
ASSEMBLY BILL NO. 267—ASSEMBLYMEN ARAUJO, CARLTON,
FRIERSON; DALY, FUMO, JAUREGUI, MONROE-MORENO
AND SPIEGEL

MARCH 7, 2017

JOINT SPONSORS: SENATORS SEGERBLOM, CANCELA,
MANENDO, PARKS AND CANNIZZARO

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions governing industrial insurance.
(BDR 53-650)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to industrial insurance; revising provisions governing prohibitions on the payment of compensation for disability caused by certain occupational diseases under certain circumstances; restricting the dissemination and use of the results of certain physical examinations required of certain firefighters, arson investigators and police officers for insurance coverage of cancer, lung disease and heart disease; providing for the payment of a claimant's attorney's fees and other associated costs under certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

- 1 Existing law provides for the payment of compensation under chapter 617 of
2 NRS for temporary or permanent disability or death for the occupational diseases of
3 lung disease and heart disease for certain firefighters, arson investigators and police
4 officers. Existing law provides that these occupational diseases are conclusively
5 presumed to have arisen out of and in the course of the employment under certain
6 circumstances. (NRS 617.455, 617.457) **Sections 4 and 5** of this bill provide that if
7 an employer, insurer or third-party administrator denies a claim for compensation
8 for these occupational diseases and the claimant ultimately prevails, the employer,



9 insurer or third-party administrator must pay all the claimant's attorney's fees and
10 associated costs.

11 Existing law requires certain tests when administering certain physical
12 examinations to firefighters, arson investigators and police officers regarding the
13 occupational diseases of lung and heart disease for the purposes of industrial
14 insurance coverage. **Section 3** of this bill restricts: (1) to whom the results of such
15 physical examinations may be disseminated; and (2) the use of such results.

16 Existing law prohibits the payment of compensation for disability because of an
17 occupational injury or disease which does not incapacitate the employee for at least
18 5 cumulative days within a 20-day period from earning full wages. (NRS 616C.400,
19 617.420) **Section 1** of this bill exempts a claim for compensation under chapters
20 616A to 616D of NRS for disability for the occupational diseases of cancer, lung
21 disease and heart disease from that prohibition. **Section 2** of this bill: (1) revises the
22 prohibition as it relates to occupational diseases to apply exclusively to
23 compensation for temporary total disability; and (2) clarifies that the prohibition
24 does not apply to medical benefits for the occupational diseases of cancer, lung
25 disease or heart disease.

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

1 **Section 1.** NRS 616C.400 is hereby amended to read as
2 follows:

3 616C.400 1. Temporary compensation benefits must not be
4 paid under chapters 616A to 616D, inclusive, of NRS for an injury
5 which does not incapacitate the employee for at least 5 consecutive
6 days, or 5 cumulative days within a 20-day period, from earning full
7 wages, but if the incapacity extends for 5 or more consecutive days,
8 or 5 cumulative days within a 20-day period, compensation must
9 then be computed from the date of the injury.

10 2. The period prescribed in this section does not apply to:

11 (a) Accident benefits, whether they are furnished pursuant to
12 NRS 616C.255 or 616C.265, if the injured employee is otherwise
13 covered by the provisions of chapters 616A to 616D, inclusive, of
14 NRS and entitled to those benefits.

15 (b) Compensation paid to the injured employee pursuant to
16 subsection 1 of NRS 616C.477.

17 (c) *A claim which is filed pursuant to NRS 617.453, 617.455 or*
18 *617.457.*

19 **Sec. 2.** NRS 617.420 is hereby amended to read as follows:

20 617.420 1. No compensation may be paid under this chapter
21 for *temporary total* disability which does not incapacitate the
22 employee for at least 5 cumulative days within a 20-day period from
23 earning full wages, but if the incapacity extends for 5 or more days
24 within a 20-day period, the compensation must then be computed
25 from the date of disability.



1 **2.** The limitations in this section do not apply to medical
2 benefits, *including, without limitation, medical benefits pursuant*
3 *to NRS 617.453, 617.455 or 617.457*, which must be paid from the
4 date of application for payment of medical benefits.

5 **Sec. 3.** NRS 617.454 is hereby amended to read as follows:

6 617.454 1. Any physical examination administered pursuant
7 to NRS 617.455 or 617.457 must include:

8 (a) A thorough test of the functioning of the hearing of the
9 employee; and

10 (b) A purified protein derivative skin test to screen for exposure
11 to tuberculosis.

12 2. Except as otherwise provided in subsection 8 of NRS
13 617.457, the tests required by this section must be paid for by the
14 employer.

15 **3.** *Except as otherwise provided by the provisions governing*
16 *privacy in the Health Insurance Portability and Accountability Act*
17 *of 1996, Public Law 104-191, as amended, and applicable*
18 *regulations, or an employee's collective bargaining agreement,*
19 *whichever is more restrictive, the results of a physical examination*
20 *administered pursuant to NRS 617.455 or 617.457 may only be:*

21 (a) *Provided to the examining physician, the employee and the*
22 *employer's officer who is responsible for risk management or*
23 *human resources or a similar position; and*

24 (b) *Used for the purposes of complying with the requirements*
25 *of NRS 617.455 or 617.457, as applicable.*

26 **Sec. 4.** NRS 617.455 is hereby amended to read as follows:

27 617.455 1. Notwithstanding any other provision of this
28 chapter, diseases of the lungs, resulting in either temporary or
29 permanent disability or death, are occupational diseases and
30 compensable as such under the provisions of this chapter if caused
31 by exposure to heat, smoke, fumes, tear gas or any other noxious
32 gases, arising out of and in the course of the employment of a
33 person who, for 2 years or more, has been:

34 (a) Employed in this State in a full-time salaried occupation of
35 fire fighting or the investigation of arson for the benefit or safety of
36 the public;

37 (b) Acting as a volunteer firefighter in this State and is entitled
38 to the benefits of chapters 616A to 616D, inclusive, of NRS
39 pursuant to the provisions of NRS 616A.145; or

40 (c) Employed in a full-time salaried occupation as a police
41 officer in this State.

42 2. Except as otherwise provided in subsection 3, each
43 employee who is to be covered for diseases of the lungs pursuant to
44 the provisions of this section shall submit to a physical examination,
45 including a thorough test of the functioning of his or her lungs and



1 the making of an X-ray film of the employee's lungs, upon
2 employment, upon commencement of the coverage, once every 2
3 years until the employee is 40 years of age or older and thereafter on
4 an annual basis during his or her employment.

5 3. Each volunteer firefighter who is to be covered for diseases
6 of the lungs pursuant to the provisions of this section shall submit
7 to:

8 (a) A physical examination upon employment and upon
9 commencement of the coverage; and

10 (b) The making of an X-ray film of the volunteer firefighter's
11 lungs once every 3 years after the physical examination that is
12 required upon commencement of the coverage,

13 ➤ until the volunteer firefighter reaches the age of 50 years. Each
14 volunteer firefighter who is 50 years of age or older shall submit to a
15 physical examination once every 2 years during his or her
16 employment. As used in this subsection, "physical examination"
17 includes the making of an X-ray film of the volunteer firefighter's
18 lungs but excludes a thorough test of the functioning of his or her
19 lungs.

20 4. All physical examinations required pursuant to subsections 2
21 and 3 must be paid for by the employer.

22 5. A disease of the lungs is conclusively presumed to have
23 arisen out of and in the course of the employment of a person who
24 has been employed in a full-time continuous, uninterrupted and
25 salaried occupation as a police officer, firefighter or arson
26 investigator for 2 years or more before the date of disablement if the
27 disease is diagnosed and causes the disablement:

28 (a) During the course of that employment;

29 (b) If the person ceases employment before completing 20 years
30 of service as a police officer, firefighter or arson investigator, during
31 the period after separation from employment which is equal to the
32 number of years worked; or

33 (c) If the person ceases employment after completing 20 years
34 or more of service as a police officer, firefighter or arson
35 investigator, at any time during the person's life.

36 ➤ Service credit which is purchased in a retirement system must not
37 be calculated towards the years of service of a person for the
38 purposes of this section.

39 6. Frequent or regular use of a tobacco product within 1 year,
40 or a material departure from a physician's prescribed plan of care by
41 a person within 3 months, immediately preceding the filing of a
42 claim for compensation excludes a person who has separated from
43 service from the benefit of the conclusive presumption provided in
44 subsection 5.



1 7. Failure to correct predisposing conditions which lead to lung
2 disease when so ordered in writing by the examining physician after
3 a physical examination required pursuant to subsection 2 or 3
4 excludes the employee from the benefits of this section if the
5 correction is within the ability of the employee.

6 8. A person who is determined to be:

7 (a) Partially disabled from an occupational disease pursuant to
8 the provisions of this section; and

9 (b) Incapable of performing, with or without remuneration, work
10 as a firefighter, police officer or arson investigator,
11 ➔ may elect to receive the benefits provided under NRS 616C.440
12 for a permanent total disability.

13 9. A person who files a claim for a disease of the lungs
14 specified in this section after he or she retires from employment as a
15 police officer, firefighter or arson investigator is not entitled to
16 receive any compensation for that disease other than medical
17 benefits.

18 *10. If an employer, insurer or third-party administrator*
19 *denies a claim that was filed pursuant to this section and the*
20 *claimant ultimately prevails, the employer, insurer or third-party*
21 *administrator, as applicable, must pay all the claimant's attorney's*
22 *fees and associated costs. Such fees and costs are payable in*
23 *addition to any benefits to which the claimant is entitled under the*
24 *claim and any fines and penalties imposed by the Administrator*
25 *pursuant to NRS 616D.120.*

26 **Sec. 5.** NRS 617.457 is hereby amended to read as follows:

27 617.457 1. Notwithstanding any other provision of this
28 chapter, diseases of the heart of a person who, for 2 years or more,
29 has been employed in a full-time continuous, uninterrupted and
30 salaried occupation as a firefighter, arson investigator or police
31 officer in this State before the date of disablement are conclusively
32 presumed to have arisen out of and in the course of the employment
33 if the disease is diagnosed and causes the disablement:

34 (a) During the course of that employment;

35 (b) If the person ceases employment before completing 20 years
36 of service as a police officer, firefighter or arson investigator, during
37 the period after separation from employment which is equal to the
38 number of years worked; or

39 (c) If the person ceases employment after completing 20 years
40 or more of service as a police officer, firefighter or arson
41 investigator, at any time during the person's life.

42 ➔ Service credit which is purchased in a retirement system must not
43 be calculated towards the years of service of a person for the
44 purposes of this section.



1 2. Frequent or regular use of a tobacco product within 1 year,
2 or a material departure from a physician's prescribed plan of care by
3 a person within 3 months, immediately preceding the filing of a
4 claim for compensation excludes a person who has separated from
5 service from the benefit of the conclusive presumption provided in
6 subsection 1.

7 3. Notwithstanding any other provision of this chapter, diseases
8 of the heart, resulting in either temporary or permanent disability or
9 death, are occupational diseases and compensable as such under the
10 provisions of this chapter if caused by extreme overexertion in times
11 of stress or danger and a causal relationship can be shown by
12 competent evidence that the disability or death arose out of and was
13 caused by the performance of duties as a volunteer firefighter by a
14 person entitled to the benefits of chapters 616A to 616D, inclusive,
15 of NRS pursuant to the provisions of NRS 616A.145 and who, for 5
16 years or more, has served continuously as a volunteer firefighter in
17 this State by continuously maintaining an active status on the roster
18 of a volunteer fire department.

19 4. Except as otherwise provided in subsection 5, each
20 employee who is to be covered for diseases of the heart pursuant to
21 the provisions of this section shall submit to a physical examination,
22 including an examination of the heart, upon employment, upon
23 commencement of coverage and thereafter on an annual basis during
24 his or her employment.

25 5. During the period in which a volunteer firefighter is
26 continuously on active status on the roster of a volunteer fire
27 department, a physical examination for the volunteer firefighter is
28 required:

29 (a) Upon employment;

30 (b) Upon commencement of coverage; and

31 (c) Once every 3 years after the physical examination that is
32 required pursuant to paragraph (b),

33 until the firefighter reaches the age of 50 years. Each volunteer
34 firefighter who is 50 years of age or older shall submit to a physical
35 examination once every 2 years during his or her employment.

36 6. The employer of the volunteer firefighter is responsible for
37 scheduling the physical examination. The employer shall mail to the
38 volunteer firefighter a written notice of the date, time and place of
39 the physical examination at least 10 days before the date of the
40 physical examination and shall obtain, at the time of mailing, a
41 certificate of mailing issued by the United States Postal Service.

42 7. Failure to submit to a physical examination that is scheduled
43 by his or her employer pursuant to subsection 6 excludes the
44 volunteer firefighter from the benefits of this section.



1 8. The chief of a volunteer fire department may require an
2 applicant to pay for any physical examination required pursuant to
3 this section if the applicant:

4 (a) Applies to the department for the first time as a volunteer
5 firefighter; and

6 (b) Is 50 years of age or older on the date of his or her
7 application.

8 9. The volunteer fire department shall reimburse an applicant
9 for the cost of a physical examination required pursuant to this
10 section if the applicant:

11 (a) Paid for the physical examination in accordance with
12 subsection 8;

13 (b) Is declared physically fit to perform the duties required of a
14 firefighter; and

15 (c) Becomes a volunteer with the volunteer fire department.

16 10. Except as otherwise provided in subsection 8, all physical
17 examinations required pursuant to subsections 4 and 5 must be paid
18 for by the employer.

19 11. Failure to correct predisposing conditions which lead to
20 heart disease when so ordered in writing by the examining physician
21 subsequent to a physical examination required pursuant to
22 subsection 4 or 5 excludes the employee from the benefits of this
23 section if the correction is within the ability of the employee.

24 12. A person who is determined to be:

25 (a) Partially disabled from an occupational disease pursuant to
26 the provisions of this section; and

27 (b) Incapable of performing, with or without remuneration, work
28 as a firefighter, arson investigator or police officer,

29 ➔ may elect to receive the benefits provided under NRS 616C.440
30 for a permanent total disability.

31 13. Claims filed under this section may be reopened at any
32 time during the life of the claimant for further examination and
33 treatment of the claimant upon certification by a physician of a
34 change of circumstances related to the occupational disease which
35 would warrant an increase or rearrangement of compensation.

36 14. A person who files a claim for a disease of the heart
37 specified in this section after he or she retires from employment as a
38 firefighter, arson investigator or police officer is not entitled to
39 receive any compensation for that disease other than medical
40 benefits.

41 ***15. If an employer, insurer or third-party administrator***
42 ***denies a claim that was filed pursuant to this section and the***
43 ***claimant ultimately prevails, the employer, insurer or third-party***
44 ***administrator, as applicable, must pay all the claimant's attorney's***
45 ***fees and associated costs. Such fees and costs are payable in***



1 *addition to any benefits to which the claimant is entitled under the*
2 *claim and any fines and penalties imposed by the Administrator*
3 *pursuant to NRS 616D.120.*

4 **Sec. 6.** The amendatory provisions of sections 1, 2, 4 and 5 of
5 this act apply only to claims filed on or after October 1, 2017.

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