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

MARCH 7, 2017

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

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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.

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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 reasonable 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 the claimant's reasonable attorney's



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10 fees and associated costs. **Sections 4 and 5** further set forth that reasonable  
11 attorney's fees and associated costs do not include any attorney's fees and  
12 associated costs that are incurred by the claimant on or before the date of the  
13 hearing before the hearing officer.

14 Existing law requires certain tests when administering certain physical  
15 examinations to firefighters, arson investigators and police officers regarding the  
16 occupational diseases of lung and heart disease for the purposes of industrial  
17 insurance coverage. (NRS 617.454) **Section 3** of this bill restricts: (1) to whom the  
18 results of such physical examinations may be disseminated; and (2) the use of such  
19 results. **Section 3** additionally authorizes the employer's officer who is responsible  
20 for risk management or human resources or a similar position to release to certain  
21 persons a report only containing certain information based on the results of a  
22 physical examination.

23 Existing law prohibits the payment of compensation for disability because of an  
24 occupational injury or disease which does not incapacitate the employee for at least  
25 5 cumulative days within a 20-day period from earning full wages. (NRS 616C.400,  
26 617.420) **Section 1** of this bill exempts a claim for compensation under chapters  
27 616A to 616D of NRS for disability for the occupational diseases of cancer, lung  
28 disease and heart disease from that prohibition. **Section 2** of this bill: (1) revises the  
29 prohibition as it relates to occupational diseases to apply exclusively to  
30 compensation for temporary total disability; and (2) clarifies that the prohibition  
31 does not apply to medical benefits for the occupational diseases of cancer, lung  
32 disease or heart disease.

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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



1 employee for at least 5 cumulative days within a 20-day period from  
2 earning full wages, but if the incapacity extends for 5 or more days  
3 within a 20-day period, the compensation must then be computed  
4 from the date of disability.

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

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

10 617.454 1. Any physical examination administered pursuant  
11 to NRS 617.455 or 617.457 must include:

12 (a) A thorough test of the functioning of the hearing of the  
13 employee; and

14 (b) A purified protein derivative skin test to screen for exposure  
15 to tuberculosis.

16 2. Except as otherwise provided in subsection 8 of NRS  
17 617.457, the tests required by this section must be paid for by the  
18 employer.

19 **3.** *Except as otherwise provided by the provisions governing*  
20 *privacy in the Health Insurance Portability and Accountability Act*  
21 *of 1996, Public Law 104-191, as amended, and applicable*  
22 *regulations, or an employee's collective bargaining agreement,*  
23 *whichever is more restrictive:*

24 (a) *The results of a physical examination administered*  
25 *pursuant to NRS 617.455 or 617.457 may only be provided to:*

26 (1) *The examining physician;*

27 (2) *The employee;*

28 (3) *The employer's officer who is responsible for risk*  
29 *management or human resources or a similar position; and*

30 (4) *If the employee has filed a claim pursuant to NRS*  
31 *617.455 or 617.457, the insurer.*

32 (b) *A person who receives the results of a physical*  
33 *examination pursuant to paragraph (a) may only use the results*  
34 *for the purposes of:*

35 (1) *Complying with the requirements of NRS 617.455 or*  
36 *617.457, as applicable; or*

37 (2) *Creating a report pursuant to paragraph (c).*

38 (c) *The employer's officer who is responsible for risk*  
39 *management or human resources or a similar position may create*  
40 *and release a report that is based on the results of a physical*  
41 *examination administered pursuant to NRS 617.455 or 617.457 to*  
42 *any person whom the employer's officer determines has a need to*  
43 *know the information in the report. The report must only contain*  
44 *the following information:*



1           ***(1) The name of the employee who was the subject of the***  
2 ***physical examination; and***

3           ***(2) A statement that the employee, as applicable:***

4               ***(I) Satisfies the physical qualifications required for his***  
5 ***or her employment; or***

6               ***(II) Does not satisfy the physical qualifications required***  
7 ***for his or her employment.***

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

9           617.455 1. Notwithstanding any other provision of this  
10 chapter, diseases of the lungs, resulting in either temporary or  
11 permanent disability or death, are occupational diseases and  
12 compensable as such under the provisions of this chapter if caused  
13 by exposure to heat, smoke, fumes, tear gas or any other noxious  
14 gases, arising out of and in the course of the employment of a  
15 person who, for 2 years or more, has been:

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

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

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

24           2. Except as otherwise provided in subsection 3, each  
25 employee who is to be covered for diseases of the lungs pursuant to  
26 the provisions of this section shall submit to a physical examination,  
27 including a thorough test of the functioning of his or her lungs and  
28 the making of an X-ray film of the employee's lungs, upon  
29 employment, upon commencement of the coverage, once every 2  
30 years until the employee is 40 years of age or older and thereafter on  
31 an annual basis during his or her employment.

32           3. Each volunteer firefighter who is to be covered for diseases  
33 of the lungs pursuant to the provisions of this section shall submit  
34 to:

35           (a) A physical examination upon employment and upon  
36 commencement of the coverage; and

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

40           ↳ until the volunteer firefighter reaches the age of 50 years. Each  
41 volunteer firefighter who is 50 years of age or older shall submit to a  
42 physical examination once every 2 years during his or her  
43 employment. As used in this subsection, "physical examination"  
44 includes the making of an X-ray film of the volunteer firefighter's



1 lungs but excludes a thorough test of the functioning of his or her  
2 lungs.

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

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

11 (a) During the course of that employment;

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

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

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

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

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

33 8. A person who is determined to be:

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

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

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

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



1        **10. Except as otherwise provided in this subsection, if an**  
2 **employer, insurer or third-party administrator denies a claim that**  
3 **was filed pursuant to this section and the claimant ultimately**  
4 **prevails, the employer, insurer or third-party administrator, as**  
5 **applicable, must pay all the claimant's reasonable attorney's fees**  
6 **and associated costs. Such fees and costs are payable in addition**  
7 **to any benefits to which the claimant is entitled under the claim**  
8 **and any fines and penalties imposed by the Administrator**  
9 **pursuant to NRS 616D.120. If a hearing before a hearing officer**  
10 **is requested pursuant to NRS 616C.315 and held pursuant to NRS**  
11 **616C.330, such fees and costs do not include any attorney's fees**  
12 **and associated costs that are incurred by the claimant on or before**  
13 **the date of the hearing before the hearing officer.**

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

15        617.457 1. Notwithstanding any other provision of this  
16 chapter, diseases of the heart of a person who, for 2 years or more,  
17 has been employed in a full-time continuous, uninterrupted and  
18 salaried occupation as a firefighter, arson investigator or police  
19 officer in this State before the date of disablement are conclusively  
20 presumed to have arisen out of and in the course of the employment  
21 if the disease is diagnosed and causes the disablement:

22        (a) During the course of that employment;

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

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

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

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

39        3. Notwithstanding any other provision of this chapter, diseases  
40 of the heart, resulting in either temporary or permanent disability or  
41 death, are occupational diseases and compensable as such under the  
42 provisions of this chapter if caused by extreme overexertion in times  
43 of stress or danger and a causal relationship can be shown by  
44 competent evidence that the disability or death arose out of and was  
45 caused by the performance of duties as a volunteer firefighter by a



1 person entitled to the benefits of chapters 616A to 616D, inclusive,  
2 of NRS pursuant to the provisions of NRS 616A.145 and who, for 5  
3 years or more, has served continuously as a volunteer firefighter in  
4 this State by continuously maintaining an active status on the roster  
5 of a volunteer fire department.

6 4. Except as otherwise provided in subsection 5, each  
7 employee who is to be covered for diseases of the heart pursuant to  
8 the provisions of this section shall submit to a physical examination,  
9 including an examination of the heart, upon employment, upon  
10 commencement of coverage and thereafter on an annual basis during  
11 his or her employment.

12 5. During the period in which a volunteer firefighter is  
13 continuously on active status on the roster of a volunteer fire  
14 department, a physical examination for the volunteer firefighter is  
15 required:

16 (a) Upon employment;

17 (b) Upon commencement of coverage; and

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

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

23 6. The employer of the volunteer firefighter is responsible for  
24 scheduling the physical examination. The employer shall mail to the  
25 volunteer firefighter a written notice of the date, time and place of  
26 the physical examination at least 10 days before the date of the  
27 physical examination and shall obtain, at the time of mailing, a  
28 certificate of mailing issued by the United States Postal Service.

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

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

35 (a) Applies to the department for the first time as a volunteer  
36 firefighter; and

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

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

42 (a) Paid for the physical examination in accordance with  
43 subsection 8;

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



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

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

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

10 12. A person who is determined to be:

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

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

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

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

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

27 *15. Except as otherwise provided in this subsection, if an*  
28 *employer, insurer or third-party administrator denies a claim that*  
29 *was filed pursuant to this section and the claimant ultimately*  
30 *prevails, the employer, insurer or third-party administrator, as*  
31 *applicable, must pay all the claimant's reasonable attorney's fees*  
32 *and associated costs. Such fees and costs are payable in addition*  
33 *to any benefits to which the claimant is entitled under the claim*  
34 *and any fines and penalties imposed by the Administrator*  
35 *pursuant to NRS 616D.120. If a hearing before a hearing officer*  
36 *is requested pursuant to NRS 616C.315 and held pursuant to NRS*  
37 *616C.330, such fees and costs do not include any attorney's fees*  
38 *and associated costs that are incurred by the claimant on or before*  
39 *the date of the hearing before the hearing officer.*

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

