

LCB File No. E002-99

**EMERGENCY REGULATION OF THE DIVISION OF INDUSTRIAL
RELATIONS OF THE DEPARTMENT OF BUSINESS AND INDUSTRY**

In the Matter of Amendment and Adoption
of Regulations Pertaining to:

DIR No: 99-3E (emergency)

the Assessment of Workers' Compensation
Insurers under Chapter 616B of the
Nevada Administrative Code.

LCB NO: E002-99

STATEMENT OF EMERGENCY

The Administrator of the Division of Industrial Relations ("Division"), Department of Business and Industry, hereby presents this Statement of Emergency to the Governor of the State of Nevada for endorsement. The Statement of Emergency is made pursuant to NRS 233B.0613 and is presented with the original copy of the Emergency Regulation, DIR 99-3E. The proposed emergency regulation concerns amendments to Chapter 616B of the Nevada Administrative Code ("NAC"), relating to the Assessment of Workers' Compensation Insurers. The Administrator has determined that an emergency exists for the adoption of these regulations, it appearing that:

I. Senate Bill 37 was approved by the Governor on May 29, 1999. Section 89, which amends NRS 232.680, changed the method of assessing insurers for the fund for workers' compensation and safety, the workers' compensation fraud unit, the legislative committee on workers' compensation, the office for consumer health assistance, and other budgetary items; it became effective on July 1, 1999. NRS 232B.680(1), as recently amended, provides:

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 to consumers and injured employees concerning workers' compensation*, must be paid from assessments payable by each ~~[-~~

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

~~(b) Employer] insurer, including each employer~~ who provides accident benefits for injured employees pursuant to NRS 616C.265, based upon ~~this expected annual expenses of providing those benefits.~~

~~For the purposes of this subsection, the "premiums to be received" by a self-insured employer or an association of self-insured public or private employers shall be deemed to be the same fraction of the premiums to be received by the state industrial insurance~~

~~system that his expected annual expenditure for claims is of the expected annual expenditure of the system for claims.]~~ *expected annual expenditures for claims for injuries occurring on or after July 1, 1999.* The division shall adopt regulations which establish formulas of assessment which result in an equitable distribution of costs among the insurers and employers who provide accident benefits for injured employees. The formulas may utilize actual expenditures for claims. (original emphasis.)

II. The current formula of assessment is based on expected annual premiums and actual expenditure of all open claims, regardless of the date of the injury or occupational disease. Section 89 of Senate Bill 37 changed the methodology for calculating the assessment from “expected annual premiums” to “expected annual expenditures for claims of injuries occurring on or after July 1, 1999.”

After the Governor approved Senate bill 37 on May 29, 1999, the Division of Industrial Relations send out the notice of public workshop and notice of intent to act upon a temporary regulation as required by NRS 233B.061 and NRS 233B.0603. On June 4, 1999, DIR mailed the notices to third-party administrators, self-insured employers, health care providers, members of self-insured associations, private carriers and the persons who requested to be placed on the DIR mailing list; it scheduled the Southern Nevada workshop and public hearing for July 6, 1999 and the Northern Nevada workshop and public hearing on July 7, 1999. Approximately thirty-five people attended these workshops and public hearings. Eleven people testified at the public workshops and public hearings; six people submitted written comments prior to and after the public workshops and public hearings.

III. On July 27, 1999, DIR submitted its adopted temporary regulation and informational statement to the Secretary of State as required by NRS 233B.066. The Secretary of State’s Office declined to file the regulation. The Legislative Counsel Bureau interprets NRS 233B.063(3) to require the temporary regulation to be adopted by July 1; DIR followed the provisions of NRS 233B.0603(2) as the temporary regulation was submitted prior to July 1, 1999 and noted since Senate Bill 37 was approved on May 29, 1999 and NRS 233B.060(1) required the agency to give at least 30 days notice of its intended action that it was legally impossible for DIR to comply with the time frames of NRS 233B.063(3) as interpreted by LCB.

IV. Adoption of a regulation regarding the method of assessing insurers is necessary to fund the cost of the Division of Industrial Relations, the Legislative Counsel Bureau research analyst for workers’ compensation, the workers’ compensation fraud unit, the legislative committee on workers’ compensation, the Division of Insurance self-insured section, the Insurance Commissioner’s review of rates, the office of the Nevada Attorney for Injured Workers, the subsequent injury funds, the uninsured employers’ claim fund, and a portion of the office for consumer health assistance. Failure to adopt a regulation regarding assessment will prevent DIR from collecting the assessment; DIR currently has fund to support the operating budget for these items until September 30, 1999.

V. Although DIR has submitted its proposed regulation to the Legislative Counsel Bureau, under the Nevada Administrative Procedure Act, there is insufficient time to enact

permanent regulations by the September 30, 1999 deadline. NRS 233B.061(2) requires an agency to notify “each person who has requested to be placed on a mailing list” and in a “manner reasonably calculated to provide” notice to the general public at least fifteen days before the scheduled workshop. An agency must give at least thirty days notice to the persons on the mailing list and the general public of its intention to adopt, amend or repeal any regulation. NRS 233B.060(1). NRS 233B.063(2) provides that the Legislative Counsel Bureau has thirty days to examine and revise the agency’s proposed regulation. Within thirty-five days after the regulation is adopted, if there is no objection by the Legislative Commission, the Director of LCB files the adopted regulation with the Secretary of State. NRS 233B.067(4).

VI. The proposed regulations have been the subject of two public workshops and two public hearings; DIR has carefully considered the testimony and written comments of the participants. It has incorporated some of the suggestions made by the interested parties. The administrator has determined that:

- a) there will be no adverse effect on business if the proposed regulations are adopted as emergency regulations as the regulations are a fair and equitable method of assessing insurers;
- b) the immediate cost to the regulated business is unknown, but some insurers may incur costs associated with complying with a new method of calculating the assessments;
- c) adoption of the proposed regulation as an emergency regulation will not result in any significant additional cost to DIR for enforcement;
- d) there are no other regulations of any state or governmental agency which overlap or duplicate the proposed regulations; and
- e) adopting the proposed regulations as an emergency regulation will not impose or increase any fees.

Respectfully submitted on August 2nd, 1999 by:

Roger Bremner /s/
ROGER BREMNER, Administrator
DIVISION OF INDUSTRIAL RELATIONS
Department of Business and Industry
400 West King Street, Suite 400
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Endorsed on August 3rd, 1999 by:

Kenny C. Guinn /s/
KENNY C. GUINN,
Governor of the State of Nevada

EMERGENCY REGULATION OF THE DIVISION OF INDUSTRIAL RELATIONS OF THE DEPARTMENT OF BUSINESS AND INDUSTRY

In the Matter of the Adoption and,
Amendments of Regulations Pertaining to:

DIR No: 99-3E (Emergency)

the Assessment of Workers' Compensation
Insurers under Chapter 616B of the
Nevada Administrative Code.

LCB NO: E002-99

Statutory Authority: Senate Bill 37, Section 89. This bill was approved by the Governor on May 29, 1999; Section 89 became effective on July 1, 1999.

Sec. 1. NAC 616B.686 is hereby amended to read as follows:

“Annual expenditures for claims” defined.

1. For assessments for fiscal years prior to July 1, 1999, “annual expenditures for claims” means the total amount of money actually paid for compensation in a fiscal year by or on behalf of an insurer pursuant to chapters 616A to 617, inclusive, of NRS reduced by any amount received from subrogation and reimbursement from the subsequent injury fund of the insurer.

2. For assessments for the fiscal year beginning July 1, 1999 and subsequent fiscal years, “annual expenditures for claims” means the total amount of money actually paid for compensation in a fiscal year for injuries occurring on or after July 1, 1999, by an insurer or its claims administrator pursuant to chapters 616A to 617, inclusive, of NRS reduced by any amount received from subrogation and reimbursement from the subsequent injury fund of the insurer.

Sec. 2. NAC 616B.692 is hereby amended to read as follows:

“Expected annual expenditures for claims” defined. “Expected annual expenditures for claims” means an estimate of the ~~sum~~ *total* amount of money to be paid for compensation in a fiscal year *for injuries occurring on or after July 1, 1999* by ~~or on behalf of~~ an insurer *or its claims administrator* pursuant to chapters 616A to 617, inclusive, of NRS.

Sec. 3. NAC 616B.695 is hereby amended to read as follows:

“Insurer” defined. “Insurer” includes any *private carrier, self-insured employer, association of self-insured employers, the state industrial insurance system, or an* employer who provides accident benefits for injured employees pursuant to NRS 616C.265.

Sec. 4. NAC 616B.713 is hereby amended to read as follows:

616B.713 Sources for determining annual expenditures for claims.

1. ~~The system~~ *Each insurer* shall provide to the division a statement showing ~~by month~~ the amount of ~~annual expenditures of claims as defined NAC 616B.707 for the time period designated by the division~~ *for each self-insured employer or member of an association*

~~incurred before becoming certified for a program of self insurance.~~

~~2. The system shall provide to the division a statement of the amounts of expenditures for claims incurred after certification for each self-insured employer or association.~~

~~3. — Each insurer shall submit to the division a statement showing by month his annual expenditures for claims.~~ The statement must be verified and signed by a responsible person employed by the insurer or his authorized agent.

~~43.~~ Amounts reported to the division pursuant to subsections 1 ~~, 2 and 3~~ will be used as *the* sources for determining annual expenditures for claims.

Sec. 5. NAC 616B.722 is hereby amended to read as follows:

Calculation of estimated annual assessment.

1. The amount of the estimated annual assessment made against each insurer to be used to defray:

(a) The administrative costs of the *office of the administrator, office of legal counsel*, administrative services unit and the industrial insurance regulation section will be calculated as follows:

(1) For assessments made for a fiscal year beginning on July 1 of an even-numbered year, the amount of the estimated assessment will be calculated by multiplying the insurer's percentage of expenditures by the sum of the amount approved in the state budget for those administrative costs and for increases in salary for the employees of those offices.

(2) For assessments made for a fiscal year beginning on July 1 of an odd-numbered year, the amount of the estimated assessment will be calculated by multiplying the insurer's percentage of expenditures by the sum of the amount proposed in the state budget for those administrative costs and for increases in salary for the employees of those offices.

(b) The administrative costs of the offices of the hearings division of the department of administration and the Nevada attorney for injured workers for the time spent concerning claims for workers' compensation will be calculated as follows:

(1) For assessments made for a fiscal year beginning on July 1 of an even-numbered year, the amount of the estimated assessment will be calculated by multiplying the insurer's percentage of expenditures by the sum of the amount approved in the state budget for these administrative costs and for increases in salary for the employees of those of those offices.

(2) For assessments made for a fiscal year beginning on July 1 of an odd-numbered year, the amount of the estimated assessment will be calculated by multiplying the insurer's percentage of expenditures by the sum of the amount proposed in the state budget for those administrative costs and for increases in salary for the employees of those offices.

(c) The administrative costs of the occupational safety and health enforcement section and the safety consultation and training section will be calculated as follows:

(1) For assessments made for a fiscal year beginning on July 1 of an even-numbered year, the amount of the estimated assessment will be calculated by multiplying the insurer's percentage of expenditures by the sum of the amount approved in the state budget for those offices and for increases in salary for the employees of those of those offices.

(2) For assessments made for a fiscal year beginning on July 1 of an odd-numbered year, the amount of the estimated assessment will be calculated by multiplying the insurer's percentage of expenditures by the sum of the amount proposed in the state budget for those offices and for increases in salary for the employees of those offices.

(d) The administrative costs of the mine safety and training section will be calculated as follows:

(1) For assessments made for a fiscal year beginning on July 1 of an even-numbered year, the amount of the estimated assessment will be calculated by multiplying the insurer's percentage of expenditures by the sum of the amount approved in the state budget for the mine safety and training section and for increases in salary for the employees of the mine safety and training section.

(2) For assessments made for a fiscal year beginning on July 1 of an odd-numbered year, the amount of the estimated assessment will be calculated by multiplying the insurer's percentage of expenditures by the sum of the amount proposed in the state budget for the mine safety and training section and for increases in salary for the employees of the mine safety and training section.

(e) The costs of the commissioner for administering the program of self-insurance will be calculated as follows:

(1) For assessments made for a fiscal year beginning on July 1 of an even-numbered year, the amount of the estimated assessment will be calculated by multiplying each self-insured employer's *and each association of self-insured employer's* percentage of expenditures by the sum of the amount approved in the state budget for those costs and for increases in salary for employees engaged in administering the program.

(2) For assessments made for a fiscal year beginning on July 1 of an odd-numbered year, the amount of the estimated assessment will be calculated by multiplying each self-insured employer's *and each association of self-insured employer's* percentage of expenditures by the sum of the amount proposed in the state budget for those costs and for increases in salary for the employees engaged in administering the program.

(f) *The assessment attributable the workers' compensation activity for the office for consumer health assistance will be calculated as follows:*

(1) For assessments made for a fiscal year beginning on July 1 of an even-numbered year, the amount of the estimated assessment will be calculated by multiplying the state industrial insurance system's percentage and each private carrier's percentage of expenditures by the sum of the amount approved in the state budget for those costs and for increases in salary for employees engaged in administering the program.

(2) For assessments made for a fiscal year beginning on July 1 of an odd-numbered year, the amount of the estimated assessment will be calculated by multiplying the state industrial insurance system's percentage and each private carrier's percentage of expenditures by the sum of the amount proposed in the state budget for those costs and for increases in salary for the employees engaged in administering the program.

~~(g)~~ The administrative costs of the administration of claims against uninsured

employers arising from compliance with NRS 616C.220 will be calculated by multiplying the insurer's percentage of expenditures by the amount derived by multiplying:

(1) The expected annual disbursements to be made from the uninsured employers' claim fund; and

(2) The ~~rate charged by the system~~ *charge for the administration of claims.*

~~(g)(h)~~ *(h)* The administrative costs of having premium rates ~~of the system~~ reviewed by the commissioner ~~is the annual amount charged by the commissioner, and the system shall pay those costs.~~ *will be calculated as follows:*

(1) For assessments made for a fiscal year beginning on July 1, of an even-numbered year, the amount of the estimated assessment will be calculated by multiplying each insurer's percentage of expenditures by the sum of the amount approved in the state budget for those costs and for increases in salary for employees engaged in administering the program.

(2) For assessments made for a fiscal year beginning on July 1, of an odd-numbered year, the amount of the estimated assessment will be calculated by multiplying each insurer's percentage of expenditures by the sum of the amount proposed in the state budget for those costs and for increases in salary for employees engaged in administering the program.

~~(h)(i)~~ *(i)* The amount of disbursements from the uninsured employers' claim fund will be calculated by multiplying the insurer's percentage of expenditures by the sum of expected annual disbursements to be made from the funds.

~~(i)(j)~~ *(j)* The amount of disbursements from a subsequent injury fund will be calculated by multiplying the insurer's percentage of expenditures by the sum of expected annual disbursements to be made from the fund.

2. For the purposes of this section, "percentage of expenditures" means the proportion of an insurer's expected annual expenditures for claims relative to the amount of the expected annual expenditures for claims of all insurers responsible for the cost shown in a particular category of the state budget.

Sec. 6. NAC 616B.725 is hereby amended to read as follows:

Pro rata assessment. The estimated annual assessment to be made against an ~~self-insured employer or association that does not participate in a program of self insurance during~~ *insurer for* a portion of a fiscal year may be calculated by the division ~~in the proportion that the number of months in the fiscal year the insurer will be self-insured bears to the total number of months in that fiscal year.~~ A statement of such an assessment may be issued to the insurer by the division. *The division may adjust an estimated assessment of an insurer.*

Sec. 7. NAC 616B.734 is hereby amended to read as follows:

Calculation of final assessment; issuance of statement of assessment.

1. The division will determine, on the basis of reports issued by the state controller for the previous fiscal year relating to closing budgets and final trial balances, the amount of money disbursed from and deposited in:

(a) The fund for workers' compensation and safety;

(b) The uninsured employers' claim fund; and

(c) The subsequent injury funds for self-insured employers, associations, and private carriers.

2. The Division will calculate, in the same manner as for estimated annual assessments, the final annual assessment for each insurer for the previous fiscal year and will use:

- (a) ~~The insurer's statements relating to annual expenditures for claims for the previous fiscal year submitted pursuant to NAC 616B.713~~ **and** ;
- (b) ~~Amounts reported for the previous fiscal year by the system pursuant to NAC 616B.713 for expenditures for claims incurred by a self-insured employer before the employer was certified for a program of self insurance; and~~
- (c) ~~Amounts reported for the previous fiscal year by the system pursuant to NAC 616B.713 for expenditures for claims incurred by an association before the association was certified for a program of self insurance; and~~
- (d) **the** determinations made pursuant to subsection 1.

The division will issue to the insurer a statement of the final assessment.

Sec. 8. NAC 616B.740 is hereby amended to read as follows:

616B.740 Penalty for late payment. The *division may assess a* penalty for the late payment, *without good cause*, of an assessment for a *the workers' compensation and safety fund, the subsequent injury funds* or the uninsured employers' claim fund, ~~without good cause, is not less than \$50 nor more than \$500~~ **as provided by NRS 616D.120.**