

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; authorizing the Administrator of the Division of Industrial Relations of the Department of Business and Industry to order the payment of a benefit penalty; providing for the payment of a claimant’s medical 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



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8 for these occupational diseases and the claimant ultimately prevails, the  
9 Administrator of the Division of Industrial Relations of the Department of Business  
10 and Industry is authorized to order the employer, insurer or third-party  
11 administrator to pay the claimant a benefit penalty of not more than \$200 for each  
12 day that the claim is under appeal. **Sections 4 and 5** require the employer, insurer  
13 or third-party administrator to pay all medical costs that are associated with the  
14 occupational disease and incurred by the claimant on or after the date of the hearing  
15 before the hearing officer but provide for the recovery of such amounts paid if the  
16 employer, insurer or third-party administrator ultimately prevails. **Sections 4 and 5**  
17 additionally require the Administrator to review a claim for the occupational  
18 disease that has been in the appeals process for longer than 6 months to determine  
19 the circumstances causing the delay in processing the claim.

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

29 Existing law prohibits the payment of compensation for disability because of an  
30 occupational injury or disease which does not incapacitate the employee for at least  
31 5 cumulative days within a 20-day period from earning full wages. (NRS 616C.400,  
32 617.420) **Section 1** of this bill exempts a claim for compensation under chapters  
33 616A to 616D of NRS for disability for the occupational diseases of cancer, lung  
34 disease and heart disease from that prohibition. **Section 2** of this bill: (1) revises the  
35 prohibition as it relates to occupational diseases to apply exclusively to  
36 compensation for temporary total disability; and (2) clarifies that the prohibition  
37 does not apply to medical benefits for the occupational diseases of cancer, lung  
38 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.



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

3 (c) *A claim which is filed pursuant to NRS 617.453, 617.455 or*  
4 *617.457.*

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

6 617.420 **1.** No compensation may be paid under this chapter  
7 for *temporary total* disability which does not incapacitate the  
8 employee for at least 5 cumulative days within a 20-day period from  
9 earning full wages, but if the incapacity extends for 5 or more days  
10 within a 20-day period, the compensation must then be computed  
11 from the date of disability.

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

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

17 617.454 **1.** Any physical examination administered pursuant  
18 to NRS 617.455 or 617.457 must include:

19 (a) A thorough test of the functioning of the hearing of the  
20 employee; and

21 (b) A purified protein derivative skin test to screen for exposure  
22 to tuberculosis.

23 **2.** Except as otherwise provided in subsection 8 of NRS  
24 617.457, the tests required by this section must be paid for by the  
25 employer.

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

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

33 (1) *The examining physician;*

34 (2) *The employee;*

35 (3) *The employer's officer who is responsible for risk*  
36 *management or human resources or his or her designee; and*

37 (4) *If the employee has filed a claim pursuant to NRS*  
38 *617.455 or 617.457, the insurer.*

39 (b) *A person who receives the results of a physical*  
40 *examination pursuant to paragraph (a) may only use the results*  
41 *for the purposes of:*

42 (1) *Complying with the requirements of NRS 617.455 or*  
43 *617.457, as applicable; or*

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



1 (c) *The employer's officer who is responsible for risk*  
2 *management or human resources or his or her designee may*  
3 *create and release a report that is based on the results of a*  
4 *physical examination administered pursuant to NRS 617.455 or*  
5 *617.457 to any person whom the employer's officer determines has*  
6 *a need to know the information in the report. The report must only*  
7 *contain the following information:*

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

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

11 (I) *Satisfies the physical qualifications required for his*  
12 *or her employment; or*

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

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

16 617.455 1. Notwithstanding any other provision of this  
17 chapter, diseases of the lungs, resulting in either temporary or  
18 permanent disability or death, are occupational diseases and  
19 compensable as such under the provisions of this chapter if caused  
20 by exposure to heat, smoke, fumes, tear gas or any other noxious  
21 gases, arising out of and in the course of the employment of a  
22 person who, for 2 years or more, has been:

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

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

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

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

39 3. Each volunteer firefighter who is to be covered for diseases  
40 of the lungs pursuant to the provisions of this section shall submit  
41 to:

42 (a) A physical examination upon employment and upon  
43 commencement of the coverage; and



1 (b) The making of an X-ray film of the volunteer firefighter's  
2 lungs once every 3 years after the physical examination that is  
3 required upon commencement of the coverage,  
4 ↳ until the volunteer firefighter reaches the age of 50 years. Each  
5 volunteer firefighter who is 50 years of age or older shall submit to a  
6 physical examination once every 2 years during his or her  
7 employment. As used in this subsection, "physical examination"  
8 includes the making of an X-ray film of the volunteer firefighter's  
9 lungs but excludes a thorough test of the functioning of his or her  
10 lungs.

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

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

19 (a) During the course of that employment;

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

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

27 ↳ Service credit which is purchased in a retirement system must not  
28 be calculated towards the years of service of a person for the  
29 purposes of this section.

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

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

41 8. A person who is determined to be:

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

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



1   ↳ may elect to receive the benefits provided under NRS 616C.440  
2 for a permanent total disability.

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

8   10. *The Administrator shall review a claim filed by a*  
9 *claimant pursuant to this section that has been in the appeals*  
10 *process for longer than 6 months to determine the circumstances*  
11 *causing the delay in processing the claim. As used in this*  
12 *subsection, "appeals process" means the period of time that:*

13   (a) *Begins on the date on which the claimant first files or*  
14 *submits a request for a hearing or an appeal of a determination*  
15 *regarding the claim; and*

16   (b) *Continues until the date on which the claim is adjudicated*  
17 *to a final decision.*

18   11. *Except as otherwise provided in this subsection, if an*  
19 *employer, insurer or third-party administrator denies a claim that*  
20 *was filed pursuant to this section and the claimant ultimately*  
21 *prevails, the Administrator may order the employer, insurer or*  
22 *third-party administrator, as applicable, to pay to the claimant a*  
23 *benefit penalty of not more than \$200 for each day from the date*  
24 *on which an appeal is filed until the date on which the claim is*  
25 *adjudicated to a final decision. Such benefit penalty is payable in*  
26 *addition to any benefits to which the claimant is entitled under the*  
27 *claim and any fines and penalties imposed by the Administrator*  
28 *pursuant to NRS 616D.120. If a hearing before a hearing officer*  
29 *is requested pursuant to NRS 616C.315 and held pursuant to NRS*  
30 *616C.330, the employer, insurer or third-party administrator, as*  
31 *applicable, shall pay to the claimant all medical costs which are*  
32 *associated with the occupational disease and are incurred from*  
33 *the date on which the hearing is requested until the date on which*  
34 *the claim is adjudicated to a final decision. If the employer,*  
35 *insurer or third-party administrator, as applicable, ultimately*  
36 *prevails, the employer, insurer or third-party administrator, as*  
37 *applicable, is entitled to recover the amount paid pursuant to this*  
38 *subsection in accordance with the provisions of NRS 616C.138.*

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

40   617.457 1. Notwithstanding any other provision of this  
41 chapter, diseases of the heart of a person who, for 2 years or more,  
42 has been employed in a full-time continuous, uninterrupted and  
43 salaried occupation as a firefighter, arson investigator or police  
44 officer in this State before the date of disablement are conclusively



1 presumed to have arisen out of and in the course of the employment  
2 if the disease is diagnosed and causes the disablement:

3 (a) During the course of that employment;

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

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

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

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

20 3. Notwithstanding any other provision of this chapter, diseases  
21 of the heart, resulting in either temporary or permanent disability or  
22 death, are occupational diseases and compensable as such under the  
23 provisions of this chapter if caused by extreme overexertion in times  
24 of stress or danger and a causal relationship can be shown by  
25 competent evidence that the disability or death arose out of and was  
26 caused by the performance of duties as a volunteer firefighter by a  
27 person entitled to the benefits of chapters 616A to 616D, inclusive,  
28 of NRS pursuant to the provisions of NRS 616A.145 and who, for 5  
29 years or more, has served continuously as a volunteer firefighter in  
30 this State by continuously maintaining an active status on the roster  
31 of a volunteer fire department.

32 4. Except as otherwise provided in subsection 5, each  
33 employee who is to be covered for diseases of the heart pursuant to  
34 the provisions of this section shall submit to a physical examination,  
35 including an examination of the heart, upon employment, upon  
36 commencement of coverage and thereafter on an annual basis during  
37 his or her employment.

38 5. During the period in which a volunteer firefighter is  
39 continuously on active status on the roster of a volunteer fire  
40 department, a physical examination for the volunteer firefighter is  
41 required:

42 (a) Upon employment;

43 (b) Upon commencement of coverage; and

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



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

4       6. The employer of the volunteer firefighter is responsible for  
5 scheduling the physical examination. The employer shall mail to the  
6 volunteer firefighter a written notice of the date, time and place of  
7 the physical examination at least 10 days before the date of the  
8 physical examination and shall obtain, at the time of mailing, a  
9 certificate of mailing issued by the United States Postal Service.

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

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

16       (a) Applies to the department for the first time as a volunteer  
17 firefighter; and

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

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

23       (a) Paid for the physical examination in accordance with  
24 subsection 8;

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

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

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

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

36      12. A person who is determined to be:

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

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

41       ↳ may elect to receive the benefits provided under NRS 616C.440  
42 for a permanent total disability.

43      13. Claims filed under this section may be reopened at any  
44 time during the life of the claimant for further examination and  
45 treatment of the claimant upon certification by a physician of a





1 change of circumstances related to the occupational disease which  
2 would warrant an increase or rearrangement of compensation.

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

8 *15. The Administrator shall review a claim filed by a*  
9 *claimant pursuant to this section that has been in the appeals*  
10 *process for longer than 6 months to determine the circumstances*  
11 *causing the delay in processing the claim. As used in this*  
12 *subsection, "appeals process" means the period of time that:*

13 *(a) Begins on the date on which the claimant first files or*  
14 *submits a request for a hearing or an appeal of a determination*  
15 *regarding the claim; and*

16 *(b) Continues until the date on which the claim is adjudicated*  
17 *to a final decision.*

18 *16. Except as otherwise provided in this subsection, if an*  
19 *employer, insurer or third-party administrator denies a claim that*  
20 *was filed pursuant to this section and the claimant ultimately*  
21 *prevails, the Administrator may order the employer, insurer or*  
22 *third-party administrator, as applicable, to pay to the claimant a*  
23 *benefit penalty of not more than \$200 for each day from the date*  
24 *on which an appeal is filed until the date on which the claim is*  
25 *adjudicated to a final decision. Such benefit penalty is payable in*  
26 *addition to any benefits to which the claimant is entitled under the*  
27 *claim and any fines and penalties imposed by the Administrator*  
28 *pursuant to NRS 616D.120. If a hearing before a hearing officer*  
29 *is requested pursuant to NRS 616C.315 and held pursuant to NRS*  
30 *616C.330, the employer, insurer or third-party administrator, as*  
31 *applicable, shall pay to the claimant all medical costs which are*  
32 *associated with the occupational disease and are incurred from*  
33 *the date on which the hearing is requested until the date on which*  
34 *the claim is adjudicated to a final decision. If the employer,*  
35 *insurer or third-party administrator, as applicable, ultimately*  
36 *prevails, the employer, insurer or third-party administrator, as*  
37 *applicable, is entitled to recover the amount paid pursuant to this*  
38 *subsection in accordance with the provisions of NRS 616C.138.*

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

