

SENATE BILL NO. 232—COMMITTEE ON  
COMMERCE, LABOR AND ENERGY

MARCH 9, 2015

Referred to Committee on Commerce, Labor and Energy

SUMMARY—Makes various changes relating to workers’ compensation. (BDR 53-987)

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 workers’ compensation; providing to a workers’ compensation insurer, organization for managed care, third-party administrator or employer certain subrogation rights regarding certain payments made for the treatment of an injured employee; revising provisions relating to the reopening of a workers’ compensation claim; revising provisions relating to a lump-sum award to an employee for a permanent partial disability; and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

1 This bill revises various provisions of the Nevada Industrial Insurance Act,  
2 which provides for the payment of compensation to employees who are injured or  
3 disabled as the result of an occupational injury. (Chapters 616A-616D of NRS)  
4 Existing law provides that if an insurer, organization for managed care, third-  
5 party administrator or employer denies coverage for medical treatment or services  
6 related to an employee’s injury, and the employee’s health or casualty insurer pays  
7 for such treatment or services, the health or casualty insurer may seek  
8 reimbursement from the insurer, organization for managed care, third-party  
9 administrator or employer if a hearing officer or appeals officer ultimately  
10 determines that the treatment or services should have been covered by the insurer,  
11 organization for managed care, third-party administrator or employer. (NRS  
12 616C.138) **Section 1** of this bill provides a reciprocal right to reimbursement in  
13 situations in which an insurer, organization for managed care, third-party  
14 administrator or employer appeals an order of a hearing officer, appeals officer or  
15 district court and the order is not stayed pending the appeal. In such situations, if  
16 the appeal is successful, the insurer, organization for managed care, third-party  
17 administrator or employer is entitled to seek reimbursement from the injured



18 employee's health or casualty insurer for payments made while the appeal was  
19 pending.

20 Existing law provides for the reopening of a workers' compensation claim  
21 under certain circumstances and conditions. (NRS 616C.390) Under these  
22 provisions, an employee has 1 year to file an application to reopen a claim if the  
23 employee was not off work as a result of the injury and did not receive benefits for  
24 a permanent partial disability. **Section 2** of this bill revises NRS 616C.390 to  
25 provide that an employee has 1 year to file an application to reopen a claim if the  
26 employee did not receive benefits for either a temporary total or permanent partial  
27 disability.

28 Existing law provides that an injured employee who suffers a permanent partial  
29 disability may elect to receive compensation for that injury in a lump sum. (NRS  
30 616C.495) **Section 3** of this bill provides that an employee who has sustained more  
31 than one permanent partial disability may not receive compensation for any portion  
32 of an injury that is based on a combined permanent partial disability rating for all  
33 the employee's injuries that exceeds 100 percent.

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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.138 is hereby amended to read as  
2 follows:

3 616C.138 1. Except as otherwise provided in this section, if a  
4 provider of health care provides treatment or other services that an  
5 injured employee alleges are related to an industrial injury or  
6 occupational disease and an insurer, an organization for managed  
7 care, a third-party administrator or an employer who provides  
8 accident benefits for injured employees pursuant to NRS 616C.265  
9 denies authorization or responsibility for payment for the treatment  
10 or other services, the provider of health care is entitled to be paid for  
11 the treatment or other services as follows:

12 (a) If the treatment or other services will be paid by a health  
13 insurer which has a contract with the provider of health care under a  
14 health benefit plan that covers the injured employee, the provider of  
15 health care is entitled to be paid the amount that is allowed for the  
16 treatment or other services under that contract.

17 (b) If the treatment or other services will be paid by a health  
18 insurer which does not have a contract with the provider of health  
19 care as set forth in paragraph (a) or by a casualty insurer or the  
20 injured employee, the provider of health care is entitled to be paid  
21 not more than:

22 (1) The amount which is allowed for the treatment or other  
23 services set forth in the schedule of fees and charges established  
24 pursuant to NRS 616C.260; or

25 (2) If the insurer which denied authorization or responsibility  
26 for the payment has contracted with an organization for managed  
27 care or with providers of health care pursuant to NRS 616B.527, the



1 amount that is allowed for the treatment or other services under that  
2 contract.

3 2. The provisions of subsection 1:

4 (a) Apply only to treatment or other services provided by the  
5 provider of health care before the date on which the insurer,  
6 organization for managed care, third-party administrator or  
7 employer who provides accident benefits first denies authorization  
8 or responsibility for payments for the alleged industrial injury or  
9 occupational disease.

10 (b) Do not apply to a provider of health care that is a hospital as  
11 defined in NRS 439B.110. The provisions of this paragraph do not  
12 exempt the provider of health care from complying with the  
13 provisions of subsections 3 and ~~4~~ 7.

14 3. If:

15 (a) The injured employee pays for the treatment or other  
16 services or a health or casualty insurer pays for the treatment or  
17 other services on behalf of the injured employee;

18 (b) The injured employee requests a hearing before a hearing  
19 officer or appeals officer regarding the denial of coverage; and

20 (c) The hearing officer or appeals officer ultimately determines  
21 that the treatment or other services should have been covered, or the  
22 insurer, organization for managed care, third-party administrator or  
23 employer who provides accident benefits subsequently accepts  
24 responsibility for payment,

25 ➤ the hearing officer or appeals officer shall order the insurer,  
26 organization for managed care, third-party administrator or  
27 employer who provides accident benefits to pay to the injured  
28 employee or the health or casualty insurer the amount which the  
29 injured employee or the health or casualty insurer paid that is  
30 allowed for the treatment or other services set forth in the schedule  
31 of fees and charges established pursuant to NRS 616C.260 or, if the  
32 insurer has contracted with an organization for managed care or  
33 with providers of health care pursuant to NRS 616B.527, the  
34 amount that is allowed for the treatment or other services under that  
35 contract.

36 4. *If:*

37 (a) *A hearing officer, appeals officer or district court issues an*  
38 *order or otherwise renders a decision requiring an insurer,*  
39 *organization for managed care, third-party administrator or*  
40 *employer to pay for treatment or other services provided to an*  
41 *injured employee;*

42 (b) *The insurer, organization for managed care, third-party*  
43 *administrator or employer appeals the order or decision, but is*  
44 *unable to obtain a stay of the order or decision;*



1 (c) *Payment for the treatment or other services provided to the*  
2 *injured employee are made by the insurer, organization for*  
3 *managed care, third-party administrator or employer during the*  
4 *period between the date of the issuance of the order or decision*  
5 *and the date of the final resolution of the appeal; and*

6 (d) *The appeal is subsequently resolved in favor of the insurer,*  
7 *organization for managed care, third-party administrator or*  
8 *employer,*

9 *↳ the insurer, organization for managed care, third-party*  
10 *administrator or employer may recover from any health or*  
11 *casualty insurer of the injured employee an amount calculated*  
12 *pursuant to subsection 5.*

13 5. *An insurer, organization for managed care, third-party*  
14 *administrator or employer entitled to recover for an amount paid*  
15 *during the pendency of an appeal pursuant to subsection 4, may*  
16 *recover from a health or casualty insurer of the injured employee*  
17 *the lesser of:*

18 (a) *The amount actually paid by the insurer, organization for*  
19 *managed care, third-party administrator or employer during the*  
20 *period between the issuance of the order and the final resolution*  
21 *of the appeal;*

22 (b) *The amount established for the treatment or services*  
23 *provided to the injured employee pursuant to NRS 616C.260 or the*  
24 *usual fee charged by the provider of health care, whichever is less;*  
25 *or*

26 (c) *The amount provided for the treatment or services provided*  
27 *to the injured employee in a contract between the provider of*  
28 *health care and the health or casualty insurer of the injured*  
29 *employee.*

30 6. *If an insurer, organization for managed care, third-party*  
31 *administrator or employer is entitled to recover for an amount*  
32 *paid during the pendency of an appeal pursuant to subsection 4,*  
33 *upon a final resolution of the appeal in favor of the insurer,*  
34 *organization for managed care, third-party administrator or*  
35 *employer, the hearing officer, appeals officer or district court shall*  
36 *order the injured employee to provide to the insurer, organization*  
37 *for managed care, third-party administrator or employer:*

38 (a) *Any documentation in the possession of the injured*  
39 *employee related to any policy of health or casualty insurance*  
40 *which may have provided coverage to the injured employee for*  
41 *treatment or other services provided to the injured employee; and*

42 (b) *The identity and contact information of the insurer*  
43 *providing such health or casualty insurance.*

44 7. *If the injured employee or the health or casualty insurer paid*  
45 *the provider of health care any amount in excess of the amount that*



1 the provider would have been entitled to be paid pursuant to this  
2 section, the injured employee or the health or casualty insurer is  
3 entitled to recover the excess amount from the provider. Within 30  
4 days after receiving notice of such an excess amount, the provider of  
5 health care shall reimburse the injured employee or the health or  
6 casualty insurer for the excess amount.

7 ~~15-1~~ 8. As used in this section:

8 (a) "Casualty insurer" means any insurer or other organization  
9 providing coverage or benefits under a policy or contract of casualty  
10 insurance in the manner described in subsection 2 of  
11 NRS 681A.020.

12 (b) "Health benefit plan" means any type of policy, contract,  
13 agreement or plan providing health coverage or benefits in  
14 accordance with state or federal law.

15 (c) "Health insurer" means any insurer or other organization  
16 providing health coverage or benefits in accordance with state or  
17 federal law.

18 **Sec. 2.** NRS 616C.390 is hereby amended to read as follows:  
19 616C.390 Except as otherwise provided in NRS 616C.392:

20 1. If an application to reopen a claim to increase or rearrange  
21 compensation is made in writing more than 1 year after the date on  
22 which the claim was closed, the insurer shall reopen the claim if:

23 (a) A change of circumstances warrants an increase or  
24 rearrangement of compensation during the life of the claimant;

25 (b) The primary cause of the change of circumstances is the  
26 injury for which the claim was originally made; and

27 (c) The application is accompanied by the certificate of a  
28 physician or a chiropractor showing a change of circumstances  
29 which would warrant an increase or rearrangement of compensation.

30 2. After a claim has been closed, the insurer, upon receiving an  
31 application and for good cause shown, may authorize the reopening  
32 of the claim for medical investigation only. The application must be  
33 accompanied by a written request for treatment from the physician  
34 or chiropractor treating the claimant, certifying that the treatment is  
35 indicated by a change in circumstances and is related to the  
36 industrial injury sustained by the claimant.

37 3. If a claimant applies for a claim to be reopened pursuant to  
38 subsection 1 or 2 and a final determination denying the reopening is  
39 issued, the claimant shall not reapply to reopen the claim until at  
40 least 1 year after the date on which the final determination is issued.

41 4. Except as otherwise provided in subsection 5, if an  
42 application to reopen a claim is made in writing within 1 year after  
43 the date on which the claim was closed, the insurer shall reopen the  
44 claim only if:



1 (a) The application is supported by medical evidence  
2 demonstrating an objective change in the medical condition of the  
3 claimant; and

4 (b) There is clear and convincing evidence that the primary  
5 cause of the change of circumstances is the injury for which the  
6 claim was originally made.

7 5. An application to reopen a claim must be made in writing  
8 within 1 year after the date on which the claim was closed if:

9 (a) The claimant ~~was not off work~~ **did not receive benefits for**  
10 **a temporary total disability** as a result of the injury; and

11 (b) The claimant did not receive benefits for a permanent partial  
12 disability.

13 ➤ If an application to reopen a claim to increase or rearrange  
14 compensation is made pursuant to this subsection, the insurer shall  
15 reopen the claim if the requirements set forth in paragraphs (a), (b)  
16 and (c) of subsection 1 are met.

17 6. If an employee's claim is reopened pursuant to this section,  
18 the employee is not entitled to vocational rehabilitation services or  
19 benefits for a temporary total disability if, before the claim was  
20 reopened, the employee:

21 (a) Retired; or

22 (b) Otherwise voluntarily removed himself or herself from the  
23 workforce,

24 ➤ for reasons unrelated to the injury for which the claim was  
25 originally made.

26 7. One year after the date on which the claim was closed, an  
27 insurer may dispose of the file of a claim authorized to be reopened  
28 pursuant to subsection 5, unless an application to reopen the claim  
29 has been filed pursuant to that subsection.

30 8. An increase or rearrangement of compensation is not  
31 effective before an application for reopening a claim is made unless  
32 good cause is shown. The insurer shall, upon good cause shown,  
33 allow the cost of emergency treatment the necessity for which has  
34 been certified by a physician or a chiropractor.

35 9. A claim that closes pursuant to subsection 2 of NRS  
36 616C.235 and is not appealed or is unsuccessfully appealed pursuant  
37 to the provisions of NRS 616C.305 and 616C.315 to 616C.385,  
38 inclusive, may not be reopened pursuant to this section.

39 10. The provisions of this section apply to any claim for which  
40 an application to reopen the claim or to increase or rearrange  
41 compensation is made pursuant to this section, regardless of the date  
42 of the injury or accident to the claimant. If a claim is reopened  
43 pursuant to this section, the amount of any compensation or benefits  
44 provided must be determined in accordance with the provisions of  
45 NRS 616C.425.



1 **Sec. 3.** NRS 616C.495 is hereby amended to read as follows:

2 616C.495 1. Except as otherwise provided in NRS 616C.380,  
3 an award for a permanent partial disability may be paid in a lump  
4 sum under the following conditions:

5 (a) A claimant injured on or after July 1, 1973, and before  
6 July 1, 1981, who incurs a disability that does not exceed 12 percent  
7 may elect to receive his or her compensation in a lump sum. A  
8 claimant injured on or after July 1, 1981, and before July 1, 1995,  
9 who incurs a disability that does not exceed ~~12.5~~ 30 percent may  
10 elect to receive his or her compensation in a lump sum.

11 (b) The spouse, or in the absence of a spouse, any dependent  
12 child of a deceased claimant injured on or after July 1, 1973, who is  
13 not entitled to compensation in accordance with NRS 616C.505, is  
14 entitled to a lump sum equal to the present value of the deceased  
15 claimant's undisbursed award for a permanent partial disability.

16 (c) Any claimant injured on or after July 1, 1981, and before  
17 July 1, 1995, who incurs a disability that exceeds ~~12.5~~ 30 percent  
18 may elect to receive his or her compensation in a lump sum equal to  
19 the present value of an award for a disability of ~~12.5~~ 30 percent. If  
20 the claimant elects to receive compensation pursuant to this  
21 paragraph, the insurer shall pay in installments to the claimant that  
22 portion of the claimant's disability in excess of ~~12.5~~ 30 percent.

23 (d) Any claimant injured on or after July 1, 1995, may elect to  
24 receive his or her compensation in a lump sum in accordance with  
25 regulations adopted by the Administrator and approved by the  
26 Governor. The Administrator shall adopt regulations for  
27 determining the eligibility of such a claimant to receive all or any  
28 portion of his or her compensation in a lump sum. Such regulations  
29 may include the manner in which an award for a permanent partial  
30 disability may be paid to such a claimant in installments.  
31 Notwithstanding the provisions of NRS 233B.070, any regulation  
32 adopted pursuant to this paragraph does not become effective unless  
33 it is first approved by the Governor.

34 *(e) If the permanent partial disability rating of a claimant*  
35 *seeking compensation pursuant to this section would, when*  
36 *combined with any previous permanent partial disability rating of*  
37 *the claimant that resulted in an award of benefits to the claimant,*  
38 *result in the claimant having a total permanent partial disability*  
39 *rating in excess of 100 percent, the claimant's disability rating*  
40 *upon which compensation is calculated must be reduced by such*  
41 *percentage as required to limit the total permanent partial*  
42 *disability rating of the claimant for all injuries to not more than*  
43 *100 percent.*

44 2. If the claimant elects to receive his or her payment for a  
45 permanent partial disability in a lump sum pursuant to subsection 1,



1 all of the claimant's benefits for compensation terminate. The  
2 claimant's acceptance of that payment constitutes a final settlement  
3 of all factual and legal issues in the case. By so accepting the  
4 claimant waives all of his or her rights regarding the claim,  
5 including the right to appeal from the closure of the case or the  
6 percentage of his or her disability, except:

7 (a) The right of the claimant to:

8 (1) Reopen his or her claim in accordance with the  
9 provisions of NRS 616C.390; or

10 (2) Have his or her claim considered by his or her insurer  
11 pursuant to NRS 616C.392;

12 (b) Any counseling, training or other rehabilitative services  
13 provided by the insurer; and

14 (c) The right of the claimant to receive a benefit penalty in  
15 accordance with NRS 616D.120.

16 ➔ The claimant, when he or she demands payment in a lump sum,  
17 must be provided with a written notice which prominently displays a  
18 statement describing the effects of accepting payment in a lump sum  
19 of an entire permanent partial disability award, any portion of such  
20 an award or any uncontested portion of such an award, and that the  
21 claimant has 20 days after the mailing or personal delivery of the  
22 notice within which to retract or reaffirm the demand, before  
23 payment may be made and the claimant's election becomes final.

24 3. Any lump-sum payment which has been paid on a claim  
25 incurred on or after July 1, 1973, must be supplemented if necessary  
26 to conform to the provisions of this section.

27 4. Except as otherwise provided in this subsection, the total  
28 lump-sum payment for disablement must not be less than one-half  
29 the product of the average monthly wage multiplied by the  
30 percentage of disability. If the claimant received compensation in  
31 installment payments for his or her permanent partial disability  
32 before electing to receive payment for that disability in a lump sum,  
33 the lump-sum payment must be calculated for the remaining  
34 payment of compensation.

35 5. The lump sum payable must be equal to the present value of  
36 the compensation awarded, less any advance payment or lump sum  
37 previously paid. The present value must be calculated using monthly  
38 payments in the amounts prescribed in subsection 7 of NRS  
39 616C.490 and actuarial annuity tables adopted by the Division. The  
40 tables must be reviewed annually by a consulting actuary.

41 6. If a claimant would receive more money by electing to  
42 receive compensation in a lump sum than the claimant would if he  
43 or she receives installment payments, the claimant may elect to  
44 receive the lump-sum payment.





1     **Sec. 4.** This act becomes effective upon passage and approval  
2 for the purposes of adopting any regulations or performing any  
3 preparatory administrative tasks that are necessary to carry out the  
4 provisions of this act, and on January 1, 2016, for all other purposes.

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