Statutes of Nevada 1999*), which provide to an employee of EICON on January 1, 2000, the right to priority placement on an appropriate reemployment list (even without being laid off) and eliminate any probationary period, are applicable to all employees of EICON, rather than only to classified employees. If enacted, this provision is to be effective on passage and approval. (BDR S-771)

REPORT TO THE 71st SESSION OF THE NEVADA LEGISLATURE
BY THE LEGISLATIVE COMMITTEE ON WORKERS' COMPENSATION

I. INTRODUCTION

The 68th Session of the Nevada Legislature created the 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) and Senate Bill 37 (Section 84 of Chapter 388, *Statutes of Nevada 1999*, at pages 1805-1806), 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 (DIR) of Nevada's Department of Business and Industry, to rate physical impairments of injured employees;

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

5. May direct the Legislative Counsel Bureau (LCB) 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 Commerce and Labor. The Committee selected a chairman and vice chairwoman from among its members.

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

During the 1999-2000 interim, the following legislators served on the Legislative Committee on Workers' Compensation:

Assemblyman David R. Parks, Chairman
Senator Margaret A. Carlton, Vice Chairwoman
Senator Ann O'Connell
Senator Dean A. Rhoads
Senator Randolph J. Townsend
Assemblyman David E. Goldwater
Assemblyman Lynn C. Hettrick
Assemblywoman Gene Wines Segerblom

Legislative Counsel Bureau staff services for the Committee were provided by Crystal M. McGee, Senior Research Analyst, Research Division; Vance A. Hughey, Principal Research Analyst, Research Division; Sue S. Matuska, Senior Deputy Legislative Counsel, Legal Division; and Susan Furlong Reil, Principal Research Secretary, Research Division.

Beginning in October 1999 and concluding in October 2000, the Committee held six meetings to obtain expert and public testimony. Following are the dates of each meeting held by the Committee:

- October 14, 1999;
- January 14, 2000;
- March 10, 2000;
- June 9, 2000;
- September 15, 2000; and
- October 20, 2000.

All of the meetings were held in Las Vegas and videoconferenced to the Legislative Building in Carson City.

During the course of this study, the Committee reviewed existing laws and implementation of workers' compensation legislation enacted by the 1999 Legislature. It received comments and recommendations from employers, injured employees, insurers, medical providers, claimants' attorneys, third-party administrators, state agency executives, and representatives of various self-insured employers, business groups, and labor organizations.

At its work session, the Committee adopted 21 recommendations on the following topics:

- Administration and regulation of the workers' compensation system;

- Benefits/claims/employees;

- Subsequent injury funds (SIFs);

- Proof of coverage;

- Hearings and appeals process; and

- Coverage and policy requirements.

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. In addition, this report 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; the Governor's Office for Consumer Health Assistance; Division of Insurance (DOI), DIR, and the Nevada Attorney for Injured Workers (NAIW).

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 1997 and 1999 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 nineteenth and early twentieth centuries.

Under common law, nineteenth 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 that 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.

Certain legislative sessions have brought major changes to the statutes relating to workers' compensation. For example, 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 for contested workers' compensation claims.

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.[2] Also on that date, the DIR began operation as the primary regulator of the state's workers' compensation program.[3]

The 1999 Legislature authorized the privatization of SIIS. On January 1, 2000, SIIS, doing business as Employers Insurance Company of Nevada (EICON), became a private domestic mutual insurance company. With the privatization of EICON, Nevada currently operates in a "two-way" market composed of private carriers and self-insured employers.

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

The NAIW,[4] 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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[2] In July 1998, SIIS began to do business as Employers Insurance Company of Nevada (EICON). For the purpose of this document, "SIIS" and "EICON" are used interchangeably.

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

[4] 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 (NAIW).

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.[5] Additionally, from 1985 through 1988, SIIS did not request approval for any increases in premium rates charged to its policyholders.[6] 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.[7]

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 healthcare 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.

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

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

[7] *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 study committee, the 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. Continued Legislative Reforms and Opening Nevada's Industrial Insurance Market to Competition

While the reforms enacted in 1993 helped to improve the financial condition of SIIS, the Legislature determined that additional reforms were necessary. With Senate Bill 458 (Chapter 587, *Statutes of Nevada 1995*), 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 in the event SIIS was declared insolvent by the Commissioner of Insurance.

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

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.

E. Preparing for Competition and the 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 became 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 became 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*) exempts certain direct sellers from the mandatory provisions regarding industrial insurance. In addition, the bill 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 set 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.

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 and local 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 United States 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 became 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 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 6 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 DIR, 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 federal and state 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 became effective on January 1, 1998. Other sections of the bill were effective on July 1, 1999.

F. Privatizing the State's Workers' Compensation Program and 1999 Legislative Reforms

During the 1999 Session, the Legislature resumed its focus on Nevada's market for industrial insurance by enacting several measures designed to ensure that the competitive market operates efficiently. One of the most significant measures of the session was **Senate Bill 37** (Chapter 388, *Statutes of Nevada 1999*) which accomplished the following:

- Authorized the privatization of SIIS;
- Increased benefits to injured workers; and
- Created the Governor's Office for Consumer Health Assistance.

Privatization of the State Industrial Insurance System

Senate Bill 37 authorizes the manager of SIIS to take the steps necessary to establish a domestic mutual insurance company to transact industrial insurance and other lines of property and casualty insurance in the state of Nevada.

The bill provides that the Governor must proclaim the following events have occurred before the manager of SIIS can transfer the assets of the system to the successor organization:

- A sufficient amount of reinsurance has been purchased by SIIS to operate in a financially responsible manner;

- The manager has taken the steps necessary to establish a domestic mutual insurance company;

- A favorable ruling has been received by SIIS from the United States Internal Revenue Service (IRS) that establishing the domestic mutual insurance company is not considered a taxable event; and

- The Commissioner of Insurance has determined the domestic mutual insurance company qualifies to transact industrial insurance in Nevada.

On December 16, 1999, Governor Kenny C. Guinn proclaimed that these events occurred. The manager then transferred to the chief executive officer of the newly established domestic mutual insurance company the premiums and other money paid to SIIS, including all records, real property, and securities acquired with money in the State Insurance Fund.

The measure requires the Governor to appoint an advisory committee to adopt the initial bylaws of the established domestic mutual insurance company. The advisory committee must be composed of members representing small, medium, and large employers insured by SIIS, whose places of employment are located in various regions of the state.

The bill requires that the chief executive officer of any successor organization to SIIS must continue to hold in trust any money paid to SIIS for the purpose of providing compensation for industrial accidents, occupational diseases, and related administrative expenses. If the successor organization stops providing industrial insurance in the state of Nevada, all money held in trust for the purpose of providing compensation for industrial injuries must be delivered to the Commissioner of Insurance and deposited in the State Insurance Fund. Further, the bill prohibits any successor organization of SIIS from using the money held in trust for the purpose of providing compensation for industrial accidents from being used to transact other property or casualty insurance.

The bill exempts all officers and employees of SIIS from the provisions of Chapter 284 of *Nevada Revised Statutes* (NRS), "State Personnel System," effective on the date the Governor's proclamation was issued. In addition, the bill provides that a classified employee who is employed by SIIS on July 1, 1999, retains his rights to reemployment with another agency of the state of Nevada, including the right to be placed on an appropriate reemployment list maintained by the Department of Personnel for at least 24 months.

If the manager of SIIS lays off an employee, the manager must give the employee 60 days' written notice and provide the Department of Personnel with the information necessary to ensure the employee receives his rights to reemployment. Further, the bill provides that the established domestic mutual insurance company must buy out the pensions of certain employees nearing retirement.

The bill provides that the chief executive officer of the established domestic mutual insurance company must enter into an agreement with the Department of Employment, Training and Rehabilitation to provide services and training to certain employees who are laid off before January 1, 2002. The established domestic mutual insurance company must pay the fees required for such training, up to $2 million. Further, the bill provides that the Commissioner of Insurance must approve any retrospective rating agreement or contract of SIIS existing on June 30, 1999, until December 31, 2000, or until the agreement or contract expires, is renewed, reissued, or amended, whichever occurs first.

Industrial Insurance Benefits

Senate Bill 37 requires an injured employee to sign all medical releases necessary for the insurer to obtain information and records about a preexisting medical condition that is reasonably related to the industrial injury of the employee. In addition, the measure provides that an injured employee may request a hearing officer or appeals officer to order the insurer to reimburse him for the cost associated with a second impairment rating that results in a higher percentage of disability than the first rating, if the hearing officer or appeals officer decides that the second determination of a higher percentage of disability is appropriate.

The bill provides that an employee, whose preexisting nonindustrial condition is aggravated due to a subsequent industrial accident or occupational disease, is entitled to workers' compensation benefits, unless the insurer can prove by a preponderance of the evidence that the subsequent injury or occupational disease is not a substantial contributing cause of the resulting condition. The bill also provides that an employee whose industrial injury or occupational disease is subsequently aggravated outside of the workplace is entitled to workers' compensation benefits, unless the insurer can prove by a preponderance of the evidence that the injury or occupational disease is not a substantial contributing cause of the resulting condition.

The bill allows an insurer to close certain claims if the medical benefits for the claims are less than $300 and the injured employee does not receive treatment for the injury for a 12-month period. The bill requires the insurer to provide written notice to the claimant of the closure of such a claim. Further, the bill provides that under certain circumstances, workers' compensation payments for a permanent total disability must be reduced by an amount equal to the amount of the permanent partial disability lump sum previously paid to the injured employee.

The bill clarifies that a position offered by an employer to an injured employee with a temporary total disability must provide a gross wage that is equal to or substantially similar to the gross wage the employee was earning at the time of his injury in order for the employer to be exempt from certain provisions governing vocational rehabilitation. Further, the bill provides that an insurer and an injured employee may jointly select the physician or chiropractor used to determine the percent of the injured employee's disability; otherwise, the insurer must select the rating physician or chiropractor from the rotating list of such practitioners maintained by the Administrator of the DIR. The bill also changes the factor for compensation of a permanent partial disability from 0.54 percent to 0.6 percent for each 1 percent of impairment of the whole man for injuries sustained on or after January 1, 2000.

The bill changes, from 90 days to 6 months, the length of time an injured employee with existing marketable skills may receive job placement assistance. The bill also extends, by three months, the time period that an injured employee who does not have existing marketable skills is eligible to receive vocational rehabilitation, depending on the injured employee's percent of impairment.

Further, the bill provides that under certain circumstances an injured employee may receive vocational rehabilitation services at a location outside of the state of Nevada, but the location may not be more than 50 miles from Nevada's border. The bill also provides that under certain circumstances, the insurer, organization for managed care, healthcare provider, third-party administrator, or employer must pay a benefit penalty to the injured worker that is not less than $5,000, but not greater than $25,000.

Governor's Office for Consumer Health Assistance

Senate Bill 37 creates the Office for Consumer Health Assistance (OCHA) in the Office of the Governor. The bill provides that the Governor must appoint a Director of the office who is a physician, registered nurse, advanced practitioner of nursing, or a physician's assistant. The bill also transfers the three ombudsmen positions of SIIS, and two positions to assist those ombudsmen, including the equipment and supplies associated with their positions, to OCHA. In addition, the bill transfers one position from the Health Division, Department of Human Resources, and one position from the Division of Health Care Financing and Policy, Department of Human Resources, to the OCHA.

The measure provides that the duties of the Director include responding to inquiries related to health care and workers' compensation, assisting consumers and injured employees in understanding their rights and responsibilities under healthcare plans and industrial insurance policies, and investigating complaints. The Director may employ the persons necessary to carry out the functions of the office. The Director may also adopt the regulations necessary to carry out the provisions of the bill related to the Office.

Finally, the bill requires the Director to submit a written report to the Governor, on or before February 1 of each year, that includes the number and geographic origin of the inquiries

received by OCHA, the type of assistance provided to each healthcare consumer and injured employee who sought assistance, and the disposition of each inquiry and complaint received by the Director.

Many sections of the bill were effective on July 1, 1999, including sections relating to the creation of the Governor's Office for Consumer Health Assistance. Sections of the bill that exempt SIIS employees from the state personnel system were effective on the date the Governor issued a proclamation that certain events had occurred. Sections of the bill that authorize a hearing and appeals officer to order an insurer to reimburse an injured employee for the expense of a second impairment rating; revise the provisions governing the effect on the availability of compensation of a preexisting condition and of an aggravation of an industrial injury or disease that is not related to employment; revise provisions governing compensation for permanent total disability; and expand the length of certain programs of vocational rehabilitation, were effective on January 1, 2000.

In addition to Senate Bill 37, the Legislature enacted various other measures related to industrial insurance.

Senate Bill 38 (Chapter 475, *Statutes of Nevada 1999*) transfers the responsibility for issuing a certificate of registration for certain employee leasing companies from SIIS to DIR. In addition, the bill requires the DIR to regulate employee leasing companies.

The bill also provides 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. In addition, the bill directs that an employer who refuses to open his books, records, and payroll to inspection by a private carrier is subject to a $1,000 fine.

The measure also allows private carriers and SIIS to offer fully insured workers' compensation coverage to heterogeneous groups of employers. In addition, the bill changes, from the current 24 hours to 15 days, the requirement for an insurer to notify DIR of changes in the insurance status of employers.

Further, the bill requires insurers to notify claimants in writing of the circumstances under which certain claims may be closed. This bill was effective on July 1, 1999.

Senate Bill 53 (Chapter 231, *Statutes of Nevada 1999*) provides that every workers' compensation insurer must provide certain information to the Administrator of DIR for the purpose of claims indexing. This bill also provides that insurers who intentionally fail to provide such information shall be fined $1,000 by the Administrator for an initial violation, and $2,000 for each subsequent violation. This bill was effective on July 1, 1999.

Senate Bill 64 (Chapter 129, *Statutes of Nevada 1999*) requires the attorney or representative of an employee or the representative of an injured employee's dependents, to notify the insurer

in writing before a proceeding or action in tort is initiated. In the case of an uninsured employer's claim or a subsequent injury claim, the Administrator of DIR must be notified.

Senate Bill 92 (Chapter 91, *Statutes of Nevada 1999*) clarifies the applicability of provisions governing occupational diseases by adding references to Chapter 617 of NRS, which governs industrial insurance.

Senate Bill 132 (Chapter 479, *Statutes of Nevada 1999*) expands accident benefits under industrial insurance to include preventive treatment administered as a precaution to a police officer, salaried firefighter, or volunteer firefighter exposed to contagious disease while performing the duties of a police officer or firefighter, or upon battery by an offender. The bill requires that any incidents of exposure to contagious disease must be documented by the employer.

In addition, the bill provides that the employer of a police officer, salaried firefighter, or volunteer firefighter must test each such employee for Hepatitis A, Hepatitis B, Hepatitis C, tuberculosis, and human immunodeficiency virus at the time he is voluntarily or involuntarily terminated, and at 6 and 12 months after the date of termination. The bill provides that a police officer, salaried firefighter, or volunteer firefighter who tests positive for such a disease is eligible, during his lifetime, to receive workers' compensation for the disease or any additional conditions resulting from the contagious disease.

The provisions of the bill do not apply to an employee who, before July 1, 1999, is receiving compensation pursuant to the Nevada Industrial Insurance Act or the Nevada Occupational Disease Act. This bill was effective on July 1, 1999.

Senate Bill 133 (Chapter 582, *Statutes of Nevada 1999*) authorizes certain providers of industrial insurance to provide workers' compensation coverage for consolidated insurance programs. The bill requires a consolidated insurance program to provide industrial insurance coverage and a comprehensive safety program for the employees of a contractor or subcontractor engaged in a construction project. The bill also requires a consolidated insurance program to provide for the administration of industrial insurance claims for employees of a contractor or subcontractor engaged in a construction project.

Further, the bill provides that a consolidated insurance program may be established and administered by the principal contractor of the construction project, which is termed a contractor-controlled insurance program (CCIP); or the owner of the construction project, which is termed an owner-controlled insurance program (OCIP). The bill provides that a private company, public entity, or utility may establish and administer a consolidated insurance program if the estimated total cost of the construction project is equal to or greater than the threshold amount established by the Commissioner of Insurance. The base amount of the threshold must be $150 million and must be adjusted annually by the Commissioner based on the Construction Price Index. In addition, Senate Bill 133 requires that the owner or principal contractor state in the notice for bids for construction of the project that the employees of the

contractors or subcontractors of the project will be covered under a consolidated insurance program.

The measure also provides that the exclusive remedy provisions of Nevada's workers' compensation law apply to an owner of a construction project who provides industrial insurance coverage to employees of his contractors and subcontractors through a consolidated insurance program. In addition, the measure allows a consolidated insurance program to cover more than one construction project beginning October 1, 2001. Finally, the measure authorizes the Commissioner of Insurance to adopt the necessary regulations to carry out the provisions of the bill.

Section 10 of the bill expires by limitation on September 30, 2001, and Section 11 of the bill is effective on October 1, 2001. The remainder of the bill was effective on October 1, 1999.

Senate Bill 175 (Chapter 94, *Statutes of Nevada 1999*) increases the penalties for employers who fail to provide, secure, or maintain industrial insurance. For a first offense involving the death or substantial injury of an employee, the penalty is increased from a misdemeanor to a Category C felony, which is punishable by a minimum of one year to a maximum of five years in the state prison and a fine of not less than $1,000 and not more than $50,000. A second offense within seven years of the first offense is a category C felony, also punishable by a fine of not less than $1,000 and not more than $50,000, in addition to the one- to five-year prison term.

Senate Bill 417 (Chapter 620, *Statutes of Nevada 1999*) creates a seven-member appeals panel for industrial insurance. The bill requires that the Governor, in consultation with the Commissioner of Insurance, appoint the members of the panel. Certain members must be selected from a list of nominees provided to the Governor by the advisory organization for industrial insurance. The appeals panel is directed to hear grievances from certain employers regarding the employer's experience modification factor, risk classification, and application of supplementary rate information to the employer. In addition, the bill provides that if any party to the hearing before the appeals panel is dissatisfied with the outcome of the hearing, the party may appeal to the Commissioner of Insurance. Most of the bill was effective on June 11, 1999, and expires by limitation on July 1, 2001.

Senate Bill 495 (Chapter 383, *Statutes of Nevada 1999*) makes various changes to provisions governing industrial insurance. The bill transfers the responsibility for issuing a certificate of registration for employee leasing companies from SIIS to DIR. In addition, the bill requires DIR to regulate employee leasing companies.

The measure prohibits an insurer from issuing an industrial insurance policy that does not cover certain employees. In addition, the bill transfers responsibility for adopting regulations concerning the modified programs of industrial insurance for the Department of Prisons, jails, and other detention facilities from SIIS to DIR. The bill also provides that a rate service

organization used by an association of public or private employers to calculate each member's annual assessment must be licensed.

The bill makes it clear that a private carrier authorized by the Commissioner of Insurance to provide industrial insurance, is an authorized insurer. The bill also clarifies the Commissioner's authority to suspend the authorization of a private carrier to provide industrial insurance. In addition, the bill requires the Administrator of DIR to establish a competitive bidding process for the purpose of selecting a third-party administrator or an insurer to administer claims against the Uninsured Employers' Claim Fund. Further, the bill also provides that certain administrative fines must be paid into the Uninsured Employers' Claim Fund.

The measure provides that the fees and mileage associated with delivering certain subpoenas are not required to be tendered at the same time the subpoena is delivered. Finally, the bill increases the deemed wage for a real estate licensee from $900 to $1,500 per month. This bill was effective July 1, 1999.

Assembly Bill 253 (Chapter 294, *Statutes of Nevada 1999*) removes the limitation on payment by a workers' compensation insurer for transporting the body of a deceased employee beyond the continental limits of the United States.

This measure was requested by the Commission on Workplace Safety and Community Protection, which was appointed by then-Governor Bob Miller, in response to the explosion at the Sierra Chemical Company. That accident resulted in the death of 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. This measure would provide for the transportation of remains beyond the continental limits of the United States. This bill was effective on July 1, 1999.

Assembly Bill 334 (Chapter 329, *Statutes of Nevada 1999*) allows SIIS or a private insurance carrier to provide industrial insurance coverage as part of a homeowner's insurance policy for individuals who are engaged exclusively in household or domestic services.

Assembly Bill 470 (Chapter 465, *Statutes of Nevada 1999*) makes various changes concerning benefit provisions and filing of rates for industrial insurance. The bill prohibits an organization for managed care from restricting or interfering with any communication between a provider of health care and an injured employee regarding information the healthcare provider determines is relevant to the health care of the injured employee. The bill also prohibits an organization for managed care from terminating a contract, demoting, refusing to contract with, or refusing to compensate a healthcare provider solely because the provider, in good faith, advocates on behalf of an injured employee or assists an injured employee in seeking reconsideration of a decision by the organization for managed care to deny coverage for a healthcare service.

The measure prohibits an organization for managed care from offering or paying any type of material inducement or financial incentive to a healthcare provider to withhold or limit medically necessary healthcare services to an injured employee. In addition, the bill clarifies that financial incentives are permissible if the arrangement is designed to provide an incentive to the healthcare provider to use healthcare services effectively and consistently in the best interest of the injured employee.

Further, the bill provides that an insurer, organization for managed care, or third-party administrator must respond to a request for prior authorization for treatment, diagnostic testing, or consultation within five working days of receiving the request. The bill also provides that if an injured employee whose insurer has contracted with an organization for managed care is not satisfied with the first physician or chiropractor he selected for treatment, an alternative physician or chiropractor may be selected within 90 days of the date of injury.

The measure allows a hearing officer or an appeals officer to refer an injured employee to a physician or chiropractor, who has demonstrated special competence to treat the particular medical condition of the employee, to determine the necessity of certain medical treatment. In addition, the bill requires that laboratories testing injured employees for the use of alcohol or a controlled substance must be licensed by the Health Division of Nevada's Department of Human Resources.

The bill provides that for the period beginning on July 1, 1999, and ending on June 30, 2000, an insurer's rate for industrial insurance may not vary from the rate filed by the advisory organization for industrial insurance and approved by the Commissioner of Insurance. During the following year—July 1, 2000, through June 30, 2001—an insurer's rate for industrial insurance may not vary more than 15 percent from the rate filed by the advisory organization. Beginning July 1, 2001, each insurer must either: (1) file its final premium rates for industrial insurance with the Commissioner, or (2) choose a multiplier that, when applied to the prospective loss costs filed by the advisory organization, will result in its final rates. Finally, the bill provides that the Commissioner may, at any time, disapprove a premium rate for industrial insurance filed by an insurer.

Many sections of the bill, including the provisions for organizations for managed care, were effective on October 1, 1999. The portion of the bill relating to the filing of industrial insurance rates is effective on July 1, 2001.

III. DISCUSSION OF RECOMMENDATIONS

The Legislative Committee on Workers' Compensation devoted many of its meeting hours to hearing matters related to the regulatory environment and administration of the workers' compensation system. Due to the considerable changes in the state's workers' compensation market, including the entrance of private carriers on July 1, 1999, and the privatization of the state-run workers' compensation program on January 1, 2000, the Committee requested several reports on the effect of these market changes. The Committee received reports on the privatization of Employers Insurance Company of Nevada, the ability of small employers to secure coverage, the role of the state's advisory organization on industrial insurance (the National Council on Compensation Insurance, Inc.), changes to industrial insurance rates and rating values, and the state's "proof of coverage" information system. In addition, the Committee heard extensive testimony on other matters related to workers' compensation that resulted in the Committee's adoption of the following 21 recommendations.

A. Administration and Regulation of the Workers' Compensation System

In-State Claims Handling

Nevada Revised Statutes (NRS) 616B.027 requires that every insurer have an office in this state operated by the insurer or its third-party administrator in which a complete file of each claim for compensation is kept. During its discussion of this matter, members of the Committee agreed that any information related to a claim for compensation needs to be accessible to injured workers, regulators, and other necessary parties. Testimony from representatives of the insurance industry explained that technological advances have changed the manner in which claims information may be stored and accessed. Advances in the computer industry have made it possible to maintain claims information at a location outside of the state, but such information may also be made readily available at an in-state office. Based on the testimony presented, the Committee adopted the following recommendation:

1. **Amend NRS to allow insurers to keep information pertaining to claims at a location outside of this state; further, allow that the file required to be accessible at an in-state office, pursuant to current state law, may be an electronic, digital, or micro-photographic version of all of its records relating to any claim filed in this state. Require that such information on an open claim be available within 24 hours of request. Information on closed claims must be available within 30 calendar days. The Administrator of the Division of Industrial Relations (DIR) may adopt regulations concerning the maintenance and preservation of files. (BDR 53-772)**

Workers' Compensation Assessment

The costs and expenses associated with administering the state's workers' compensation program, including the Workers' Compensation and Safety Fund, the Uninsured Employer's

Claim Fund, and Nevada's three subsequent injury funds are paid for through an assessment against insurers, which includes private carriers, self-insured employers, and associations of self-insured public and private employers. Under existing state law, the formula used to determine the assessment must be based on expected annual expenditures for claims for injuries occurring on or after July 1, 1999.

Testimony before the Committee indicated concern that the current assessment formula does not result in the equitable distribution of costs among insurers. To illustrate this point, a representative of the American Insurance Association (AIA) provided to the Committee the example of two industrial insurance companies with the same market share that each target different sectors of the market. Under the current assessment formula, an insurance company that primarily insures law firms, with relatively low claims costs, compared to a carrier that insures construction companies, with higher claims costs, results in the disproportionate sharing of the assessment, even though these two companies have the same market share. The AIA recommends the use of expected annual premium rather than expected annual expenditures for claims in the assessment formula. The Committee adopted the following recommendation concerning the assessment formula:

2. Amend the provisions of NRS related to the assessment for the Workers' Compensation and Safety Fund, the Uninsured Employers' Claim Fund, and the various subsequent injury funds (BDR 53-877):

(a) Require that the formula used to determine the equitable distribution among insurers of certain costs associated with the workers' compensation program must be based on: (1) expected annual premiums for private carriers, self-insured employers, and associations of self-insured public and private employers; and (2) expected annual expenses for "ex-med" employers.

(b) Define expected annual premiums for self-insured employers and associations of self-insured public and private employers to mean 105 percent of the average claims costs for the preceding three years or the lowest of three quotes from a commercial carrier until such time as a three-year average claims cost can be calculated.

(c) Delete the provision that currently authorizes the formula to "utilize actual expenditures for claims."

Audit of Insurers

During the 1999-2000 interim, a working group of private industrial insurers was formed to collaborate on recommended statutory changes concerning industrial insurance. Members of this working group included individuals representing the AIA, EICON, Farmers Insurance

Group, Liberty Mutual, and Sierra Insurance Group. The group developed several recommendations adopted by the Committee, the first of which concerns the audit of insurers.

Testimony indicated that as more private carriers enter Nevada's industrial insurance market, DIR needs more flexibility with respect to the mandatory audit of insurers. Based on the testimony presented, the Committee adopted the following recommendation:

3. Amend the provisions of NRS related to the audit of an insurer (BDR 53-772):

(a) Extend from at least every three years to at least every five years the time period in which the Administrator of the DIR must audit all insurers.

(b) Allow DIR to conduct an "abbreviated" audit at any time of insurers that have no history of prior violations of Chapters 616A to 616D, and Chapter 617 of NRS. The Administrator must establish procedures for "abbreviated" audits.

(c) Allow DIR, with the consultation of the Commissioner of Insurance, to perform its audit of an insurer in conjunction with an audit conduct by the Division of Insurance.

Investment of Associations of Self-Insured Public Employers

Pursuant to NRS 616B.368, both associations of self-insured public and private employers are currently allowed to invest the money of the association not needed to pay the obligations of the association pursuant to Chapter 682A of NRS ("Investments"). Testimony before the Committee indicated that the Public Agency Compensation Trust (PACT), an association of self-insured public employers qualified under NRS 616B.350, has limited its investments to those allowed under Chapter 355 of NRS ("Public Investment"), which precludes investments in corporate equities that are otherwise allowed under Chapter 682A of NRS. As a local government association formed under the Interlocal Cooperation Act (NRS 277.080 through NRS 277.180), the individual members of PACT are limited to the conservative investments allowed under Chapter 355 of NRS. The PACT requested that the Committee clarify state law so that an association of self-insured public employers may invest pursuant to Chapter 682A of NRS despite the fact that individual public employers are limited to investments allowed under Chapter 355of NRS. The Committee adopted the following recommendation to clarify state law as follows:

4. Amend NRS 616B.368 to clarify that associations of self-insured public employers may invest the money of the association not needed to pay the obligations of the association pursuant to Chapter 682A of NRS ("Investments") even though individual members of the association, who are public employers, are limited in their investments by Chapter 355 of NRS ("Public Investments"). (BDR 53-772)

Payment to Healthcare Providers

During the course of its study, the Committee heard testimony concerning the payment of an employee's medical bills, which indicated that injured workers do not always receive timely notification of the denial of the payment of a medical bill. Injured workers may understand that certain elements of treatment may be denied, but they do not receive the bill for such denied medical treatment. Testimony further indicated that bills for denied medical treatment are often presented to DIR by either the medical provider or the injured worker. In many cases, by the time DIR receives these bills the time period to appeal the denial of payment has expired. The DIR is then faced with a bill payment issue that is actually a contested claim matter that is within the jurisdiction of the Hearings Division. The Committee adopted the following recommendation designed to provide the employee with adequate notice of unpaid medical bills:

5. **Amend NRS to provide that if an insurer denies payment of a medical bill, the insurer must provide notification of the denial to the employee. The notification must include the amount of the medical bill, the reason for the determination, and the forms necessary to appeal the determination pursuant to NRS 616C.315. An employee who elects not to appeal the determination is responsible for payment of the medical bill. Also, the employee who elects to appeal, but does not prevail upon appeal, is responsible for payment of the medical bill. (BDR 53-772)**

B. <u>Benefits/Claims/Employees</u>

Medical Fee Schedule

Nevada Revised Statutes 616C.260 requires that the Administrator of DIR establish a schedule of reasonable fees and charges allowable for industrial insurance accident benefits provided to injured employees whose insurers have not contracted with a managed care organization (MCO). In other words, a healthcare provider who does not have a contract with an MCO may not charge any fee for services that exceeds the medical fee schedule. State law requires that the medical fee schedule be reviewed and revised, as needed, on an annual basis.

According to testimony before the Committee, as part of its annual review the of the medical fee schedule, the Administrator conducts a study of the fees and charges being paid in the state for various medical services. The Administrator typically contracts with a company to assist the Division in its annual revisions of the schedule. Testimony further indicated that in some cases the medical fee schedule in too high or too low for certain medical treatments and services, and the methodology currently used to revise the fee schedule is not statistically defendable. In the case of fees that are considered low, some healthcare providers are unwilling to contract with private insurers and self-insured employers for medical services. Therefore, private insurers and self-insured employers have lost access to certain healthcare providers.

To address such problems, a working group of insurers, third-party administrators, representatives from the medical community, and staff of the DIR met during the 1999-2000 interim to discuss the current methodology used to annually revise the medical fee schedule. Members of the working group agreed that the Administrator needs a broad, flexible, and cost-efficient approach to fee schedule review. The working group felt it is important that the Administrator be able to use a large and independent data set that is statistically defendable. Further, the Administrator should have the ability to benchmark medical fee data one time only and implement a low-cost methodology to review and update the fee schedule annually based on the Consumer Price Index. Based on these criteria, the working group proposed the creation of a fair and equitable fee schedule that is updated every year.

The working group developed a proposal designed to allow the Administrator to utilize national medical fee information, rather than just information exclusive to Nevada's market, when adjusting the medical fee schedule. In addition, the working group proposed requiring the Administrator to consider amounts being charged, as well as paid, when revising the fee schedule. Based on the recommendations of the working group and the testimony presented, the Committee adopted the following proposal:

6. Amend NRS 616C.260 concerning the maintenance of the medical fee schedule (BDR 53-773):

(a) Require the Administrator of the DIR to consider the amounts being charged and paid in the state for accident benefits when revising the medical fee schedule for accident benefits.

(b) Allow the Administrator to utilize Nevada data from a national medical fee data warehouse vendor when adjusting the medical fee schedule for accident benefits.

(c) Require the Administrator to adjust annually the medical fee schedule by an amount equivalent to the corresponding annual change in the Consumer Price Index, Medical Care Component.

(d) Require that any revisions to the medical fee schedule for accident benefits be completed in sufficient time to be considered by Nevada's advisory organization in its annual rate filing.

Reduction and Enhancement of Compensation

Pursuant to NRS 616D.280, if a safeguard or protection is removed by a workman himself, or with his consent is removed by any of his fellow workmen, unless done by order or direction of the employer or superintendent or foreman of the employer, the compensation of the injured

worker must be reduced 25 percent. Under existing state law, this provision applies with respect to any safeguard or protection that is required to be provided or maintained pursuant to any statute, ordinance, or divisional regulation under any statute.

The Committee discussed several issues related to the provisions of NRS 616D.280. Certain members of the Committee felt strongly the employees should be aware of the fact that their compensation for an industrial injury will be reduced 25 percent if the injury resulted from the removal of a safety device that is required by a state law or regulation. Testimony before the Committee indicated that existing law is very specific that the reduction of compensation is only applicable when a safety device has been removed, resulting in an injury, and not when such a safety device was not used by the employee. The Committee agreed that the absence of a safety device should also result in the reduction of compensation. The Committee further discussed that compensation should be enhanced by 25 percent if the absence or removal of a required safety device occurs at the direction of the employer. After careful consideration, the Committee adopted the following recommendation regarding the reduction and enhancement of compensation in certain situations:

7. **Amend NRS 616D.280 to provide that if an industrial injury occurs due to the absence of a safeguard or protection, the compensation of the injured employee must be reduced 25 percent. In addition, compensation of the injured employee must be increased 25 percent if the absence or removal of a safeguard or protection is done at the direction of the employer or superintendent or foreman of the employer. The provisions of NRS 616D.280 pertaining to the reduction of an employee's worker's compensation due the absence or removal of a safeguard or protection must be posted in an open and conspicuous area at the employer's place of business for employees to view. The posting of this information must be in English and Spanish. (BDR 53-773)**

Reopening a Claim for Compensation

In order to reopen a claim for compensation more than one year after the claim has been closed, the request must be in writing and several criteria must be met pursuant to subsection 1 of NRS 616C.390. If a change of circumstances warrants an increase or rearrangement of compensation during the life of the claimant, the primary cause of the change of circumstances is the injury for which the claim was originally made, and the application is accompanied by the certificate of a physician or a chiropractor showing a such a change would warrant an increase or rearrangement of compensation, the insurer must reopen the claim. A separate set of criteria must be met for a request to reopen a claim for compensation less than one year after the claim was closed.

Testimony before the Committee indicated the need to clarify the law with respect to the provisions that must be met in order to reopen a claim. According to testimony, references to "time off work" as used in NRS 616C.390 are not clearly defined. With the following

recommendation, the Committee aimed to clarify the requirements to be met to reopen a claim for compensation, further providing that only individuals with significant injuries are eligible for lifetime reopening:

8. **Amend NRS so that a request to reopen a claim that is made more than one year after the date on which the claim was closed must not be granted unless the claimant received an award for permanent partial disability and was off work for at least 5 consecutive days, or 5 cumulative days within a 20-day period, in addition to meeting the criteria under subsection 1 of NRS 616C.390. (BDR 53-773)**

Contagious Disease Testing

During the 1999 Legislative Session, the Legislature expanded accident benefits under the Industrial Insurance Act to include preventive treatment administered as a precaution to a police officer, salaried firefighter, or volunteer firefighter exposed to contagious disease while performing the duties of a police officer or firefighter, or upon batter by an offender. State law provides that the employer of a police officer or firefighter must test each such employee for Hepatitis A, Hepatitis B, Hepatitis C, tuberculosis (TB), and human immunodeficiency virus (HIV) at the time he is voluntarily or involuntarily terminated, and at 6 and 12 months after the date of termination. Statute specifically provides that a blood test to screen for these contagious diseases must be administered.

Testifying before the Committee, Roger M. Belcourt, M.D., Medical Director, CDS of Nevada, noted that there is no "blood test" to detect the presence of TB. The standard currently used for TB testing is a baseline "skin test" and then another "skin test" three months later to determine whether there has been an interval conversion. Drug therapy is recommended for workers who have been exposed to the disease to minimize the risk of turning positive at some point in the future. Once exposed, a person will always test positive for TB.

Testimony presented to the Committee also indicated that parts of state law pertaining to medicine that may require a health practitioner to order blood tests or prescribe toxic medications typically include the language "physician or chiropractor." Dr. Belcourt indicated that most chiropractors with whom he is acquainted prefer not be involved in these types of treatment situations.

Based on the testimony heard, the Committee made the following recommendation:

9. Amend the provisions of NRS related to the report of exposure of a police officer or firefighter to a contagious disease (BDR 53-773):

(a) Clarify NRS 616C.052 to provide that when testing a police officer or firefighter for tuberculosis, as currently required by state law in certain situations, a "skin test," not a blood test, must be administered.

(b) Prohibit chiropractors from administering the tests to screen for contagious disease as required in NRS 616C.052.

C. Subsequent Injury Funds (SIFs)

A SIF provides a method of spreading the costs associated with an employee's second or "subsequent" injury, which is incurred on the job, across all employers in a given state. Prior to the creation of SIFs, when an injury in the course and scope of employment occurred to a previously injured employee—resulting in an increased or perhaps permanent total disability—either the worker was penalized by having any compensation benefits limited to the disability directly associated with the second injury, or the employer was penalized by having to pay for the combined resulting disability. Therefore, prior to the advent of SIFs, the latter possibility provided a strong incentive for employers not to hire or retain physically impaired employees.

When originally created, SIFs were designed to encourage employers to hire and retain workers who have preexisting conditions, and to provide economic relief to employers who hire workers with preexisting conditions should the employee sustain a subsequent injury in the course and scope of employment.[8]

Through the utilization of a SIF, an employer or insurance carrier pays only the industrial insurance benefits associated with the subsequent injury and is reimbursed from the SIF for that portion of the compensation due because of the combined effect of the subsequent injury and the preexisting condition. Rather than charging the total experience of that injury against the employer, the costs of the subsequent injury are paid from the SIF and spread among all employers operating in the state through a cost-sharing or assessment mechanism.

Since the first SIF was created in 1916 in New York, the funds have played a significant role in the history of workers' compensation by providing economic relief to employers who hire workers with preexisting conditions when a subsequent injury occurs. However, in recent years the need for SIFs has come under question, as groups in support of and opposition to the

[8] Letter dated March 10, 2000, from Sue S. Matuska, Senior Deputy Legislative Counsel, and Kim Marsh Guinasso, Principal Deputy Legislative Counsel, Legal Division, Legislative Counsel Bureau, to Assemblyman David R. Parks, which provides an overview of the legislative history on the statutes that govern subsequent injury funds in the State of Nevada is included in this report as Appendix B.

funds have come forward. Today many states are evaluating whether SIFs are operating as originally intended. A number of states have already elected to eliminate their SIFs.

On several different occasions, the Committee heard testimony regarding SIFs. Much of the information presented in testimony on this subject is included in Background Paper 01-1, "A Study of Subsequent Injury Funds," prepared by the Research Division of the Legislative Counsel Bureau. This document provides background information pertaining to SIFs, including how the funds operate, a history of SIFs in Nevada, and a summary of SIF-related policy issues. A copy of the paper can be obtained by contacting the LCB Research Library at (775) 684-6827.

After considering several proposals on this topic, the Committee adopted the following recommendations:

10. **Retain Nevada's existing subsequent injury funds and continue to administer as currently provided in state law. (This recommendation does not require draft legislation.)**

11. **Require the DIR to create, maintain, and make publicly available an informational brochure on Nevada's subsequent injury funds. (BDR 53-770)**

D. Proof of Coverage

Certificate of Insurance

Nevada Revised Statutes 616B.026 requires that an insurer, other than a self-insured employer or an association of self-insured public or private employers, provide each employer to whom the insurer provides industrial insurance a certificate of insurance which indicates that the employer has obtained a policy of industrial insurance. Pursuant to NRS 616A.495, an employer is also required to post its certificate of insurance in a conspicuous location at each of the employer's places of business. An employer who fails to post its certificate is guilty of a misdemeanor.

State law also requires the posting of a notice identifying the employer's industrial insurer. Specifically, NRS 616A.490 requires that every employer post a notice in a conspicuous place at the employer's place of business that includes the insurer's name, business address and telephone number, and the name, business address and telephone number of its nearest adjuster in the state. *Nevada Administrative Code* (NAC) 616A.460 specifies that this information must be posted in the format specified in Form D-1. Individuals testifying before the Committee agreed that this posting requirement is useful because it ensures that critical information as to who the employee should contact in the event of an injury is easily accessible.

The Committee devoted considerable time to discussing whether posting of the certificate of insurance is necessary in light of the information that is provided in the posting of the Form D-1. Testimony indicated that the information provided in the posting to a certificate of insurance is intended to help investigators, particularly in the Workers' Compensation Fraud Unit, Office of the Attorney General, so that such investigators may quickly determine who the employer has secured industrial insurance coverage with and the policy number. To ensure that investigators have access to necessary information pertaining to a policy of industrial insurance and at the same time eliminate redundancies in posting of certain information, the Committee adopted the following recommendation:

12. **Amend NRS to provide that a policy of industrial insurance, including the declaration page for privately insured employers, and a certificate of qualification for self-insured employers or associations of self-insured public and private employers, must be open to inspection by the Administrator of the DIR or his auditor or agent. An employer who fails to provide such access to this information is guilty of a misdemeanor. In addition, delete subsection 1(a) of NRS 616A.495 that requires the posting of a certificate of insurance at the employer's place of business and subsection 1(b) of NRS 616A.495 that requires the posting of a certificate of qualification for a self-insured employer. Repeal NRS 616B.026 that requires an insurer to provide each employer for whom the insurer provides industrial insurance, a certificate of insurance indicating the employer has obtained a workers' compensation policy. (BDR 53-769)**

Notice of Cancellation of Coverage

Pursuant to NRS 616B.460, all private carriers must notify the Administrator of the DIR within 15 days if an employer has changed his insurer or has allowed his insurance to lapse. State law further requires that if an insurer or employer *intends* to cancel or renew a policy of industrial insurance, the insurer or employer must notify the Administrator in writing (NRS 616B.033). The DIR is under contract with the National Council on Compensation Insurance, Inc. (NCCI) to receive proof of coverage information. The NCCI's proof of coverage service is a program whereby NCCI collects coverage information from industrial insurance providers in Nevada and then provides that data to DIR. Testimony indicated that occasionally the information reported to DIR by NCCI is not correct. The Committee discussed the "proof of coverage" reporting requirements and adopted a recommendation making the following changes to the existing standards:

13. **Clarify the "proof of coverage" reporting requirements in NRS (BDR 53-769):**

    (a) **Amend NRS 616B.033 to provide that an employer must give notice of the actual cancellation of its industrial insurance policy to the Administrator of the DIR only. The employer is not required to give such notice to the Administrator, if**

the employer's subsequent insurer has provided notice to the Administrator that a policy has been secured.

(b) Repeal NRS 616B.460(2) that allows an employer to change carriers for the purpose of securing workers' compensation insurance if he notifies the Administrator of the change and provides proof that subsequent coverage has been secured.

(c) Amend NRS to require private carriers to notify the Administrator in cases of the issuance of a new policy, the reinstatement of a policy, and the renewal or cancellation of an existing policy.

(d) Enact legislation to provide that if an error occurs when reporting the information specified in paragraph (c) above to the Administrator of the DIR, the insurer must investigate the error and submit corrected information or substantiate the prior submitted information within 30 calendar days, during which time the insurer is not subject to fines. If the discrepancy is due to incorrect information being submitted to the Administrator by the state's advisory organization, no fine or corrective action may be imposed against the insurer.

E. Hearings and Appeals Process

Appeal to DIR Administrator

Pursuant to NRS 616B.215, an employer aggrieved by a determination regarding vocational rehabilitation of an injured employee may appeal to the Administrator of DIR. Representatives of private industrial insurance carriers indicated that it is more appropriate to appeal such matters to the Hearings Division of the Department of Administration that currently has jurisdiction over similar industrial insurance matters. During its discussion, members of the Committee further agreed that the provision of state law that requires the Administrator to resolve any disputes between insurers if an injured employee claims benefits against more than one insurer also would be more appropriately resolved by the Hearings Division. The Committee adopted the following recommendation transferring the jurisdiction of certain matters from the Administrator of DIR to the Hearings Division of the Department of Administration:

14. Amend the provisions of NRS 616B.215 and any other sections of NRS that allow an employer aggrieved by a determination regarding vocational rehabilitation of an injured employee to provide that such grievances must be appealed to the Hearings Division of the Department of Administration and not to the Administrator of the DIR, as currently provided in state law. Also, amend NRS 616C.170 to provide that matters concerning disputes between insurers if an injured employee claims benefits

against more than one insurer must be appealed to the Hearings Division. (BDR 53-767)

Conduct of Appeals Officers

The Committee heard testimony indicating that there is a need for appeals officers of the Hearings Division to meet certain standards related to professional conduct. The following recommendation was adopted by the Committee concerning the conduct of appeals officers:

15. **Enact legislation to require the Chief of the Hearings Division to adopt regulations governing the conduct of appeals officers. The regulations must include procedures for the filing of complaints against an appeals officer who is believed to be in violation of the regulations governing conduct, rules of practice for hearing such complaints, and applicable penalties. (BDR 53-767)**

F. Coverage and Policy Requirements

Policy of Coverage and Owner-Controlled Insurance Program (OCIP) Participants

A consolidated insurance program, commonly referred to as an OCIP, is a program of insurance that provides, for a specified period of time, industrial insurance coverage, a comprehensive safety program, and a system for administering industrial insurance claims 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 project. Pursuant to NRS 616B.730, a consolidated insurance program must not provide industrial insurance coverage, a comprehensive program of safety or for the administration of claims for industrial insurance for an employee of a contractor or subcontractor who is engaged in the construction of a project that is covered by a consolidated insurance program at any time that such an employee does not work at the site of the construction project. In other words, OCIP coverage is site-specific. Testimony indicated the need to clarify state law so that a policy of industrial insurance issued to an employer is not required to cover an employee who works exclusively at an OCIP job site, because such an employee would be covered by the consolidated insurance program. Based on the discussion before the Committee, the following proposal was adopted:

16. **Amend NRS to provide that an insurer is not required to provide an industrial insurance policy covering each employee of an insured employer if certain employees are covered under the industrial insurance policy of a contractor or subcontractor participating in a consolidated insurance program and are working exclusively at the site of the construction project covered by the consolidated insurance program. (BDR 53-768)**

Reporting of Tip Income

Nevada Revised Statutes 616B.227 requires an employer insured by a private insurer to submit to the carrier a report concerning tips received by employees. Testimony indicated the need to allow employers to utilize computerized payroll records summarizing tip income to meet the requirements of NRS 616B.227. Members of the Committee agreed that such an allowance should be made and adopted the following recommendation:

17. Amend NRS 616B.227 to allow employers to utilize computerized payroll records, that summarize allocated tips, to meet the existing provisions of state law which require an employer to copy each form its employees must file with the United States Internal Revenue Service concerning tip income and forward each copy to its insurer. (BDR 53-768)

Interest Due on Unpaid Premiums

Pursuant to NRS 616B.236, any industrial insurance premium of an employer that remains unpaid on the date it is due shall bear interest at a rate of 1 percent for each month or portion of the month thereafter until payment of the premium is received by the insurer. Testimony indicated the unpaid premiums results in the cancellation of the employer's industrial insurance policy. Representatives of the insurance industry agreed that a statutorily established interest rate on unpaid premiums is not necessary in the current market. Based on the testimony, the Committee made the following recommendation:

18. Repeal NRS 616B.236 that requires the accrual of interest at a rate of 1 percent per month on industrial insurance premiums unpaid by an employer. (BDR 53-768)

"Policy Year" Language

According to testimony by NCCI, "policy year" is the standard term used throughout the industry. Representatives of the insurance industry indicated the need for consistent use of the appropriate insurance terminology to eliminate confusion. In response, the Committee adopted the following recommendation:

19. Amend NRS 616B.624(1) and NRS 617.207(1) to change the phrase "year the policy of industrial insurance for the employer is effective" to "policy year." (BDR 53-768)

Physical Examination of a Sole Proprietor

Nevada Revised Statutes 616B.659 and NRS 617.225 require a sole proprietor who elects industrial insurance coverage to submit to a physical examination before such coverage takes effect. A representative of the insurance industry explained that a physical examination of a sole proprietor should be at the discretion of the private carrier who is willing to provide such

coverage. The Committee adopted the following recommendation making such an examination permissive on the part of the insurer:

20. Amend NRS 616B.659(2) and NRS 617.225(2) to provide that an insurer may request rather than require that a sole proprietor who elects industrial insurance coverage, submit to a physical examination before coverage commences. (BDR 53-768)

G. Miscellaneous

Reemployment Rights of Employees of Employers Insurance Company of Nevada (EICON)

During the 1999 Legislative Session, the privatization of the state industrial insurance system (d.b.a. EICON) was authorized with the passage and approval of Senate Bill 37 (Chapter 388, *Statutes of Nevada 1999*). The Legislature packaged the privatization of EICON with various protections for EICON employees in addition to increased benefits for injured workers. Specifically, Section 132 of Senate Bill 37 provides certain employees of EICON the right to a priority placement on the appropriate reemployment list maintained by the Department of Personnel. In addition, such employees who secure reemployment with the state of Nevada are not subject to any probationary period that would otherwise be applicable to reemployment in the classified service of the state.

It was brought to the Committee's attention that pursuant to a legal opinion of the Office of the Attorney General, the Department of Personnel has not extended the rights of Section 132 of Senate Bill 37 to contract employees of EICON.[9] The opinion concludes that an individual employed under contract with EICON, who has never served in the classified service, is not entitled to the reemployment benefits provided in Section 132 of Senate Bill 37. Based on the Committee's discussion the following recommendation extending the provision of Section 132 of Senate Bill 37 to all EICON employees was adopted:

21. Enact legislation to clarify that the provisions of Section 132 of Senate Bill 37, which provide to an employee of EICON on January 1, 2000, the right to priority placement on an appropriate reemployment list (even without being laid off) and eliminate any probationary period, are applicable to all employees of EICON, rather than only to classified employees. If enacted, this provision is to be effective on passage and approval. (BDR S-771)

[9] Opinion No. 2000-21, Office of the Attorney General, "Classified Employees; Statutes; Personnel," dated June 8, 2000, is included in this report as Appendix C.

IV. CONCLUSION

Considerable work has been done by the Legislative Committee on Workers' Compensation and by individuals throughout the state to ensure the success of a competitive workers' compensation insurance market 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, including adopted recommendations presented to the 71st Session of the Nevada Legislature. The recommendations in this report are designed to enhance and clarify existing statutes.

The chairman and 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.

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APPENDIX A

NRS 218.5375 through NRS 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 which had jurisdiction of issues relating to workers' compensation 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 which had jurisdiction of issues relating to workers' compensation 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; A 1999, 2201)

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

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

(Added to NRS by 1995, 2163; A 1997, 1449; 1999, 1805)

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

Letter dated March 10, 2000, from Sue S. Matuska, Senior Deputy Legislative Counsel, and Kim Marsh Guinasso, Principal Deputy Legislative Counsel, Legal Division, Legislative Counsel Bureau, to Assemblyman David R. Parks, which consists of an overview of the legislative history on the statutes that have governed subsequent injury funds in the State of Nevada

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March 10, 2000

Assemblyman David R. Parks
P.O. Box 71887
Las Vegas, Nevada 89170-1887

Dear Assemblyman Parks:

As chairman of the Legislative Committee on Workers' Compensation, you have asked for an overview of the legislative history on the statutes that have governed subsequent injury funds in the State of Nevada. This letter describes the major changes to the various statutes that have governed subsequent injury funds but does not point out every minor change made to each of the statutes. However, copies of any of the bills referenced in this letter can certainly be provided to you if you would like to review them. We have organized the letter by the years in which changes were made to the various statutes.

I. 1973.

The first subsequent injury fund was created by the Nevada Legislature in 1973 with the enactment of Assembly Bill No. 27 (chapter 468, Statutes of Nevada 1973, at page 693). The minutes from the standing committees that considered this bill indicate that its primary purpose was to encourage employers to hire workers who had already suffered a permanent physical impairment. The bill provided such encouragement by creating, within the state insurance fund, the subsequent injury account from which the Nevada Industrial Commission was to pay, at least in part, for any compensation required for a subsequent injury arising out of and in the course of employment that was substantially greater by reason of the combined effects of the preexisting impairment and the subsequent injury.[1] To obtain a credit against the subsequent injury account: (1) the

[1] All the statutes providing for coverage through a subsequent injury account or fund from 1973 to the current date have also provided such coverage if a death results in the course of employment and it is determined that the death would not have resulted except for the preexisting permanent physical impairment. Throughout the remainder of this letter, however, we will use the term "subsequent injuries" to refer to both injuries and deaths that occur subsequent to a preexisting permanent physical impairment.

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"permanent physical impairment" had to support a rating of permanent impairment of 12 percent or more of the whole man if evaluated according to the latest edition of the American Medical Association Guides to the Evaluation of Permanent Impairment; (2) the employer had to establish by written records that the employer had knowledge of the "permanent physical impairment" at the time that the employee was hired or at the time the employee was retained in employment after the employer acquired such knowledge; and (3) certain procedural requirements had to be met. If the two conditions were met, the bill provided that the Nevada Industrial Commission would pay the compensation due and would establish rules and regulations for allocating such compensation costs between the employer involved and the subsequent injury account. The two sections created by Assembly Bill No. 27 were codified as NRS 616.426 and 616.427.

II. 1979.

NRS 616.427 was next amended in 1979 in the same bill that authorized employers to self-insure against liability for industrial accidents and occupational diseases. In Assembly Bill No. 84 (chapter 533, Statutes of Nevada 1979, at page 1035), the Legislature authorized certain employers to obtain a certification from the Commissioner of Insurance that would allow them to assume the responsibility for the payment of compensation pursuant to chapters 616 and 617 of NRS. Because any employer so authorized would no longer be obtaining compensation from the state insurance fund, it was necessary for the Legislature to provide for an assessment against such employers to cover the costs of paying for subsequent injuries suffered by their employees. Therefore, in Assembly Bill No. 84 (A.B. No. 84) the Legislature amended NRS 616.427 to add a new subsection that required the Commissioner of Insurance to establish, by regulation, a special revenue fund, known as the subsequent injury fund, and to establish the assessments to be paid into the fund by the self-insured employers. These changes were made to become effective on January 1, 1980. Therefore, in 1980, there existed a subsequent injury fund, which was funded only by self-insured employers, and the subsequent injury account which was an account in the state insurance fund. NRS 616.427 was also amended in A.B. No. 84 to specify that, in addition to the standard of demonstrating that the employer had knowledge of the employee's preexisting injury, an employer could also qualify for coverage for subsequent injuries if he could show, instead, that the employee "failed to report or denied the impairment on any written application which formed the basis of the employment."

III. 1981.

In 1981, new statutes governing compensation for subsequent injuries were created in Senate Bill No. 548 (chapter 642, Statutes of Nevada 1981, at page 1449). In Senate Bill No. 548 (S.B. No. 548), the Legislature reorganized the system of industrial insurance to, among many other things, create the State Industrial Insurance System. As pertains to the subsequent injury account, S.B. No. 548 repealed NRS 616.426, which had created the subsequent injury account, and enacted a new section, later codified as

NRS 616.4261, which created in the state treasury the subsequent injury fund. The Administrator of the Division of Industrial Insurance Regulation of the Department of Industrial Relations was designated as the administrator of the fund, the State Treasurer was designated as the trustee of the fund and the Director of the Department of Industrial Relations was required to assess all insurers, including the State Industrial Insurance System and self-insured employers, to provide the money for the subsequent injury fund. The Commissioner of Insurance was given the responsibility to review the establishment of the assessment rates. Also in S.B. No. 548, NRS 616.427 was amended to provide that subsequent injuries no longer be paid by the Nevada Industrial Commission but rather to provide that the cost for the injuries would be fairly allocated between the insurer and the subsequent injury fund in accordance with rules adopted by the Administrator of the Division of Industrial Insurance Regulation of the Department of Industrial Relations. NRS 616.427 was also amended to eliminate the requirement that the Commissioner of Insurance create and provide for assessments for a subsequent injury fund. This change was required because, as stated above, the Legislature had created a new section, NRS 616.4261, which created a new fund and required the Director of the Department of Industrial Relations to provide for assessments for that new fund. Finally, in order to properly account for the money in the old fund, the Legislature provided, in sections 344 and 345 of S.B. No. 548, for the transfer of money in the fund that had been created pursuant to NRS 616.427 and some money in the state insurance fund to the new fund created in NRS 616.4261. Thus, in 1981, there existed only one fund, the subsequent injury fund, which was funded by all insurers, including the State Industrial Insurance System and self-insured employers.

IV. 1985.

In 1985, NRS 616.427 was amended in Assembly Bill No. 25 (chapter 102, Statutes of Nevada 1985, at page 372) to specify that the permanent impairment rating of 12 percent that is required for payment or reimbursement from the subsequent injury fund must be based on the American Medical Association's Guides to the Evaluation of Permanent Impairment "in the form most recently published and supplemented before January 1, 1985." Assembly Bill No. 25 also made other technical changes.

V. 1987.

In 1987, in Assembly Bill No. 488 (chapter 201, Statutes of Nevada 1987, at page 452), the Legislature created a new section, later codified as NRS 616.428, that specified that, in addition to the standard of demonstrating that the employer had knowledge of the employee's preexisting impairment, reimbursement from the subsequent injury fund would be required if three conditions were met. The three conditions specified were: (1) the employee knowingly or willfully made a false representation as to his physical condition at the time he was hired by the employer; (2) the employer relied upon the false representation and this reliance formed a substantial basis of the employment; and (3) a causal connection existed between the false representation and the subsequent disability.

The Legislature also amended NRS 616.427 to delete the portion that had specified that reimbursement was required where the "employee failed to report or denied the impairment on any written application which formed the basis of the employment." Thus, the new standard for reimbursement set forth in NRS 616.428 was intended to replace the standard for reimbursement where an employee failed to report or denied impairment that had been set forth in NRS 616.427. Also in 1987, in Senate Bill No. 555 (chapter 415, Statutes of Nevada 1987, at page 944), the Legislature amended NRS 616.427 to require that if the conditions of that section are met, the full amount of compensation due must be charged to the subsequent injury fund. This language replaced the language that had said the compensation due must be fairly allocated between the insurer and the subsequent injury fund.

VI. 1991.

In 1991, NRS 616.427 was amended by three bills: Assembly Bill No. 422 (chapter 228, Statutes of Nevada 1991, at page 454); Senate Bill No. 7 (chapter 723, Statutes of Nevada 1991, at page 2388); and Assembly Bill No. 391 (chapter 191, Statutes of Nevada 1991, at page 362). The first bill, Assembly Bill No. 422, changed the version of the American Medical Association's (AMA's) Guides to the Evaluation of Permanent Impairment that was required to be used to determine if an employee had a "permanent physical impairment" which was eligible for reimbursement from the subsequent injury fund. The second bill, Senate Bill No. 7, required the Department of Industrial Relations to adopt regulations incorporating a certain version of the AMA's Guides to the Evaluation of Permanent Impairment. The third bill, Assembly Bill No. 391 (A.B. No. 391), changed the percentage of the permanent physical impairment that was required for a claim to be eligible for payment or reimbursement from the subsequent injury fund. Before the enactment of A.B. No. 391, an employee's injury had to support a rating of permanent impairment of 12 percent or more of the whole man pursuant to a certain version of the AMA's Guides to the Evaluation of Permanent Impairment. With the enactment of A.B. No. 391, an employee's injury only had to support a rating of permanent impairment of 6 percent or more of the whole man pursuant to the AMA's Guides. The legislative history behind this bill indicates that the purpose was to allow more claims to qualify for payment or reimbursement from the subsequent injury fund and, therefore, to further encourage employers to hire employees who had suffered previous permanent physical impairments. Also in 1991, NRS 616.4261 was amended by Senate Bill No. 264 (chapter 122, Statutes of Nevada 1991, at page 206) to specify that the subsequent injury fund was a "trust fund."

VII. 1993.

In 1993, the statutes governing the subsequent injury funds were significantly amended by Senate Bill No. 316 (chapter 265, Statutes of Nevada 1993, at page 657). Senate Bill No. 316 (S.B. No. 316) significantly revised the industrial insurance system in the State of Nevada, in part, to address a concern with the financial stability of the State Industrial Insurance System (the System). One of the changes made by S.B. No. 316 was to remove the System from the current subsequent injury fund and to provide that the System was to account for subsequent injuries within its accounting system and was not to charge any compensation paid for such injuries against the account of the employer involved. To accomplish this, a new section was created, which was later codified as NRS 616.4255, which stated that when an employee of an employer who is insured by the System has a permanent physical impairment and is subsequently injured in the course of his employment, the compensation due must not be charged to the employer's account. The new section contained the same requirement that the prior permanent physical impairment support a rating of permanent impairment of 6 percent or more of the whole man according to certain guidelines of the American Medical Association and that the disability be substantially greater by reason of the combined effects of the preexisting impairment and the subsequent injury. However, the new section was silent on what other conditions had to be met for an employer to qualify for the privilege of having no charge imposed against his account, such as employer knowledge of the preexisting impairment or that the employee made a false representation concerning the preexisting impairment.

To accompany the creation of the new section, NRS 616.4261 was amended twice in S.B. No. 316. The first amendment required that only self-insured employers were to be assessed for the subsequent injury fund. The second amendment which was to take effect on July 1, 1995, required that self-insured employers and associations of self-insured public or private employers would be assessed for the subsequent injury fund.[2] NRS 616.427 and 616 428 were similarly amended twice in S.B. No. 316. The first amendment limited the eligibility for payment or reimbursement for appropriate subsequent injuries from the subsequent injury fund to self-insured employers. The second amendment, which was to take effect on July 1, 1995, expanded the eligibility for such payment to self-insured employers and associations of self-insured public or private employers. Finally, to account for the money which had been deposited into the subsequent injury fund by the System and the self-insured employers a section was enacted in S.B. No. 316 which provided:

> 1. Payments for compensation made from the subsequent injury fund for any claim filed by an injured employee insured by the state industrial insurance system must terminate on [June 18, 1993], and any

[2] Formation and operation of associations of self-insured public and private employers was authorized in S.B. No. 316 but was not made to become effective until July 1, 1995.

> future charges for such a claim must be made by the system pursuant to the procedures established pursuant to section 83 of this act.
>
> 2. As soon as practicable after [June 18, 1993], the director of the department of industrial relations shall cause to be conducted an audit of the subsequent injury fund and return to the state industrial insurance system any excess money in the fund in an amount equal to the system's portion of the assessments paid into the fund pursuant to NRS 616.4261. Any money received by the system pursuant to this subsection must be deposited in the state insurance fund.

Section 291 of S.B. No. 316 (chapter 265, Statutes of Nevada 1993, at page 807) (emphasis added). Thus, this section required that a certain amount of money that had been contained in the subsequent injury fund be returned to the System. In a memo addressed to an employee of the Research Division of the Legislative Counsel Bureau, the former Administrator of the Division of Industrial Relations informed the Legislature that the amount that was transferred to the System pursuant to section 291 of S.B. No. 316 was approximately 9 million dollars. Thus, with the enactment of S.B. No. 316, there existed a subsequent injury fund which was funded only by self-insured employers and an account within the state insurance fund which was to be used to cover employers insured by the System. The legislative history on S.B. No. 316 indicates that the purpose of removing the State Industrial Insurance System from the subsequent injury fund was to allow both the System and the Division of Industrial Relations to process claims for subsequent injuries more quickly. The System asserted it would be able to process claims more quickly because it would not need to file claims with the Division of Industrial Relations and wait for processing by the Division. It was also asserted that the Division of Industrial Relations would be able to process claims more quickly because it would not have to process as many claims if the claims of the System were removed from the subsequent injury fund.

Also in 1993, the names of certain governmental agencies were changed in the subsequent injury provisions with the enactment of Assembly Bill No. 782 (chapter 466, Statutes of Nevada 1993, at page 1479) which was a bill that reorganized the executive branch of state government.

VIII. 1995.

In 1995, the statutes governing the subsequent injury funds were again significantly amended by Senate Bill No. 458 (chapter 587, Statutes of Nevada 1995, at page 2122), as amended by Senate Bill No. 359 (chapter 203, Statutes of Nevada 1997, at page 508, 596). In Senate Bill No. 458 (S.B. No. 458) the Legislature: (1) maintained the ability of the System to manage its own claims for compensation for subsequent injuries, but specified additional conditions for the processing of such claims; (2) created one subsequent injury fund only for self-insured employers; (3) created a separate subsequent

injury fund for associations of self-insured employers; (4) created boards for the administration of those two subsequent injury funds; and (5) created one more subsequent injury fund for private carriers, which was to be administered by the Administrator of the Division of Industrial Relations and was not to become effective until July 1, 1999. To accomplish this, the Legislature amended NRS 616.4255 to specify conditions that an employer insured by the System had to meet to qualify for the privilege of not having a charge imposed against his account. These conditions mirrored the standards for payment or reimbursement from the subsequent injury funds for self-insured employers and for associations of self-insured public or private employers. Furthermore, the Legislature enacted new sections creating the Board for the Administration of the Subsequent Injury Fund for Self-Insured Employers and the Board for the Administration of the Subsequent Injury Fund for Associations of Self-Insured Employers Public or Private Employers. Finally, the Legislature enacted new sections which created the subsequent injury fund for associations of self-insured public or private employers and the subsequent injury fund for private carriers. The subsequent injury fund for private carriers was not to become effective until July 1, 1999.

In S.B. No. 458, the subsequent injury funds for self-insured employers and associations of self-insured public or private employers were and still are structured so that the appropriate board assesses the employers to provide the money for each fund and processes claims against each fund in accordance with regulations adopted by the board. The appropriate sections were also amended or new sections were added to provide that the Administrator of the Division of Industrial Relations will evaluate any claim submitted to the board for payment or reimbursement from the subsequent injury fund and recommend to the board any appropriate action to be taken on that claim and any other recommendations relating to the fund. Finally the appropriate sections were amended or new sections were added to provide that an appeal of any decision made concerning a claim against the subsequent injury fund is to be submitted directly to the district court. It appears from the legislative history of S.B. No. 458 that, by allowing appeals concerning decisions of the boards for the funds for self-insured employers and associations of self-insured employers to go directly to district court, the Legislature intended to cause these boards to replace the administrative review process normally provided by the appeals officer.

The subsequent injury fund for private carriers, however, was and is still structured so that the Administrator of the Division of Industrial Relations is to assess the private carriers to provide the money for the fund and will process claims against the

fund in accordance with regulations adopted by the Administrator. Another difference between this fund and the funds for self-insured employers and associations of self-insured public or private employers is that any appeal of any decision made concerning a claim against the subsequent injury fund for private carriers must be submitted to an appeals officer, rather than to the district court.

Finally, in S.B. No. 458, the new sections creating standards for payment or reimbursement from the new subsequent injury fund for associations of self-insured employers and the new subsequent injury fund for private carriers set forth standards that were the same as the previous standards for payment from the fund for self-insured employers and the standards for obtaining the privilege of not having a charge imposed against the account of an employer insured by the System.

IX. 1997 and 1999.

In 1997, the only bills to amend the statutes governing subsequent injury funds, other than bills making purely technical changes, were Senate Bill No. 164 (chapter 66, Statutes of Nevada 1997, at page 118) and Assembly Bill No. 609 (chapter 410, Statutes of Nevada 1997, at page 1423). Senate Bill No. 164 changed the designation of subsequent injury funds from "trust fund" to "special revenue funds." Assembly Bill No. 609 specified that the System could "take such actions as are necessary" rather than "adopt regulations" concerning the processing of claims for subsequent injuries. In 1999, the only bill to amend the statutes governing subsequent injury funds, other than bills making purely technical changes, was Senate Bill No. 37 (S.B. No. 37). S.B. No. 37 authorized the System to create a private, domestic mutual insurance company and to transfer the assets and liabilities of the System to such company. S.B. No. 37 also specified that, if the transfer were to occur, all sections of NRS and references therein to "the System" would be removed. Therefore, the section that had required the System to not impose a charge against an employer's account if he was claiming coverage for an appropriate subsequent injury (NRS 616B.540, formerly NRS 616.4255) was repealed and in the other statutes governing the subsequent injury funds, all references to "the System" were removed.

X. Conclusion.

As stated in the introduction, this letter provides a broad overview of the legislative history concerning the statutes that have governed subsequent injury funds in the State of Nevada. The major change appears to have been the restructuring of the number and type of subsequent injury funds or accounts. These changes appear to have been largely a result of changes to the structure of the industrial insurance system and to

the parties that have been authorized to participate by providing industrial insurance in this state.

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 _____
Sue S. Matuska
Senior Deputy Legislative Counsel

By _____
Kim Marsh Guinasso
Principal Deputy Legislative Counsel

Cc: Senator Maggie Carlton
Senator Ann O'Connell
Senator Dean A. Rhoads
Senator Randolph J. Townsend
Assemblyman David Goldwater
Assemblyman Lynn Hettrick
Assemblywoman Gene Wines Segerblom
Crystal McGee, Senior Research Analyst, Research Division, LCB

APPENDIX C

Nevada Attorney General Opinion No. 2000-21 dated June 8, 2000, regarding "Classified Employees; Statutes; Personnel"

Page 7 of this AGO was missing in the original bulletin.
For the complete opinion, see pp 112-122 at
http://ag.state.nv.us/publications/ago/archive/2000_AGO.pdf,
or contact the Research Library.

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June 8, 2000

OPINION NO. 2000-21

CLASSIFIED EMPLOYEES; STATUTES; PERSONNEL. An attorney employed under contract by the Employers Insurance Company of Nevada, who has never served in the classified service, is not entitled to the reemployment benefit provided in section 132 of Senate Bill 37 of the 1999 Nevada Legislature.

Jeanne Greene, Director
Department of Personnel
209 E. Musser Street, Room 101
Carson City, Nevada 89701-4204

Dear Ms. Greene:

You have asked our opinion as to the applicability of a certain provision of Senate Bill 37 of the 1999 Nevada Legislature to a certain contract employee of the Employers Insurance Company of Nevada (EICON).

QUESTION

Is an attorney employed under contract by EICON, but without ever having served as a classified employee, entitled to the reemployment benefit provided in section 132 of Senate Bill 37 of the 1999 Legislative Session (S.B. 37), codified as Act of May 29, 1999, ch. 388, § 132, 1999 Nev. Stat. 1756, 1840?

ANALYSIS

The subject attorney was formerly employed under contract by the State Industrial Insurance System (SIIS). Pursuant to section 129 of S.B. 37, SIIS was transformed into EICON, a private, domestic mutual insurance company, effective January 1, 2000. Act of

May 29, 1999, ch. 388, § 129, 1999 Nev. Stat. 1756, 1838. The subject attorney continued under a contract of employment with EICON. The employment contract ends June 30, 2001. The subject attorney has never been employed by the State of Nevada as a classified or unclassified employee.

Three sections of S.B. 37 govern the rights of former SIIS employees to reemployment, sections 130—132. Section 130 provides certain reemployment rights to certain employees who were laid off by SIIS before January 1, 2000, providing in relevant part:

> **Sec. 130.** 1. A *classified* employee of the state industrial insurance system who:
> (a) Is employed by the system on July 1, 1999; and
> (b) Is laid off by the state industrial insurance system before January 1, 2000,
> is entitled to the rights to *reemployment* provided by chapter 284 of NRS and the regulations adopted pursuant thereto, including, without limitation, the right to be placed on an *appropriate reemployment list maintained by the department of personnel* . . . .

Act of May 29, 1999, ch. 388, § 130, 1999 Nev. Stat. 1756, 1839 (emphasis added).

Section 131 of S.B. 37 determines the reemployment rights of certain former SIIS employees who were laid off by EICON after SIIS was abolished on January 1, 2000, providing in relevant part:

> **Sec. 131.** 1. . . . [An EICON employee] who:
> (a) Is employed on January 1, 2000, by . . . [EICON];
> (b) Was employed as a *classified* employee by the state industrial insurance system on June 30, 1999; and
> (c) Is laid off by . . . [EICON] on or after January 1, 2000, but before January 1, 2003,
> is entitled to the rights to *reemployment* provided by chapter 284 of NRS and the regulations adopted pursuant thereto, including, without limitation, the right to be placed on an *appropriate reemployment list maintained by the department of personnel* . . . .

Act of May 29, 1999, ch. 388, § 131, 1999 Nev. Stat. 1756, 1840 (emphasis added). Sections 130 and 131 are therefore clearly limited in their application to former classified employees of SIIS.

The relevant provision of section 132 is subsection 2, which provides:

> **Sec. 132.** 2. If . . . [EICON] receives the assets and assumes the debts and liabilities of the state industrial [sic] system on January 1, 2000, pursuant to section 129 of this act, a *person who is employed* on January 1, 2000, by that company:
>
> (a) May request the department of personnel to place his name on an *appropriate reemployment list maintained by the department* and is entitled to be allowed a preference on that list. Upon receipt of such a request, the department shall maintain such an employee on the reemployment list until January 1, 2002, or until he is *reemployed* by the executive branch of state government, whichever occurs earlier.
>
> (b) Notwithstanding the provisions of chapter 284 of NRS or the regulations adopted pursuant thereto, is not subject to any probationary period otherwise applicable to his initial *reemployment to a position in the classified service* of the state.

Act of May 29, 1999, ch. 388, § 132, 1999 Nev. Stat. 1756, 1840—1841 (emphasis added).

Because sections 130 and 131 each refer specifically to a "classified employee," and since section 132 does not specifically mention a classified employee and instead refers to a "person employed by," the question is whether section 132's application extends only to persons who were formerly classified employees of SIIS, as with sections 130 and 131, or to all persons employed by EICON on January 1, 2000, including the subject contract attorney.

A. Statutory and Regulatory Framework of the Reemployment Process

To consider the meaning of the above-emphasized terms in the context of section 132 we must first examine their meaning within the context of the Nevada Revised Statutes and the Nevada Administrative Code. The general authority of the Director of the Department of Personnel (Director) to adopt regulations is set forth in NRS 284.155, which provides:

> 1. The director shall adopt a code of regulations for the *classified service* which must be approved by the [personnel] commission.
>
> 2. The code must include regulations concerning certifications and appointments for:

> (a) Positions in *classes* having a maximum salary of $12,500 or less as of December 31, 1980, where the regular procedures for examination and certification are impracticable; and
> (b) *Classes* where applicants for promotion are not normally available.
> These regulations may be different from the regulations concerning certifications and appointments for other positions in the *classified service*. [Emphasis added.]

The Director's authority to adopt regulations concerning appointments is therefore generally limited to the classified service.

The term "reemployment" is used in NRS 284.380 in the context of the rights of a person who is laid off for certain reasons:

> 1. In accordance with regulations, an appointing authority may lay off an employee in the *classified service* whenever he deems it necessary by reason of shortage of work or money or of the abolition of a position or of other material changes in duties or organization.
> 2. Among other factors, an appointing authority shall consider, in the manner provided by regulation, the status, seniority and service rating of employees in determining the order of layoffs.
> 3. Within a reasonable time before the effective date of a proposed layoff, the appointing authority shall give written notice thereof to the director. The director shall make such orders relating thereto as he considers necessary to secure compliance with the regulations.
> 4. The name of every regular employee so laid off must be placed on *an appropriate reemployment list.* [Emphasis added.]

NRS 284.380(1) provides for the layoff of only classified employees, and the "appropriate reemployment list" provided in NRS 284.380(4) is therefore limited only to the names of classified employees who have been laid off. Accordingly, we are advised that the Department of Personnel has never created a reemployment list for positions other than classified positions.

The term reemployment is defined in NAC 284.095 as:

> [A] noncompetitive appointment of a *current or former employee to a class for which he has reemployment rights,* as provided in this chapter, because of military service, layoff, a

> permanent disability arising from a disability related to work, seasonal separation, reallocation, or reclassification of his position to a lower grade. [Emphasis added.]

The reemployment rights referred to in NAC 284.095 are particularly set forth in NAC 284.630:

> 1. The names of *permanent* employees who have received their notices of layoff will be placed on the statewide reemployment list for the *class and option* of the position involved in the layoff, in order of seniority. If applicable, the names will be integrated with the names of employees who are eligible for reemployment pursuant to NAC 284.6014. The agency and the employee shall provide the necessary information for reemployment on the form prescribed by the department of personnel for the employee to be placed on the reemployment list.
> 2. The names of *permanent* employees who have received their notices of layoff will also be placed on the statewide reemployment list for other *classes* for which they qualify, in order of seniority, but behind those identified in subsection 1, if those *classes* do not respectively exceed the level of the *class* from which the employee was laid off. If applicable, the names will be integrated with the names of employees who are eligible for reemployment pursuant to NAC 284.6014. It is the affected employee's responsibility to demonstrate his interest in, and qualifications for, the *classes* for which reemployment is sought within 30 days after the date set for his layoff.
> 3. Part-time employees are not entitled to be reemployed in full-time positions and full-time employees are not entitled to be reemployed in part-time positions.
> 4. Seniority must be projected and counted up to the established layoff date, or transfer date if the provisions of NAC 284.390 apply. Seniority determines ranking on all reemployment lists. The amount of seniority will not be recalculated unless the holder is affected by a subsequent layoff.
> 5. Each person on the list retains eligibility for appointment therefrom for 1 year from the date he was laid off. Except as otherwise provided in this section, reemployment rights are exhausted when a person accepts or declines an offer of employment in the *class or a comparable class* with the *same grade* from the department and geographical location from which

> he was laid off. Any exception to this provision may be made only if approved by the department of personnel. When a person accepts a position at a *grade* lower than that held at the time of layoff, his name will be removed from all reemployment lists that are equal to or below the *grade* accepted.
>
> 6. A *permanent* employee who has been laid off and is being reemployed in the department, *class*, and option from which he was laid off must have his permanent status restored. A *permanent* employee who is reemployed in a different *class* or in a different department than from which laid off shall serve a *new probationary period*. If the employee does not complete the probationary period his name must be restored to the appropriate reemployment list for any remaining part of the year following the date on which he was laid off. When the right to reemployment expires, the person affected retains his right to reinstatement or reappointment pursuant to NAC 284.386 or 284.404, respectively. [Emphasis added.]

NAC 284.630 therefore clearly contemplates that only classified employees be afforded reemployment rights. The section further requires that the position to which the person is reemployed be a classified position selected based on a comparison to the class, grade, and option of the employee's former classified position. *See also* NAC 284.385(3), which provides: "The grade of the class at which a person is reemployed cannot exceed the current *grade of the class he formerly held.*" [Emphasis added.]

In summary, the cited statutes and regulations concerning reemployment anticipate that reemployment be made from a position formerly held in the classified service to another position in the classified service because: (1) the Department of Personnel's regulation adoption authority extends generally only to regulations for the classified service; (2) pursuant to the Department of Personnel's statutory authority, and as set forth in the Department's regulations, reemployment lists are limited to lists of positions in the classified service; (3) an employee's placement on a reemployment list generally requires a comparison to the class, grade, and option of the classified position formerly held by the employee; and (4) the grade at which a person is reemployed cannot exceed the current grade of the class which he formerly held.

B. The Scope of the Application of Section 132 is Ambiguous

In reading section 132, we are cognizant of the tenet of statutory construction, "[w]hen the language of a statute is plain, its intention must be deduced from that language." *Hedlund v. Hedlund,* 111 Nev. 325, 328, 890 P.2d 790, 792 (1995). However, statutory

public legislative records on file at the Legislative Counsel Bureau for this purpose. *Hotel Employees v. State Gaming Control Bd.*, 103 Nev. 588, 747 P.2d 878 (1987). "When a statute is of doubtful import and subject to opposite meanings, limited resort may be had to testimony and committee discussions concerning the legislation in question." *Bd. of Cty. Comm'rs. v. White,* 102 Nev. 587, 590, 729 P.2d 1347, 1350 (1986). We have scoured the 285 pages of minutes of legislative committee meetings and exhibits relating to S.B. 37 to see what testimony was offered on the applicability of section 132. At only one place was section 132's applicability discussed, and it was discussed in conjunction with the intended applicability of sections 130 and 131, as well. During a presentation to the Assembly Committee on Commerce and Labor, Leonard Ormsby, General Counsel for EICON, testified:

> Mr. Ormsby continued by pointing out sections 130, 131, and 132 addressed the reemployment rights of *classified* personnel. All employees would go on the re-employment list for a maximum of 24 months. The provision would apply not only to permanent state employees, but probationary employees as well. Section 133 provided for the establishment of a fund . . . .

Hearing on S.B. 37 Before the Assembly Committee on Commerce and Labor, 1999 Legislative Session, 204 (May 12, 1999) (emphasis added). This testimony indicates the intention of S.B. 37's main proponent, EICON, was to limit the reemployment benefits of sections 130—132 apply only to classified State employees. We have found no testimony throughout the legislative history of S.B. 37 which indicates an intention to provide professional contract employees any reemployment rights.

We further note that an interpretation of section 132 to provide reemployment rights to a contract employee who has performed no previous classified service would require the Department of Personnel to somehow "shoehorn" the contract employee into a classified position without statutory or regulatory guidance. As noted above, the regulations concerning reemployment require that an employee be placed on an appropriate reemployment list based on a comparison of the employee's previous class, grade, and option in his former classified position. Where a professional contract employee has no previous classified service to base such a comparison on, the Department of Personnel is left without the tools to make a comparison and would have no ability or authority to place the employee on an appropriate reemployment list. However, we further note that the Legislature has provided a mechanism whereby persons who have not had previous classified service are allowed to *transfer* into the classified service. NRS 284.3775(1) provides in relevant part:

> [E]mployees of the supreme court, employees in the unclassified service of the executive branch of the government of the State of Nevada, or employees of the legislative branch of the government

> of the State of Nevada who have served for 4 consecutive months or more are *entitled to transfer to a position having similar duties and compensation in the classified service on the same basis as employees may transfer within the classified service* . . . . [Emphasis added.]

Transfers within the classified service are generally made from one position to another in the *same or related class.* NAC 284.390. Employees of the Supreme Court, Legislature, and employees in the unclassified service do not hold positions which are classified and therefore have no "same or related class" for purposes of comparison with a position to be transferred to in the classified service. Apparently to overcome this obstacle, the Legislature provided for the transfer of these employees to the classified service based solely on a comparison of "similar duties and compensation." This forms a basis for a comparison between positions in the Supreme Court, legislative branch, and unclassified service with positions in the classified service. No such authorizing language was provided in section 132 to allow a comparison between the professional contract employee's position and a position in the classified service for purposes of reemployment.

In enacting NRS 284.3775, the Legislature has demonstrated an understanding that a direct comparison of positions which are not classified to positions which are classified is not possible. The Legislature provided the flexible language, "similar duties and compensation" in NRS 284.3775 to facilitate such a comparison, but failed to include similar language in section 132. If the Legislature had intended that employees other than classified employees should be entitled to the reemployment benefits of section 132, it could have easily provided clear authority and language similar to the "similar duties and compensation" language of NRS 284.3775. The Legislature's failure to provide that authority and to include that language is indicative of an intent not to afford persons other than classified employees the reemployment benefits of section 132. *See Ramacciotti v. Ramacciotti,* 106 Nev. 529, 795 P.2d 988 (1990) (if the Legislature intended to require that a motion to modify child support obligation could only be made before child reaches 18 years, it could have included such a requirement in the statute).

For the above reasons, we conclude that an attorney employed under contract by EICON is not entitled to the reemployment benefits provided in section 132 of S.B. 37.

Finally, we are advised that you may be in possession of an opinion on this topic which was not authored by the Attorney General. We would point out that the Attorney General is the official legal adviser on State matters arising in the executive branch of State government, NRS 228.110, and further serves as official legal counsel for purposes of written opinions to executive agency heads. Good faith reliance by an executive agency head provides the agency head protection from certain kinds of damages. "[W]here government officials are entitled to

rely on opinions of the state's Attorney General, and do rely in good faith, they are not responsible in damages to the governmental body they serve if the Attorney General is mistaken." *Cannon v. Taylor,* 88 Nev. 89, 91—92, 493 P.2d 1313 (1972). We point out that no such similar protection exists for State agency heads when relying on opinions authored by persons or agencies other than the Attorney General.

CONCLUSION

An attorney employed under contract by the Employers Insurance Company of Nevada, who has never served in the classified service, is not entitled to the reemployment benefit provided in section 132 of Senate Bill 37 of the 1999 Nevada Legislature.

Cordially,

FRANKIE SUE DEL PAPA
Attorney General

By: _____
JAMES T. SPENCER
Senior Deputy Attorney General
Government Affairs Section
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JTS:srh

APPENDIX D

Suggested Legislation

		Page
BDR 53-767	Makes various changes concerning duties and professional conduct of hearing and appeals officers of department of administration	67
BDR 53-768	Makes various changes concerning policies of industrial insurance	73
BDR 53-769	Makes various changes concerning policies of industrial insurance	85
BDR 53-770	Requires administrator of division of industrial relations of department of business and industry to create pamphlet concerning use of subsequent injury funds	93
BDR S-711	Clarifies applicability of provision providing certain reemployment rights with executive branch of state government to certain employees regardless of status of such employees with department of personnel	95
BDR 53-772	Makes various changes relating to responsibilities of insurers who provide industrial insurance	99
BDR 53-773	Makes various changes concerning workers' compensation that affect eligibility, and amount and payment of benefits	109
BDR 53-877	Revises formula for assessments related to program of workers' compensation	121

SUMMARY—Makes various changes concerning duties and professional conduct of hearing and appeals officers of department of administration. (BDR 53-767)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State: Yes.

AN ACT relating to industrial insurance; transferring certain duties from the administrator of the division of industrial relations of the department of business and industry to the hearing and appeals officers of the department of administration; requiring that a code of professional conduct be created for appeals officers of the department of administration; 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.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 pursuant to NRS 616C.315 or 616C.345.~~

~~3.]~~ ***2.*** 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. 2. NRS 616C.170 is hereby amended to read as follows:

616C.170 1. ~~[The administrator shall resolve any disputes between insurers if an injured employee claims benefits against more than one insurer.~~

~~2. The administrator shall adopt regulations concerning the resolution of disputes between insurers regarding benefits to be paid to any injured employee.~~

~~3. If the insurer or the employee is dissatisfied with the decision of the administrator, the dissatisfied party may request a hearing before an appeals officer.~~

~~4. Until the administrator has determined which insurer is responsible for a claim,]~~ ***A dispute between insurers regarding responsibility for payment of compensation if an injured employee claims benefits against more than one insurer must be appealed to the hearings division of the department of administration in the manner provided by NRS 616C.315 to 616C.385, inclusive.***

2. Until a final resolution of the issue of responsibility for payment of the claim is obtained, the current insurer of the employer shall pay benefits to the claimant pursuant to chapters 616A to 617, inclusive, of NRS. Payments made by an insurer pursuant to this subsection are not an admission of liability for the claim or any portion of the claim.

Sec. 3. NRS 616C.340 is hereby amended to read as follows:

616C.340 1. The governor 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]~~ ***An*** appeals officer ~~[must]~~ ***:***

(a) Must be an attorney who has been licensed to practice law before all the courts of this state for at least 2 years ~~[.]~~ ***;***

(b) Except as otherwise provided in NRS 7.065, ~~[an appeals officer]~~ shall not engage in the private practice of law ~~[.]~~ ***; and***

(c) Shall comply with the rules of conduct adopted by the director pursuant to section 5 of this act.

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, he shall disqualify himself from hearing the case.

4. The governor may appoint one or more special appeals officers to conduct hearings in contested claims for compensation pursuant to NRS 616C.360. The governor 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 decision of an appeals officer is the final and binding administrative determination of a claim for compensation under 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. 4. 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 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.

4. An employer aggrieved by a determination made by his insurer pursuant to this section may appeal that determination to the hearings division of the department of administration in the manner provided by NRS 616C.315 to 616C.385, inclusive.

Sec. 5. 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 professional conduct of appeals officers. The regulations must include:

1. A procedure for a person who believes that an appeals officer has violated the standards for professional conduct to make a complaint to the director or his designee;

2. Rules of practice pursuant to which the director or his designee will hear complaints made pursuant to subsection 1; and

3. The penalties that may be imposed against an appeals officer if the director or his designee determines, pursuant to the rules of practice adopted pursuant to subsection 2, that an appeals officer has violated a standard for professional conduct.

Sec. 6. NRS 232.212 is hereby amended to read as follows:

232.212 As used in NRS 232.212 to 232.2195, inclusive, ***and section 5 of this act,*** unless the context requires otherwise:

1. "Department" means the department of administration.

2. "Director" means the director of the department.

Sec. 7. This act becomes effective on July 1, 2001.

SUMMARY—Makes various changes concerning policies of industrial insurance. (BDR 53-768)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State: No.

AN ACT relating to industrial insurance; providing a definition of "policy year" for the purpose of industrial insurance; specifying the circumstances under which a policy of industrial insurance may exclude coverage for certain employees covered by a consolidated insurance program; allowing certain employers to report information concerning tips received by their employees by a computerized program or process; authorizing a private carrier to require a sole proprietor seeking coverage to submit to a physical examination; eliminating the requirement that unpaid premiums bear interest at the rate of 1 percent monthly; 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:

"Policy year" means the 12-month period during which a policy of industrial insurance is effective.

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. NRS 616B.031 is hereby amended to read as follows:

616B.031 ~~[An]~~

1. Except as otherwise provided in subsection 2, an insurer shall not issue a policy of industrial insurance to an employer that does not cover each employee of that employer who satisfies the definition of employee set forth in NRS 616A.105 to 616A.225, inclusive.

2. If the employer is a contractor or subcontractor who is engaged in the construction of a project that is covered by a consolidated insurance program established pursuant to NRS 616B.710 to 616B.737, inclusive, an insurer may issue a policy of industrial insurance to that employer which does not cover an employee of the employer who:

(a) Is assigned to participate in the construction of the project that is covered by the consolidated insurance program; and

(b) Works exclusively at the site of the construction project that is covered by the consolidated insurance program.

Sec. 4. NRS 616B.222 is hereby amended to read as follows:

616B.222 To determine the total amount paid to employees for services performed, the maximum amount paid to any one employee during ~~[the year in which]~~ a policy ~~[of industrial insurance is effective]~~ ***year*** shall be deemed to be $36,000.

Sec. 5. NRS 616B.227 is hereby amended to read as follows:

616B.227 1. ~~[An]~~ ***Except as otherwise provided in subsection 2, 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; ***and***

(b) Submit the copy to his 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]~~

2. An employer that maintains his records concerning payroll by a computerized program or process that can produce a report on all employees which indicates:

(a) The amount of tips reported by each employee pursuant to 26 U.S.C. § 6053(a); or

(b) The amount of tips allocated to each employee pursuant to a formula applied by the employer, whether by agreement of the employees or by imposition of the employer,

may satisfy the requirements of subsection 1 by submitting a copy of the report to his private carrier and maintaining another copy of the report for his records.

3. An employer that is not self-insured or a member of an association of self-insured public or private employers ~~[,]~~ ***shall*** pay the 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.]~~ ***4.*** The private carrier, self-insured employer or association ***of self-insured public or private employers*** 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.]~~ ***6053(a).*** Reports made after the date of injury may not be used for the calculation of compensation.

~~[4.]~~ ***5.*** An employer shall notify his employees of the requirement to report income from tips to calculate his federal income tax and to include the income in the computation of benefits pursuant to chapters 616A to 616D, inclusive, and chapter 617 of NRS.

~~[5.]~~ ***6.*** The administrator shall adopt such regulations as are necessary to carry out the provisions of this section.

Sec. 6. NRS 616B.624 is hereby amended to read as follows:

616B.624 1. If a quasi-public or private corporation or a limited-liability company is required to be insured pursuant to chapters 616A to 616D, inclusive, of NRS, an officer of the corporation or a manager of the company who:

(a) Receives pay for services performed as an officer, manager or employee of the corporation or company shall be deemed for the purposes of those chapters to receive a

minimum pay of $6,000 per ***policy*** year ~~[the policy of industrial insurance for the employer is effective]~~ and a maximum pay of $36,000 per ***policy*** year . ~~[the policy of industrial insurance is effective.]~~

(b) Does not receive pay for services performed as an officer, manager or employee of the corporation or company shall be deemed for the purposes of those chapters to receive a minimum pay of $500 per month or $6,000 per ***policy*** year . ~~[the policy of industrial insurance is effective.]~~

2. An officer or manager who does not receive pay for services performed as an officer, manager or employee of the corporation or company may elect to reject coverage by filing written notice thereof with the corporation or company and the insurer. The rejection is effective upon receipt of the notice by the insurer.

3. An officer or manager who has rejected coverage may rescind that rejection by filing written notice thereof with the corporation or company and the insurer. The rescission is effective upon receipt of the notice by the insurer. If an officer or manager who has rejected coverage receives pay for services performed as an officer, manager or employee of the corporation or company, the officer or manager shall be deemed to have rescinded that rejection.

4. A nonprofit corporation whose officers do not receive pay for services performed as officers or employees of the corporation may elect to reject coverage for its current officers and all future officers who do not receive such pay by filing written notice thereof with the corporation and the insurer. The rejection is effective upon receipt of the notice by the insurer.

5. A nonprofit corporation which has rejected coverage for its officers who do not receive pay for services performed as officers or employees of the corporation may rescind that rejection by filing written notice thereof with the corporation and the insurer. The rescission is effective upon receipt of the notice by the insurer. If an officer of a nonprofit corporation which has rejected coverage receives pay for services performed as an officer or employee of the corporation, the corporation shall be deemed to have rescinded that rejection.

Sec. 7. NRS 616B.659 is hereby amended to read as follows:

616B.659 1. A sole proprietor may elect to be included within the terms, conditions and provisions of chapters 616A to 616D, inclusive, of NRS to secure for himself compensation equivalent to that to which an employee is entitled for any accidental injury sustained by the sole proprietor which arises out of and in the course of his self-employment by filing a written notice of election with the administrator and a private carrier.

2. A ***private carrier may require a*** sole proprietor who elects to accept the terms, conditions and provisions of chapters 616A to 616D, inclusive, of NRS ~~[shall]~~ ***to*** submit to a physical examination before his coverage commences. ~~[The]~~ ***If a*** private carrier ***requires such a physical examination, the private carrier*** shall prescribe the scope of the examination and shall consider it for rating purposes. The cost of the physical examination must be paid by the sole proprietor.

3. A sole proprietor who elects to submit to the provisions of chapters 616A to 616D, inclusive, of NRS shall pay to the private carrier premiums in such manner and amounts as may be prescribed by the regulations of the commissioner.

4. If a sole proprietor fails to pay all premiums required by the regulations of the commissioner, the failure operates as a rejection of chapters 616A to 616D, inclusive, of NRS.

5. A sole proprietor who elects to be included pursuant to the provisions of chapters 616A to 616D, inclusive, of NRS remains subject to all terms, conditions and provisions of those chapters and all regulations of the commissioner until he files written notice with the administrator and the private carrier that he withdraws his election.

6. For the purposes of chapters 616A to 616D, inclusive, of NRS, a sole proprietor shall be deemed to be receiving a wage of $300 per month unless, at least 90 days before any injury for which he requests coverage, he files written notice with the administrator and the private carrier that he elects to pay an additional amount of premiums for additional coverage. If the private carrier receives the additional premiums it requires for such additional coverage, the sole proprietor shall be deemed to be receiving a wage of $1,800 per month.

Sec. 8. NRS 616B.730 is hereby amended to read as follows:

616B.730 1. A consolidated insurance program must not provide industrial insurance coverage, a comprehensive program of safety or 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 program 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 ***exclusively*** at the site of the project.

3. The owner or principal contractor of a construction project 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 ***exclusively*** at the site of the construction project and would therefore be ***fully*** 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. 9. NRS 617.207 is hereby amended to read as follows:

617.207 1. If a quasi-public or private corporation or limited-liability company is required to be insured pursuant to this chapter, an officer of the corporation or a manager of the company who:

(a) Receives pay for service performed shall be deemed for the purposes of this chapter to receive a minimum pay of $6,000 per ***policy*** year ~~[the policy of industrial insurance for the employer is effective]~~ and a maximum pay of $36,000 per ***policy*** year . ~~[the policy of industrial insurance if effective.]~~

(b) Does not receive pay for services performed shall be deemed for the purposes of this chapter to receive a minimum pay of $500 per month or $6,000 per ***policy*** year . ~~[the policy of industrial insurance is effective.]~~

2. An officer or manager who does not receive pay for services performed may elect to reject coverage by filing written notice thereof with the corporation or company and the insurer. The rejection is effective upon receipt of the notice by the insurer.

3. An officer or manager who has rejected coverage may rescind that rejection by filing written notice thereof with the corporation or company and the insurer. The rescission is effective upon receipt of the notice by the insurer.

Sec. 10. NRS 617.225 is hereby amended to read as follows:

617.225 1. A sole proprietor may elect to be included within the terms, conditions and provisions of this chapter to secure for himself compensation equivalent to that to which an employee is entitled for any occupational disease contracted by the sole proprietor which arises out of and in the course of his self-employment by filing a written notice of election with the administrator and a private carrier.

2. A ***private carrier may require a*** sole proprietor who elects to accept the terms, conditions and provisions of this chapter ~~[shall]~~ ***to*** submit to a physical examination by a physician selected by the private carrier before the commencement of coverage and on a yearly basis thereafter. ~~[The]~~ ***If a*** private carrier ***requires such a physical examination, the private carrier*** shall prescribe the scope of the examination and shall consider it for rating purposes. The cost of the physical examination must be paid by the sole proprietor.

3. A sole proprietor who elects to submit to the provisions of this chapter shall pay to the private carrier premiums in such manner and amounts as may be prescribed by the regulations of the commissioner.

4. If a sole proprietor fails to pay all premiums required by the regulations of the commissioner, the failure operates as a rejection of this chapter.

5. A sole proprietor who elects to be included under the provisions of this chapter remains subject to all terms, conditions and provisions of this chapter and all regulations of the commissioner until he files a written notice with the private carrier and the administrator that he withdraws his election.

6. For purposes of this chapter, a sole proprietor shall be deemed to be an employee receiving a wage of $300 per month.

Sec. 11. NRS 616B.236 is hereby repealed.

Sec. 12. This act becomes effective on July 1, 2001.

TEXT OF REPEALED SECTION

616B.236 Accrual of interest on unpaid premiums. Except as otherwise provided in NRS 616D.200, when any premium of an employer remains unpaid on the date on which it becomes due, as prescribed by NRS 616B.224, it bears interest at the rate of 1 percent for each

month or portion of a month thereafter until payment of the premium, plus accrued interest, is received by the insurer.

SUMMARY—Makes various changes concerning policies of industrial insurance. (BDR 53-769)

FISCAL NOTE: Effect on Local Government: Yes.

Effect on the State: No.

AN ACT relating to industrial insurance; requiring an employer to ensure that a copy of its policy of industrial insurance is available for inspection by certain state officials; requiring self-insured employers and associations of self-insured public or private employers to ensure that their certificates of qualification are available for inspection by certain state officials; revising the provisions governing notification by employers and private carriers of cancellations, issuances and other actions concerning policies of industrial insurance; 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.495 is hereby amended to read as follows:

616A.495 1. Each employer shall ensure that ~~[:~~

~~(a) A certificate of insurance provided pursuant to NRS 616B.026;~~

~~(b) A certificate~~] ***a copy of his:***

(a) Policy of industrial insurance, including the declaration page, if the employer is insured by a private carrier;

(b) Certificate issued by the commissioner pursuant to NRS 616B.312 ~~[:]~~ ***, if the employer is self-insured;*** or

(c) ~~[A certificate issued to an association of self-insured public or private employers]~~ ***Certificate issued*** by the commissioner pursuant to NRS 616B.359 and ***of*** a certificate or letter issued by ~~[such an]~~ ***the*** association ***of self-insured public or private employers*** verifying that the employer is a member in good standing of the association, ~~[is posted in a conspicuous location]~~ ***if the employer is a member of an association of self-insured public or private employers, is available at all times for inspection by the administrator or his auditor or agent or an investigator of the attorney general*** at each of the employer's places of business, including, without limitation, each location at which the employer has directed one or more employees to perform work.

2. An employer ***insured by a private carrier, self-insured employer or employer who is a member of an association of self-insured public or private employers*** who violates the provisions of subsection 1 is guilty of a misdemeanor.

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

1. An employer who cancels a policy of industrial insurance issued to him by a private carrier shall notify the administrator in writing within 20 days after the cancellation,

specifying the date on which the cancellation became effective, unless the employer's subsequent insurer is a private carrier who has already notified the administrator pursuant to subsection 2 that it has issued a new policy to that employer. The notice must be served personally or sent by first-class mail or electronic transmission to the administrator. If the employer has secured insurance with another insurer that could cause double coverage, the date on which cancellation of the previous policy became effective must be the effective date of the new insurance.

2. A private carrier shall notify the administrator in writing within 15 days after the private carrier:

(a) Issues a policy of industrial insurance.

(b) Renews a policy of industrial insurance.

(c) Reinstates a policy of industrial insurance that had been temporarily canceled.

(d) Cancels or does not renew a policy of industrial insurance.

3. If the administrator believes that a private carrier has inaccurately reported the information required pursuant to subsection 2 and notifies the private carrier of the alleged inaccuracy, the private carrier shall within 30 calendar days after receiving the notification:

(a) Investigate the alleged inaccuracy; and

(b) Submit to the administrator accurate information or information proving that the previously submitted information was accurate.

4. During the period of investigation by the private carrier, the administrator may not impose any administrative fines, issue a notice of correction or take any other corrective

action against the private carrier. If the private carrier is able to prove that the information originally submitted to the administrator or, if applicable, his designated agent, was accurate, the administrator may not impose any administrative fines, issue a notice of correction or take any other corrective action against the private carrier. As used in this subsection, "designated agent" means an agent who is authorized by the administrator to receive, compile and forward to the administrator the information required pursuant to subsection 2.

Sec. 3. NRS 616B.033 is hereby amended to read as follows:

616B.033 1. Every policy of insurance issued pursuant to chapters 616A to 617, inclusive, of NRS must contain a provision for the requirements of subsection ~~[5]~~ *4* and a provision that insolvency or bankruptcy of the employer or his estate, or discharge therein, or any default of the employer does not relieve the insurer from liability for compensation resulting from an injury otherwise covered under the policy issued by the insurer.

2. No statement in an employer's application for a policy of industrial insurance voids the policy as between the insurer and employer unless the statement is false and would have materially affected the acceptance of the risk if known by the insurer, but in no case does the invalidation of a policy as between the insurer and employer affect the insurer's obligation to provide compensation to claimants arising before the cancellation of the policy. If the insurer is required pursuant to this subsection to provide compensation under an invalid policy, the insurer is subrogated to the claimant's rights against the employer.

3. ~~[If an insurer or employer intends to cancel or renew a policy of insurance issued by the insurer pursuant to chapters 616A to 617, inclusive, of NRS, the insurer or employer must give~~

~~notice to that effect in writing to the administrator and to the other party fixing the date on which it is proposed that the cancellation or renewal becomes effective. The notices must comply with the provisions of NRS 687B.310 to 687B.355, inclusive, and must be served personally on or sent by first-class mail or electronic transmission to the administrator and the other party. If the employer has secured insurance with another insurer which would cause double coverage, the cancellation must be made effective as of the effective date of the other insurance.~~

~~4.]~~ As between any claimant and the insurer, no defense based on any act or omission of the insured employer, if different from the insurer, may be raised by the insurer.

~~[5.]~~ ***4.*** For the purposes of chapters 616A to 617, inclusive, of NRS, as between the employee and the insurer:

(a) Except as otherwise provided in NRS 616C.065, notice or knowledge of the injury to or by the employer is notice or knowledge to or by the insurer;

(b) Jurisdiction over the employer is jurisdiction over the insurer; and

(c) The insurer is bound by and subject to any judgments, findings of fact, conclusions of law, awards, decrees, orders or decisions rendered against the employer in the same manner and to the same extent as the employer.

Sec. 4. NRS 616B.224 is hereby amended to read as follows:

616B.224 1. Every private or public employer who is not a self-insured employer or a member of an association of self-insured public or private employers shall, at intervals and on or before dates established by his insurer, furnish the insurer with:

(a) A true and accurate payroll showing:

(1) The total amount paid to employees for services performed;

(2) 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

(3) A segregation of employment in accordance with the requirements of the commissioner; and

(b) Any premium due pursuant to the terms of the policy of industrial insurance.

The payroll reports and any premium may be furnished to the insurer on different dates, as established by the insurer.

2. The failure of any employer to comply with the provisions of this section operates as a rejection of chapters 616A to 616D, inclusive, and chapter 617 of NRS. The insurer shall ***, within the period specified in subsection 2 of section 2 of this act,*** notify the administrator of each such rejection ~~[within the period specified in NRS 616B.460.]~~ ***by notifying the administrator of its cancellation or decision not to renew the policy of that employer.***

3. 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.

4. 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. 5. 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]~~ ***who cancels a policy of industrial insurance to*** 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 shall notify the administrator if an employer has changed his insurer or has allowed his insurance to lapse, within 15 days after the insurer has notice of the change or lapse.]~~ ***shall comply with the reporting requirements of section 2 of this act.***

Sec. 6. NRS 616B.026 is hereby repealed.

Sec. 7. The amendatory provisions of this act do not apply to offenses committed before July 1, 2001.

Sec. 8. This act becomes effective on July 1, 2001.

TEXT OF REPEALED SECTION

616B.026 Certificate of industrial insurance: Issuance by certain insurers; contents.

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.

SUMMARY—Requires administrator of division of industrial relations of department of business and industry to create pamphlet concerning use of subsequent injury funds. (BDR 53-770)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State: Yes.

AN ACT relating to industrial insurance; requiring the administrator of the division of industrial relations of the department of business and industry to create and make publicly available a pamphlet addressing the use and operation of the subsequent injury funds for self-insured employers, associations of self-insured public or private employers, and private carriers; 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:

1. The administrator shall prepare an informational pamphlet describing the requirements for submitting a claim for payment from the subsequent injury fund for:

(a) Self-insured employers pursuant to NRS 616B.545 to 616B.560, inclusive;

(b) Associations of self-insured public or private employers pursuant to NRS 616B.563 to 616B.581, inclusive; and

(c) Private carriers pursuant to NRS 616B.584, 616B.587 and 616B.590.

2. The pamphlet must describe:

(a) The purpose of the subsequent injury funds;

(b) What type of claim is eligible for payment from each of the subsequent injury funds;

(c) How to submit a claim for payment from each of the subsequent injury funds;

(d) The right of:

(1) A self-insured employer;

(2) An association of self-insured public or private employers; and

(3) A private carrier,

to appeal a decision made concerning a claim against the appropriate subsequent injury fund; and

(e) Such other information as the administrator deems necessary.

3. Copies of the pamphlet must be made available to the public and must be distributed to any person who requests a pamphlet.

Sec. 2. This act becomes effective on July 1, 2001.

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SUMMARY—Clarifies applicability of provision providing certain reemployment rights with executive branch of state government to certain employees regardless of status of such employees with department of personnel. (BDR S-771)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State: No.

AN ACT relating to state personnel system; clarifying that the provision which provides certain reemployment rights with the executive branch of state government to certain employees applies regardless of the status of such employees with the department of personnel; 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. Section 132 of chapter 388, Statutes of Nevada 1999, at page 1840, is hereby amended to read as follows:

Sec. 132. 1. ~~[A]~~ ***Any*** person who is employed by the state industrial insurance system on July 1, 1999:

(a) May request the department of personnel to place his name on an appropriate reemployment list maintained by the department and is entitled to be allowed a preference

on that list. Upon receipt of such a request, the department shall maintain such an employee on the reemployment list until July 1, 2001, or until he is reemployed by the executive branch of state government, whichever occurs earlier.

(b) Notwithstanding the provisions of chapter 284 of NRS or the regulations adopted pursuant thereto, is not subject to any probationary period otherwise applicable to his initial reemployment ~~[to]~~ ***, if he is reemployed in*** a position in the classified service of the state.

The provisions of this subsection apply to any person performing services for pay for the state industrial insurance system on July 1, 1999, regardless of the manner in which his service is classified or otherwise characterized pursuant to chapter 284 of NRS or the regulations adopted pursuant thereto and regardless of whether the state industrial insurance system considers the person to be a permanent employee or an employee serving pursuant to a contract that establishes a limited period of employment.

2. If a domestic mutual insurance company receives the assets and assumes the debts and liabilities of the state industrial ***insurance*** system on January 1, 2000, pursuant to section 129 of this act, ~~[a]~~ ***any*** person who is employed on January 1, 2000, by that company:

(a) May request the department of personnel to place his name on an appropriate reemployment list maintained by the department and is entitled to be allowed a preference on that list. Upon receipt of such a request, the department shall maintain such an

employee on the reemployment list until January 1, 2002, or until he is reemployed by the executive branch of state government, whichever occurs earlier.

(b) Notwithstanding the provisions of chapter 284 of NRS or the regulations adopted pursuant thereto, is not subject to any probationary period otherwise applicable to his initial reemployment ~~[to]~~ ***, if he is reemployed in*** a position in the classified service of the state.

The provisions of this subsection apply to any person performing services for pay for the domestic mutual insurance company on January 1, 2000, regardless of the manner in which his service is classified or otherwise characterized pursuant to chapter 284 of NRS or regulations adopted pursuant thereto and regardless of whether, on January 1, 2000, the domestic mutual insurance company considers the person to be a permanent employee or an employee serving pursuant to a contract that establishes a limited period of employment.

Sec. 2. This act becomes effective on passage and approval.

SUMMARY—Makes various changes relating to responsibilities of insurers who provide industrial insurance. (BDR 53-772)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State: No.

AN ACT relating to industrial insurance; revising the provisions requiring the administrator of the division of industrial relations of the department of business and industry to conduct audits of insurers; revising the provisions governing maintenance of files of claims at the office of an insurer; clarifying the authority of a board of trustees of an association of self-insured public employers to invest certain money; requiring insurers, organizations for managed care and certain employers to notify an injured employee if a medical bill submitted on his behalf is denied and that the injured employee has a right to appeal the denial; 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.003 is hereby amended to read as follows:

616B.003 1. The administrator shall cause to be conducted at least every ~~[3]~~ *5* years an audit of all insurers who provide benefits to injured employees pursuant to chapters 616A to 616D, inclusive, or chapter 617 of NRS. ~~[The administrator shall cause to be conducted]~~

2. In addition to the audit conducted pursuant to subsection 1, the administrator:

(a) Shall, each year on a random basis ~~[additional]~~ ***, cause to be conducted*** partial audits of any insurer who has a history of violations of the provisions of chapters 616A to 616D, inclusive, or chapter 617 of NRS, or the regulations adopted pursuant thereto, as determined by the administrator.

~~[2.]~~ ***(b) May, at any time, cause to be conducted an audit that examines a fewer number of files than the audit conducted pursuant to subsection 1 of any insurer who does not have a history of violations of the provisions of chapters 616A to 616D, inclusive, or chapter 617 of NRS, or the regulations adopted pursuant thereto, as determined by the administrator.***

3. The administrator shall require the use of standard auditing procedures and shall establish a manual to describe the standard auditing procedures ~~[.]~~ ***for the audits conducted pursuant to subsections 1 and 2.*** The manual must include:

(a) Specific audit objectives;

(b) Standards for documentation;

(c) Policies for supervisory review;

(d) Policies for the training of auditors;

(e) The format for the audit report; and

(f) Procedures for the presentation, distribution and retention of the audit report ~~[.]~~

~~3.~~],

for each type of audit conducted pursuant to subsections 1 and 2.

4. In consultation with and with the permission of the commissioner, the audits required or authorized to be conducted pursuant to subsections 1 and 2 may be conducted in conjunction with an audit or examination conducted by the division of insurance of the department of business and industry or the commissioner pursuant to chapters 616A to 617, inclusive, or Title 57 of NRS.

5. The commissioner and the administrator shall establish a procedure for sharing information between the division of insurance of the department of business and industry and the division concerning the qualifications of employers as self-insured employers pursuant to NRS 616B.300 or as an association of self-insured public or private employers pursuant to NRS 616B.353.

[~~4.~~] *6.* On or before March 1 of each year, the administrator shall make a report of each audit to the legislature, if it is in session, or to the interim finance committee if the legislature is not in session.

Sec. 2. NRS 616B.021 is hereby amended to read as follows:

616B.021 1. An insurer shall provide access to the files of claims in its offices.

2. [~~A file is~~] ***The physical records in a file concerning a claim filed in this state may be kept at an office located outside this state if all records in the file are accessible at offices located in this state on computer in a microphotographic, electronic or other similar format that produces an accurate reproduction of the original. Except as otherwise provided in this***

subsection, the records in a file concerning a claim filed in this state must be reproduced and available for inspection during regular business hours ***within 24 hours after requested*** by the employee or his designated agent, the employer or his designated agent ~~[and]~~ ***, or*** the administrator or his designated agent. ***If a claim filed in this state has been closed, the records in the file must be reproduced and available for inspection during regular business hours within 30 calendar days after requested by such persons.***

3. Upon request, the insurer shall make copies ***or other reproductions*** of anything in the file and may charge a reasonable fee for this service. Copies ***or other reproductions*** of materials in the file which are requested by the administrator or his designated agent, or the Nevada attorney for injured workers or his designated agent must be provided free of charge.

4. ~~[If a claim has been closed for at least 1 year, the insurer may microphotograph or film any of its records relating to that claim. The microphotographs or films must be placed in convenient and accessible files.~~

~~5.]~~ The administrator ~~[shall]~~ ***may*** adopt regulations concerning the:

(a) Maintenance of records in a file on current or closed claims; ***and***

(b) Preservation, examination and use of records which have been ~~[microphotographed or filmed]~~ ***stored on computer or in a microphotographic, electronic or similar format*** by an insurer. ~~[; and~~

~~(c) Location of a file on a closed claim.~~

~~6.]~~ ***5.*** This section does not require an insurer to allow inspection or reproduction of material regarding which a legal privilege against disclosure has been conferred.

Sec. 3. NRS 616B.027 is hereby amended to read as follows:

616B.027 1. Every insurer shall ~~[provide:~~

~~(a) An]~~ ***:***

(a) Provide an office in this state operated by the insurer or its third-party administrator in which:

(1) A complete file of each claim is ~~[kept;]~~ ***accessible, in accordance with the provisions of NRS 616B.021;***

(2) Persons authorized to act for the insurer and, if necessary, licensed pursuant to chapter 683A of NRS, may receive information related to a claim and provide the services to an employer and his employees required by chapters 616A to 617, inclusive, of NRS; and

(3) An employee or his employer, upon request, is provided with information related to a claim filed by the employee or a copy ***or other reproduction*** of the information from the file for that claim ~~[.~~

~~(b) Statewide,]~~ ***, in accordance with the provisions of NRS 616B.021.***

(b) Provide statewide toll-free telephone service to ~~[that]~~ ***the*** office ***maintained pursuant to paragraph (a)*** or accept collect calls from injured employees.

2. Each private carrier shall provide:

(a) Adequate services to its insured employers in controlling losses; and

(b) Adequate information on the prevention of industrial accidents and occupational diseases.

Sec. 4. NRS 616B.368 is hereby amended to read as follows:

616B.368 1. The board of trustees of an association of self-insured public or private employers is responsible for the money collected and disbursed by the association.

2. The board of trustees shall:

(a) Establish a claims account in a financial institution in this state which is approved by the commissioner and which is federally insured or insured by a private insurer approved pursuant to NRS 678.755. Except as otherwise provided in subsection 3, at least 75 percent of the annual assessment collected by the association from its members must be deposited in this account to pay:

(1) Claims;

(2) Expenses related to those claims;

(3) The costs associated with the association's policy of excess insurance; and

(4) Assessments, payments and penalties related to the subsequent injury fund and the uninsured employers' claim fund.

(b) Establish an administrative account in a financial institution in this state which is approved by the commissioner and which is federally insured or insured by a private insurer approved pursuant to NRS 678.755. The amount of the annual assessment collected by the association that is not deposited in its claims account must be deposited in this account to pay the administrative expenses of the association.

3. The commissioner may authorize an association to deposit less than 75 percent of its annual assessment in its claims account if the association presents evidence to the satisfaction of the commissioner that:

* 5 3 - 7 7 2 *

(a) More than 25 percent of the association's annual assessment is needed to maintain its programs for loss control and occupational safety; and

(b) The association's policy of excess insurance attaches at less than 75 percent.

4. ~~[The]~~ ***Notwithstanding the provisions of chapter 355 of NRS that limit investments of public employers, the*** board of trustees ***of either an association of self-insured private employers or an association of self-insured public employers*** may invest the money of the association not needed to pay the obligations of the association pursuant to chapter 682A of NRS.

5. The commissioner shall review the accounts of an association established pursuant to this section at such times as he deems necessary to ensure compliance with the provisions of this section.

Sec. 5. Chapter 616C of NRS is hereby amended by adding thereto a new section to read as follows:

1. If an insurer, organization for managed care or employer who provides accident benefits for injured employees pursuant to NRS 616C.265 denies payment for some or all of the services itemized on a statement submitted by a provider of health care on the sole basis that those services were not related to the employee's industrial injury or occupational disease, the insurer, organization for managed care or employer shall, at the same time that it sends notification to the provider of health care of the denial, send a copy of the statement to the injured employee and notify the injured employee that it has denied payment. The notification sent to the injured employee must:

(a) State the relevant amount requested as payment in the statement, that the reason for denying payment is that the services were not related to the industrial injury, and that, pursuant to subsection 2, the injured employee will be responsible for payment of the relevant amount if he does not, in a timely manner, appeal the denial pursuant to NRS 616C.305 and 616C.315 to 616C.385, inclusive, or appeals but is not successful.

(b) Include an explanation of the injured employee's right to request a hearing to appeal the denial pursuant to NRS 616C.305 and 616C.315 to 616C.385, inclusive, and a suitable form for requesting a hearing to appeal the denial.

2. An injured employee who does not, in a timely manner, appeal the denial of payment for the services rendered or, who appeals the denial but is not successful, is responsible for payment of the relevant charges on the itemized statement.

3. To succeed on appeal, the injured employee must show that the:

(a) Services provided were related to the employee's industrial injury or occupational disease; or

(b) Insurer, organization for managed care or employer who provides accident benefits for injured employees pursuant to NRS 616C.265 gave prior authorization for the services rendered and did not withdraw that prior authorization before the services of the provider of health care were rendered.

Sec. 6. NRS 616C.135 is hereby amended to read as follows:

616C.135 1. A provider of health care who accepts a patient as a referral for the treatment of an industrial injury or an occupational disease may not charge the patient for any treatment

related to the industrial injury or occupational disease, but must charge the insurer. The provider of health care may charge the patient for any ~~[other unrelated services which are requested in writing by the patient.]~~ ***services that are not related to the employee's industrial injury or occupational disease.***

2. The insurer is liable for the charges for approved services ***related to the industrial injury or occupational disease*** if the charges do not exceed:

(a) The fees established in accordance with NRS 616C.260 or the usual fee charged by that person or institution, whichever is less; and

(b) The charges provided for by the contract between the provider of health care and the insurer or the contract between the provider of health care and the organization for managed care.

3. If a provider of health care, an organization for managed care, an insurer or an employer violates the provisions of this section, the administrator shall impose an administrative fine of not more than $250 for each violation.

Sec. 7. This act becomes effective on July 1, 2001.

SUMMARY—Makes various changes concerning workers' compensation that affect eligibility, and amount and payment of benefits. (BDR 53-773)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State: No.

AN ACT relating to industrial insurance; revising the provision governing tests that are to be administered to certain police officers and firemen to determine if they have contagious diseases that qualify for workers' compensation; requiring the administrator of the division of industrial relations of the department of business and industry to designate a vendor of certain data to assist the administrator in the establishment and revision of a schedule of reasonable fees for accident benefits; revising the provisions governing the circumstances under which a closed claim may be reopened; revising the provisions governing the effect on workers' compensation if an employee's injury is caused at least in part by the absence of a required safeguard or protection; 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 616C.052 is hereby amended to read as follows:

616C.052 1. If a police officer or a salaried or volunteer fireman is exposed to a contagious disease:

(a) Upon battery by an offender; or

(b) While performing the duties of a police officer or fireman,

the employer of the police officer or fireman shall create and maintain a report concerning the exposure that includes, without limitation, the name of each police officer or fireman, as applicable, who was exposed to the contagious disease and the name of each person, if any, to whom the police officer or fireman was exposed.

2. If the employment of a police officer or a salaried or volunteer fireman is terminated, voluntarily or involuntarily, the employer of the police officer or fireman shall, at the time of termination and at 6 and 12 months after the date of termination, provide to the police officer or fireman ~~[a blood]~~ ***an appropriate*** test ***of the blood or skin*** to screen for contagious diseases . ~~[, including, without limitation, hepatitis A, hepatitis B, hepatitis C, tuberculosis and human immunodeficiency virus.]~~ ***The test must be administered by a physician, a member of his staff, or an employee of a medical laboratory in accordance with generally accepted medical practices.*** If a ~~[blood]~~ test administered pursuant to this subsection and provided to the employer reveals that a former police officer or a former salaried or volunteer fireman has a contagious disease or the antibodies associated with a contagious disease, the police officer or fireman is eligible, during his lifetime, to receive compensation for such a disease and any additional diseases or conditions that are associated with or result from the contagious disease pursuant to

chapters 616A to 617, inclusive, of NRS. The former employer of a police officer or a salaried or volunteer fireman shall pay all the costs associated with providing ~~[blood]~~ tests required pursuant to this subsection.

3. As used in this section, the term ~~["battery"]~~ ***:***

(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) "Contagious diseases" includes, without limitation, hepatitis A, hepatitis B, hepatitis C, tuberculosis and human immunodeficiency virus.

Sec. 2. NRS 616C.260 is hereby amended to read as follows:

616C.260 1. All fees and charges for accident benefits must not:

(a) Exceed the ~~[fees and charges]~~ ***amounts*** usually ***billed and*** paid in the state for similar treatment.

(b) Be unfairly discriminatory as between persons legally qualified to provide the particular service for which the fees or charges are asked.

2. The administrator shall, giving consideration to the fees and charges being ***billed and*** paid in the state, establish a schedule of reasonable fees and charges allowable for accident benefits provided to injured employees whose insurers have not contracted with an organization for managed care or with providers of health care services pursuant to NRS 616B.527. The administrator shall review and revise the schedule on or before ~~[October]~~ ***February*** 1 of each year. ~~[The administrator may increase or decrease]~~ ***In the revision, the administrator shall***

adjust the schedule ~~[, but shall not increase the schedule by any factor greater than]~~ ***by*** the corresponding annual ~~[increase]~~ ***change*** in the Consumer Price Index, Medical Care Component . ~~[, unless the advisory council of the division approves such an increase.]~~

3. The administrator ~~[may request]~~ ***shall designate a vendor who compiles data on a national basis concerning fees and charges that are billed and paid for treatment or services similar to the treatment and services that qualify as accident benefits in this state to provide him with such information as he deems necessary to carry out the provisions of subsection 2. The designation must be made pursuant to reasonable competitive bidding procedures established by the administrator. In addition, the administrator may request*** a health insurer, health maintenance organization or provider of accident benefits, an agent or employee of such a person, or an agency of the state ~~[,]~~ to provide the administrator with ~~[such]~~ information concerning fees and charges ***that are billed and*** paid ***in this state*** for similar services as he deems necessary to carry out the provisions of subsection 2. The administrator shall require a ~~[person or entity providing]~~ ***health insurer, health maintenance organization or provider of accident benefits, an agent or employee of such a person, or an agency of the state that provides*** records or reports of fees ~~[charged]~~ ***and charges billed and paid pursuant to this section*** to provide interpretation and identification concerning the information delivered. The administrator may impose an administrative fine of $500 ***on a health insurer, health maintenance organization or provider of accident benefits, or an agent or employee of such a person*** for each refusal to provide the information requested pursuant to this subsection.

4. The division may adopt reasonable regulations necessary to carry out the provisions of this section. The regulations must include provisions concerning:

(a) Standards for the development of the schedule of fees and charges ~~[,]~~ ***that are billed and paid;***

(b) The periodic revision of the schedule; and

(c) The monitoring of compliance by providers of benefits with the adopted schedule of fees and charges.

5. The division shall adopt regulations requiring the ~~[utilization]~~ ***use*** of a system of billing codes as recommended by the American Medical Association.

Sec. 3. NRS 616C.390 is hereby amended to read as follows:

616C.390 ***Except as otherwise provided in subsection 8 of NRS 617.457:***

1. If an application to reopen a claim to increase or rearrange compensation is made in writing more than 1 year after the date on which the claim was closed, the insurer shall reopen the claim if:

(a) ***The claimant was incapacitated from earning full wages for at least 5 consecutive days or 5 cumulative days within a 20-day period;***

(b) The claimant received benefits for a permanent partial disability;

(c) A change of circumstances ***now*** warrants an increase or rearrangement of compensation during the life of the claimant;

~~[(b)]~~ ***(d)*** The primary cause of the change of circumstances is the injury ***or disease*** for which the claim was originally made; and

~~[(c)]~~ *(e)* The application is accompanied by the certificate of a physician or a chiropractor showing a change of circumstances which would warrant an increase or rearrangement of compensation.

2. After a claim has been closed, the insurer, upon receiving an application and for good cause shown, may authorize the reopening of the claim for medical investigation only. The application must be accompanied by a written request for treatment from the physician or chiropractor treating the claimant, certifying that the treatment is indicated by a change in circumstances and is related to the industrial injury sustained ***or occupational disease contracted*** by the claimant.

3. If a claimant applies for a claim to be reopened pursuant to subsection 1 or 2 and a final determination denying the reopening is issued, the claimant ~~[shall]~~ ***may*** not reapply to reopen the claim until at least 1 year after the date on which the final determination is issued.

4. Except as otherwise provided in subsection 5, if an application to reopen a claim is made in writing within 1 year after the date on which the claim was closed, the insurer shall reopen the claim ~~[only]~~ if:

(a) ***The claimant either received benefits for a permanent partial disability or did not receive benefits for a permanent partial disability but was incapacitated from earning full wages for at least 5 consecutive days or 5 cumulative days within a 20-day period;***

(b) The application is supported by medical evidence demonstrating an objective change in the medical condition of the claimant; and

~~[(b)]~~ *(c)* There is clear and convincing evidence that the primary cause of the change of circumstances is the injury ***or disease*** for which the claim was originally made.

5. ~~[An application to reopen a claim must be made in writing within 1 year after the date on which the claim was closed if:~~

~~(a) The claimant was not off work]~~ ***If the claimant:***

(a) Was not incapacitated from earning full wages for at least 5 consecutive days or 5 cumulative days within a 20-day period as a result of the injury ~~[,]~~ ***or disease;*** and

(b) ~~[The claimant did]~~ ***Did*** not receive benefits for a permanent partial disability ~~[.~~

~~If an application to reopen a claim to increase or rearrange compensation is made pursuant to this subsection, the insurer shall reopen the claim if]~~ ***, the application to reopen the claim must be made in writing within 1 year after the date on which the claim was closed and the claimant must demonstrate that*** the requirements set forth in paragraphs ~~[(a), (b) and]~~ (c) ***, (d) and (e)*** of subsection 1 are met. ***If the application is made in a timely manner and the claimant meets the requirements of paragraphs (c), (d) and (e) of subsection 1, the insurer shall reopen the claim.***

6. If an employee's claim is reopened pursuant to this section, he is not entitled to vocational rehabilitation services or benefits for a temporary total disability if, before his claim was reopened, he:

(a) Retired; or

(b) Otherwise voluntarily removed himself from the work force,

for reasons unrelated to the injury ***or disease*** for which the claim was originally made.

7. One year after the date on which the claim was closed, an insurer may dispose of the file of a claim authorized to be reopened pursuant to subsection 5, unless an application to reopen the claim has been filed pursuant to that subsection.

8. An increase or rearrangement of compensation is not effective before an application for reopening a claim is made unless good cause is shown. The insurer shall, upon good cause shown, allow the cost of emergency treatment the necessity for which has been certified by a physician or a chiropractor.

9. A claim that closes pursuant to subsection 2 of NRS 616C.235 and is not appealed or is unsuccessfully appealed pursuant to the provisions of NRS 616C.305 and 616C.315 to 616C.385, inclusive, may not be reopened pursuant to this section.

10. The provisions of this section apply to any claim for which an application to reopen the claim or to increase or rearrange compensation is made pursuant to this section, regardless of the date of the injury or accident ***or the date of disablement*** to the claimant. If a claim is reopened pursuant to this section, the amount of any compensation or benefits provided must be determined in accordance with the provisions of NRS 616C.425 ~~[.]~~ ***or 617.445, as appropriate.***

Sec. 4. NRS 616D.270 is hereby amended to read as follows:

616D.270 Any employer who fails:

1. To post the notice required by NRS 616A.490 , ~~[and]~~ 616B.650 ***and 616D.280*** in a place that is readily accessible and visible to employees is guilty of a misdemeanor.

2. To maintain the notice or notices required by NRS 616A.490 , ~~[and]~~ 616B.650 ***and 616D.280*** is guilty of a misdemeanor.

Sec. 5. NRS 616D.280 is hereby amended to read as follows:

616D.280 1. If any ~~[workman]~~ ***employee*** is injured because of the absence of any safeguard or protection required to be provided or maintained ~~[by, or]~~ pursuant to ~~[,]~~ any statute, ordinance ~~[, or any divisional regulation under any statute, the]~~ ***or regulation, and the absence is caused by the failure of the employer to provide and make the safeguard or protection available for use, or the absence is caused by the removal of the safeguard or protection by the employee in compliance with a deliberate order or direction by the employer, superintendent or foreman to do so:***

(a) The employer is liable to the division for a penalty of not less than $300 nor more than $2,000, to be collected in a civil action at law by the division.

(b) The compensation of the injured employee as provided for by NRS 616C.405, 616C.425, 616C.435, 616C.440, 616C.445 and 616C.475 to 616C.505, inclusive, must be increased by 25 percent.

2. ~~[The provisions of subsection 1 do not apply if the absence of the safeguard or protection is due to the removal thereof by the injured workman himself, or with his knowledge by any fellow workman, unless the removal is by order or direction of the employer or superintendent or foreman of the employer.~~

~~3.~~] If ***any employee is injured because of the absence of any safeguard or protection required to be provided or maintained pursuant to any statute, ordinance or regulation, and the absence is caused by the employee, on the date of injury:***

(a) Failing to use the safeguard or protection that was provided by his employer;

(b) Using the provided safeguard or protection for a period but subsequently and voluntarily removing it himself; or

(c) Using the ***provided*** safeguard or protection ~~[is removed by the workman himself, or]~~ ***for a period but subsequently and voluntarily allowing the safeguard or protection to be removed,*** with his consent , ~~[is removed]~~ by any of his fellow ~~[workmen, unless done by order or direction of the employer or superintendent or foreman of the employer,]~~ ***employees,***

the compensation of the injured ~~[workman,]~~ ***employee,*** as provided for by NRS 616C.405, 616C.425, 616C.435, 616C.440, 616C.445 and 616C.475 to 616C.505, inclusive, must be reduced ***by*** 25 percent.

3. The employer shall ensure that a notice containing the contents of subsection 2 is printed in English and Spanish and posted in an area that is conspicuous, readily accessible and visible to employees at the employer's place of business.

Sec. 6. Notwithstanding the amendatory provisions of section 2 of this act, the administrator of the division of industrial relations of the department of business and industry is not required to designate a vendor that compiles data on a national basis concerning fees and charges that are billed and paid for certain treatment and services pursuant to section 2 of this act in sufficient time to ensure that the schedule of reasonable fees and charges allowable for accident benefits that must be revised on or before February 1, 2002, includes the data obtained from that vendor, but shall use his best efforts to do so.

Sec. 7. 1. Section 2 of this act becomes effective:

(a) Upon passage and approval for the purpose of requiring the administrator to designate a vendor who compiles data on a national basis concerning fees and charges that are billed and paid for treatment or services similar to the treatment and services that qualify as accident benefits in this state to provide the administrator with such information as he deems necessary to carry out the provisions of subsection 2 of section 2 of this act.

(b) On July 1, 2001, for all other purposes.

2. Section 6 of this act becomes effective upon passage and approval.

3. This section and sections 1, 3, 4 and 5 of this act become effective on July 1, 2001.

SUMMARY—Revises formula for assessments related to program of workers' compensation. (BDR 53-877)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State: No.

AN ACT relating to workers' compensation; requiring that the formula for the assessments to support the uninsured employers' claim fund, the subsequent injury fund for self-insured employers, the subsequent injury fund for associations of self-insured public or private employers, the subsequent injury fund for private carriers and the fund for workers' compensation and safety be based on premiums to be received by industrial 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. NRS 616A.430 is hereby amended to read as follows:

616A.430 1. There is hereby established as a special revenue fund in the state treasury the uninsured employers' claim fund, which may be used only for the purpose of making payments in accordance with the provisions of NRS 616C.220 and 617.401. The administrator shall

administer the fund and shall credit any excess money toward the assessments of the insurers for the succeeding years.

2. All assessments, penalties, bonds, securities and all other properties received, collected or acquired by the administrator for the uninsured employers' claim fund 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.

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 money of the state general fund. 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, based upon expected annual ~~[expenditures for claims.]~~ ***premiums to be received.*** Assessment rates must reflect the relative hazard of the employments covered by the insurers, and must be based upon expected annual ~~[expenditures for claims.]~~ ***premiums to be received. For purposes of this subsection, "expected annual premiums to be received" by a self-insured employer or an association of self-insured public or private employers shall be deemed to be 105 percent of the average expenditures for claims for that employer or association for the preceding 3 years or, if data is not available to determine a 3-year average, the lowest of three quotes, which the employer or association must obtain from***

three different private carriers, for the purchase of industrial insurance for the employees of that employer or the employees of all the employers who are members of that association.

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

Sec. 2. NRS 616B.554 is hereby amended to read as follows:

616B.554 1. There is hereby established as a special revenue fund in the state treasury the subsequent injury fund for self-insured employers, which may be used only to make payments in accordance with the provisions of NRS 616B.557 and 616B.560. The board shall administer the fund based upon recommendations made by the administrator pursuant to subsection 8.

2. All assessments, penalties, bonds, securities and all other properties received, collected or acquired by the board for the subsequent injury fund for self-insured employers 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 of self-insured employers.

4. The state treasurer may disburse money from the fund only upon written order of the board.

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 board 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 self-insured employers, and must be based upon expected annual ~~[expenditures for claims for payments from the subsequent injury fund for self-insured employers.]~~ ***premiums to be received. For purposes of this subsection, "expected annual premiums to be received" by a self-insured employer shall be deemed to be 105 percent of the average expenditures for claims for that employer for the preceding 3 years or, if data is not available to determine a 3-year average, the lowest of three quotes, which the employer must obtain from three different private carriers, for the purchase of industrial insurance for the employees of that employer.***

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 self-insured employer who wishes to appeal the rate so filed must do so pursuant to NRS 679B.310.

8. The administrator shall:

(a) Evaluate any claim submitted to the board for payment or reimbursement from the subsequent injury fund for self-insured employers and recommend to the board any appropriate action to be taken concerning the claim; and

(b) Submit to the board any other recommendations relating to the fund.

Sec. 3. NRS 616B.575 is hereby amended to read as follows:

616B.575 1. There is hereby established as a special revenue fund in the state treasury the subsequent injury fund for associations of self-insured public or private employers, which may be used only to make payments in accordance with the provisions of NRS 616B.578 and 616B.581. The board shall administer the fund based upon recommendations made by the administrator pursuant to subsection 8.

2. All assessments, penalties, bonds, securities and all other properties received, collected or acquired by the board for the subsequent injury fund for associations of self-insured public or private employers 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 of members of associations of self-insured public or private employers.

4. The state treasurer may disburse money from the fund only upon written order of the board.

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 board 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 associations of self-insured public or private employers, and must be based upon expected annual ~~[expenditures for claims for payments from the subsequent injury fund for associations of self-insured public or private employers.]~~ ***premiums to be received. For***

purposes of this subsection, "expected annual premiums to be received" by an association of self-insured public or private employers shall be deemed to be 105 percent of the average expenditures for claims for that association for the preceding 3 years or, if data is not available to determine a 3-year average, the lowest of three quotes, which the association must obtain from three different private carriers, for the purchase of industrial insurance for the employees of all the employers who are members of that association.

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 association of self-insured public or private employers that wishes to appeal the rate so filed must do so pursuant to NRS 679B.310.

8. The administrator shall:

(a) Evaluate any claim submitted to the board for payment or reimbursement from the subsequent injury fund for associations of self-insured public or private employers and recommend to the board any appropriate action to be taken concerning the claim; and

(b) Submit to the board any other recommendations relating to the fund.

Sec. 4. NRS 616B.584 is hereby amended to read as follows:

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.]~~ ***premiums to be received.***

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.

Sec. 5. NRS 616C.265 is hereby amended to read as follows:

616C.265 1. Except as otherwise provided in NRS 616C.280, every employer operating under chapters 616A to 616D, inclusive, of NRS, alone or together with other employers, may make arrangements to provide accident benefits as defined in those chapters for injured employees.

2. Employers electing to make such arrangements shall notify the administrator of the election and render a detailed statement of the arrangements made, which arrangements do not become effective until approved by the administrator.

3. Every employer who maintains a hospital of any kind for his employees, or who contracts for the hospital care of injured employees, shall, on or before January 30 of each year, make a written report to the administrator for the preceding year, which must contain a statement showing:

(a) The total amount of hospital fees collected, showing separately the amount contributed by the employees and the amount contributed by the employers;

(b) An itemized account of the expenditures, investments or other disposition of such fees; and

(c) What balance, if any, remains.

4. Every employer who provides accident benefits pursuant to this section:

(a) Shall, in accordance with regulations adopted by the administrator, make a written report to the division of his actual and expected annual expenditures for claims and such other information as the division deems necessary to calculate an estimated or final annual assessment

~~[.]~~ ***and shall, to the extent that the regulations refer to the responsibility of insurers to make such reports, be deemed to be an insurer.***

(b) Shall ~~[be deemed to be an insurer for the purposes of]~~ ***pay the*** assessments collected pursuant to NRS 232.680 . ~~[and the regulations adopted by the division pursuant to that section.]~~

5. The reports required by the provisions of subsections 3 and 4 must be verified:

(a) If the employer is a natural person, by the employer;

(b) If the employer is a partnership, by one of the partners;

(c) If the employer is a corporation, by the secretary, president, general manager or other executive officer of the corporation; or

(d) If the employer has contracted with a physician or chiropractor for the hospital care of injured employees, by the physician or chiropractor.

6. No employee is required to accept the services of a physician or chiropractor provided by his employer, but may seek professional medical services of his choice as provided in NRS 616C.090. Expenses arising from such medical services must be paid by the employer who has elected to provide benefits, pursuant to the provisions of this section, for his injured employees.

7. Every employer who fails to notify the administrator of such election and arrangements, or who fails to render the financial reports required, is liable for accident benefits as provided by NRS 616C.255.

Sec. 6. NRS 232.680 is hereby amended to read as follows:

232.680 1. The cost of carrying out the provisions of NRS 232.550 to 232.700, inclusive, and of supporting the division, a full-time employee of the legislative counsel bureau, the fraud

control unit for industrial insurance established pursuant to NRS 228.420 and the legislative committee on workers' compensation created pursuant to NRS 218.5375, and that portion of the cost of the office for consumer health assistance established pursuant to NRS 223.550 that is related to providing assistance to consumers and injured employees concerning workers' compensation, must be paid from assessments payable by each ~~[insurer, including each employer]~~ ***:***

(a) Insurer based upon expected annual premiums to be received; and

(b) Employer who provides accident benefits for injured employees pursuant to NRS 616C.265, based upon expected annual expenditures for claims **.** ~~[for injuries occurring on or after July 1, 1999.]~~

For purposes of this subsection, "expected annual premiums to be received" by a self-insured employer or an association of self-insured public or private employers shall be deemed to be 105 percent of the average expenditures for claims for that employer or association for the preceding 3 years or, if data is not available to determine a 3-year average, the lowest of three quotes, which the employer or association must obtain from three different private carriers, for the purchase of industrial insurance for the employees of that employer or the employees of all the employers who are members of that association.

2. The division shall adopt regulations which establish ***the*** formulas ~~[of]~~ ***for the*** assessment which ***must*** result in an equitable distribution of costs among the insurers and employers who provide accident benefits for injured employees. The formulas may ~~[utilize]~~ ***use*** actual expenditures for claims ~~[.~~

~~2.~~ *of self-insured employers and associations of self-insured public or private employers.*

3. Federal grants may partially defray the costs of the division.

~~[3.]~~ *4.* Assessments made against insurers by the division after the adoption of regulations must be used to defray all costs and expenses of administering the program of workers' compensation, including the payment of:

(a) All salaries and other expenses in administering the division, including the costs of the office and staff of the administrator.

(b) All salaries and other expenses of administering NRS 616A.435 to 616A.460, inclusive, the offices of the hearings division of the department of administration and the programs of self-insurance and review of premium rates by the commissioner of insurance.

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

(d) All salaries and other expenses of the fraud control unit for industrial insurance established pursuant to NRS 228.420.

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

(f) All salaries and expenses of the members of the legislative committee on workers' compensation and any other expenses incurred by the committee in carrying out its duties pursuant to NRS 218.5375 to 218.5378, inclusive.

(g) That portion of the salaries and other expenses of the office for consumer health assistance established pursuant to NRS 223.550 that is related to providing assistance to consumers and injured employees concerning workers' compensation.

Sec. 7. This act becomes effective on July 1, 2001.