
Senate Committee on Commerce and Labor

This measure may be considered for action during today's work session.

SENATE BILL 274

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

Sponsored By: Senator Daly
Date Heard: March 29, 2023
Fiscal Notes: Effect on Local Government: No.
Effect on the State: No.

Senate Bill 274 authorizes a claimant who has been aggrieved by a violation of the Nevada Industrial Insurance Act or the Nevada Occupational Diseases Act to bring a civil action for actual damages and reasonable attorney's fees and costs against an insurer or third-party administrator who committed the violation if the violation involved:

- The refusal to pay or unreasonably delayed payment to the claimant of compensation or other relief found to be due the claimant under certain circumstances; and
- Negligence or bad faith on the part of the insurer or third-party administrator.

In addition, the bill increases the minimum and maximum administrative fines and benefit penalties for violating workers' compensation laws and regulations.

Amendments:

Senator Daly proposes the following amendments (draft mock-up attached):

1. Delete Section 1, which would have authorized a claimant who has been aggrieved by a violation of the Nevada Industrial Insurance Act or the Nevada Occupational Diseases Act to bring a civil action for actual damages and reasonable attorney's fees and costs against an insurer or third-party administrator, under certain conditions.
2. Amend Section 2 to increase from \$15,000 to \$17,000 the minimum and decrease from \$200,000 to \$120,000 the maximum for administrative fines and benefit penalties for violating workers' compensation laws and regulations. In addition, amend subsection 4 of Section 2 to increase from 10 days to 15 days the timeframe for when the benefit penalty must be paid directly to the claimant after the Administrator of the Division of Industrial Insurance, Department of Business and Industry, makes a determination.
3. Add a new section to the bill to amend Chapter 616D of the *Nevada Revised Statutes* (NRS) by adding a new section to ensure transparency and accountability by requiring the Administrator to publish information about benefit penalties imposed on various entities under NRS 616C.D120.
4. Add a new section to the bill to amend NRS 616D.130, governing investigation of alleged violations and determination of the Administrator to require that upon receiving a complaint or suspicion of a violation, the Administrator must promptly inform relevant parties, initiate an investigation within 30 days, and after completing the investigation, the Administrator must deliver their determination, which includes any settlement agreement to the claimant's employer or the insured entity as applicable, and the Commissioner of Insurance. In addition, amend subsection 2 of NRS 616D.130 to delete the reference to paragraphs (a), (b), (c) or (d) of subsection 1 of NRS 616D.120.

5. Add a new section to the bill to amend NRS 616D.140, governing benefit penalties, to amend subsection 2 to increase from 100 days to 120 days the timeframe for when an aggrieved person can file a request for a hearing before an appeals officer after the date that the unanswered written request was mailed to the Administrator. In addition, add a new subsection to provide that if an appeal upholds a benefit penalty, the responsible party must pay double the original penalty to the claimant within 15 days of the decision. If a settlement is reached, the claimant must be paid within 15 days of the agreed date. Failure to pay within the specified time limits may result in the suspension of certificates issued by the Commissioner to the insurer or third-party administrator, pending investigation and further disciplinary action.
6. Add a new section to the bill to provide that the provisions of this bill apply only to actions and omissions by insurers, employers, or third-party administrators for claims occurring on or after the bill's effective date. The provisions of this bill shall not be construed to have any retroactive effect on claims that took place before the effective date. In addition, Sections 1 to 5 of the act become effective upon passage for administrative tasks and on January 1, 2024, for all other purposes.

Amendment Proposed by Senator Daly to SB 274

LEGEND: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; (4) ~~purple double strike through~~ is language in the original bill that is proposed to be deleted in this amendment.

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

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

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

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

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

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

~~—(b) Negligence or bad faith on the part of the insurer or third party administrator.~~

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

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

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

(b) Without justification, persuaded a claimant to:

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

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

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

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

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

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

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

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

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

carrying out its duties pursuant to chapters 616A to 616D, inclusive, or chapter 617 of NRS;

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

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

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

(i) Intentionally failed to comply with any provision of, or regulation adopted pursuant to, this chapter or chapter 616A, 616B, 616C or 617 of NRS,

➔ the Administrator shall impose an administrative fine of \$1,500 for each initial violation, or a fine of \$15,000 for a second or subsequent violation.

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

(a) Issue a notice of correction for:

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

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

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

(b) Impose an administrative fine for:

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

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

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

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

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

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

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

4. To determine the amount of the benefit penalty, the Administrator shall consider the degree of physical harm suffered by the injured employee or the dependents of the injured employee as a result of the violation of paragraph (a), (b), (c), (d), (e), (h) or (i) of subsection 1, the amount of compensation found to be due the claimant and the number of fines and benefit penalties, other than a benefit penalty described in paragraph (b) of subsection 3, previously imposed against the insurer, organization for managed care, health care provider, third-party administrator, employer or professional employer organization pursuant to this section. The Administrator shall also consider the degree of economic harm suffered by the injured employee or the dependents of the injured employee as a result of the violation of paragraph (a), (b), (c), (d), (e), (h) or (i) of subsection 1. Except as otherwise provided in this section, the benefit penalty is for the benefit of the claimant and must be paid directly to the claimant within ~~10~~ 15 days after the date of the Administrator's determination.

If the claimant is the injured employee and the claimant dies before the benefit penalty is paid to him or her, the benefit penalty must be paid to the estate of the claimant. Proof of the payment of the benefit penalty must be submitted to the Administrator within 10 days after the date of the Administrator's determination unless an appeal is filed pursuant to NRS 616D.140. Any compensation to which the claimant may otherwise be entitled pursuant to chapters 616A to 616D, inclusive, or chapter 617 of NRS must not be reduced by the amount of any benefit penalty received pursuant to this subsection. To determine the amount of the benefit penalty in cases of multiple violations occurring within a certain period of time, the Administrator shall adopt regulations which take into consideration:

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

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

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

6. If:

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

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

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

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

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

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

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

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

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

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

ADD A NEW SECTION AS FOLLOWS

Sec. 3. Chapter 616D of NRS is hereby amended by adding thereto a new section to read as follows:

1. If the Administrator imposes a benefit penalty on an insurer, organization for managed care, health care provider, third-party administrator, employer or professional employer organization pursuant to NRS 616C.D120, the Administrator shall publish the following information on its official website:

(a) The full legal name of the entity penalized;

(b) The amount of the penalty imposed; and

(c) A brief description of the violation that led to the imposition of the penalty.

2. The information described in subsection 1 shall be published within 30 days of the final determination of the penalty, including the resolution of any appeals, and shall remain publicly accessible on the Administrator's website for a period of not less than five years from the date of publication.

3. The Administrator shall establish and maintain a publicly accessible, searchable database on its website containing the information described in subsection 1, which shall be updated on a regular basis to reflect new penalties imposed and the resolution of any appeals.

Sec. 4. NRS 616D.130 Is hereby amended to read as follows:

1. Upon receipt of a complaint for a violation of subsection 1, 2 or 3 of NRS 616D.120, or if the Administrator has reason to believe that such a violation has occurred, the Administrator shall cause to be conducted an investigation of the alleged violation, and;

↳ Promptly provide a copy of the complaint or alleged violation prompting an investigation by the Administrator to the insurer, organization for managed care, health care provider, self-insured employer, association of self-insured public or private employers, third-party administrator, employer or professional employer organization, and the Commissioner.

~~Except as otherwise provided in subsection 2,~~ 2. The Administrator shall, within 30 days after receipt of the complaint, initiating the initiate their investigation; and

(a) The Administrator shall render a determination and deliver a copy of the determination including any settlement agreement to the claimant's employer or the insured entity as applicable, and the Commissioner.

(b) The determination must include the Administrator's findings of fact and, if the Administrator determines that a violation has occurred, one or more of the following:

(1) The amount of any fine required to be paid pursuant to [NRS 616D.120](#).

(2) The amount of any benefit penalty required to be paid to a claimant pursuant to [NRS 616D.120](#).

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

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

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

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

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

Sec. 5. NRS 616D.140 is hereby amended to read as follows:

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

2. A person who is aggrieved by:

(a) A written determination of the Administrator; or

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

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

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

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

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

7. If an appeal has been filed pursuant to this section, and the decision of the appeals officer or district court upholds the benefit penalty, the insurer, self-insured employer, association of self-insured public or private employers, organization for managed care, health care provider, employer or professional employer organization, or third-party administrator must pay twice the amount of the original benefit penalty to the claimant on whose behalf it was imposed within 15 days after the decision. If at any time there is a settlement entered into to resolve a determination pursuant to NRS 616D.120 (3) the settlement amount must be paid directly to the claimant within 15 days after the date stipulated in the settlement agreement. If any benefit penalty is not paid within the time limits as provided in this section and NRS 616D.120 (4) that would be cause to allow the Commissioner, pending investigation and any other disciplinary action, to suspend any certificate issued by the Commissioner to the insurer or third-party administrator.

Sec. 6

1. The provisions of this act shall apply only to actions and omissions alleged against an insurer, employer or third party administrator for claims that take place on or after the effective date of this act.

2. This act shall not be construed to have any retroactive effect or application to actions and omissions alleged against an insurer, employer or third party administrator for claims that occurred before the effective date of this act.

3. Sections 1 to 5, inclusive, of this act shall become effective;

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

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