
SENATE BILL NO. 289—SENATOR ROBERSON (BY REQUEST)

MARCH 18, 2013

Referred to Committee on Commerce, Labor and Energy

SUMMARY—Revises provisions relating to workers' compensation.
(BDR 53-903)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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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; revising the period during which certain injured employees must file a claim for compensation with an insurer; providing that an insurer or employer may recover certain money paid to an injured employee or the health or casualty insurer of the injured employee under certain circumstances; providing that compensation is not payable if an injury is proximately caused by an employee's use of a prohibited substance; providing that the results of any test to determine whether an injured employee used alcohol or a controlled or prohibited substance must be made available to an insurer or employer upon request; authorizing an insurer to deny compensation for temporary total disability and vocational rehabilitation services under certain circumstances; revising procedures relating to the stay of a decision of an appeals officer; revising provisions relating to the payment of benefits for a temporary total disability or vocational rehabilitation services following the reopening of a claim; revising provisions relating to certain payments to an injured employee of lump-sum compensation; and providing other matters properly relating thereto.



* S B 2 8 9 *

Legislative Counsel's Digest:

1 This bill revises various provisions of the Nevada Industrial Insurance Act
2 (Chapters 616A-616D of NRS), which provides for the payment of compensation
3 to employees who are injured or disabled as a result of an occupational injury or
4 disease.

5 Existing provisions of the Act provide that an employee is not entitled to accrue
6 or be paid certain benefits while the employee is in jail or otherwise "incarcerated."
7 (NRS 616C.475, 616C.500, 616C.590) For the purpose of these provisions, **section**
8 **1** of this bill revises the definition of that term to include confinement during a
9 period of weekend incarceration or house arrest.

10 **Section 2** of this bill revises from 90 days to 30 days the period in which
11 certain injured employees must file a claim for compensation with an insurer.

12 **Section 3** of this bill authorizes an insurer or employer to recover from an
13 injured employee or the health or casualty insurer of the employee certain amounts
14 paid by the insurer or employer on behalf of the injured employee if a hearing
15 officer, appeals officer or court ultimately determines that the amounts were paid
16 for treatment or other services that should not have been covered.

17 Existing law provides that compensation is not payable if an injured
18 employee's injury is proximately caused by the employee's use of a controlled
19 substance. (NRS 616C.230) **Section 4** of this bill expands this provision to include
20 prohibited substances. Additionally, **section 4** requires that the results of any test
21 for the use of alcohol or a controlled or prohibited substance by an injured
22 employee be provided to the insurer or employer upon request.

23 **Section 5** of this bill authorizes an insurer to deny compensation for vocational
24 rehabilitation services if an injured employee is discharged from his or her
25 employment as a result of misconduct and further authorizes an insurer to deny
26 compensation for temporary total disability and vocational rehabilitation services if
27 an injured employee voluntarily resigns as a result of misconduct.

28 Under existing law, the decision of an appeals officer is not stayed by an appeal
29 from the decision unless a stay is granted by the appeals officer or the district court.
30 (NRS 616C.375) **Section 6** of this bill provides that such a decision is
31 automatically stayed by the submission of a request for a stay and that the stay
32 remains in effect until the appeals officer or the district court rules on the request.
33 **Section 6** further requires that such a ruling be issued within 30 days, and requires
34 the parties to comply within the decision of the appeals officer within 10 days after
35 the issuance of an order denying a stay.

36 **Sections 7 and 12** of this bill revise provisions relating to an injured
37 employee's entitlement, upon reopening of a claim, to vocational rehabilitation
38 services or benefits for a temporary total disability. **Section 8** of this bill provides
39 for recovery by an insurer of the amount of any lump sum paid to an injured
40 employee for vocational rehabilitation services when an injured employee is
41 determined, subsequent to the payment of the lump sum, to be permanently and
42 totally disabled.

43 **Section 9** of this bill revises provisions concerning the gross wages and
44 employment benefits which must be provided pursuant to an offer of temporary,
45 light-duty employment.

46 **Section 10** of this bill revises certain provisions concerning the payment of a
47 lump-sum award for a permanent partial disability to authorize the payment of such
48 an award to certain claimants who incur a disability that does not exceed 30
49 percent.

50 Existing law provides for the development of a plan for a program of vocational
51 rehabilitation for certain injured employees, which may include on-the-job training.
52 Under existing law, the insurer is required to pay a percentage of the wages of an
53 employee who is receiving such training. (NRS 616C.555, 616C.570) **Section 11** of



54 this bill provides, instead, for the payment of benefits for temporary partial
55 disability to such an employee.

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

1 **Section 1.** NRS 616A.250 is hereby amended to read as
2 follows:

3 616A.250 ~~["Incarcerated"]~~
4 **1. Except as otherwise provided in subsection 2,**
5 **"incarcerated"** means confined in:

6 ~~1-1~~ **(a)** Any local detention facility, county jail, state prison,
7 reformatory or other correctional facility as a result of a conviction
8 or a plea of guilty, guilty but mentally ill or nolo contendere in a
9 criminal proceeding; or

10 ~~1-2~~ **(b)** Any institution or facility for persons with mental
11 illness as a result of a plea of not guilty by reason of insanity in a
12 criminal proceeding,
13 ↳ in this State, another state or a foreign country.

14 **2. For the purposes of NRS 616C.475, 616C.500 and**
15 **616C.590, a person is also "incarcerated" while confined during a**
16 **period of weekend incarceration or house arrest.**

17 **Sec. 2.** NRS 616C.020 is hereby amended to read as follows:
18 616C.020 1. Except as otherwise provided in subsection 2, an
19 injured employee, or a person acting on behalf of the employee,
20 shall file a claim for compensation with the insurer within ~~190~~ **30**
21 days after an accident if:

- 22 (a) The employee has sought medical treatment for an injury
23 arising out of and in the course of his or her employment; or
- 24 (b) The employee was off work as a result of an injury arising
25 out of and in the course of his or her employment.

26 2. In the event of the death of the injured employee resulting
27 from the injury, a dependent of the employee, or a person acting on
28 behalf of the employee, shall file a claim for compensation with the
29 insurer within 1 year after the death of the injured employee.

30 3. The claim for compensation must be filed on a form
31 prescribed by the Administrator.

32 **Sec. 3.** NRS 616C.138 is hereby amended to read as follows:
33 616C.138 1. Except as otherwise provided in this section, if a
34 provider of health care provides treatment or other services that an
35 injured employee alleges are related to an industrial injury or
36 occupational disease and an insurer, an organization for managed
37 care, a third-party administrator or an employer who provides
38 accident benefits for injured employees pursuant to NRS 616C.265
39 denies authorization or responsibility for payment for the treatment



1 or other services, the provider of health care is entitled to be paid for
2 the treatment or other services as follows:

3 (a) If the treatment or other services will be paid by a health
4 insurer which has a contract with the provider of health care under a
5 health benefit plan that covers the injured employee, the provider of
6 health care is entitled to be paid the amount that is allowed for the
7 treatment or other services under that contract.

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

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

16 (2) If the insurer which denied authorization or responsibility
17 for the payment has contracted with an organization for managed
18 care or with providers of health care pursuant to NRS 616B.527, the
19 amount that is allowed for the treatment or other services under that
20 contract.

21 2. The provisions of subsection 1:

22 (a) Apply only to treatment or other services provided by the
23 provider of health care before the date on which the insurer,
24 organization for managed care, third-party administrator or
25 employer who provides accident benefits first denies authorization
26 or responsibility for payments for the alleged industrial injury or
27 occupational disease.

28 (b) Do not apply to a provider of health care that is a hospital as
29 defined in NRS 439B.110. The provisions of this paragraph do not
30 exempt the provider of health care from complying with the
31 provisions of subsections 3 and 4.

32 3. If:

33 (a) The injured employee pays for the treatment or other
34 services or a health or casualty insurer pays for the treatment or
35 other services on behalf of the injured employee;

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

38 (c) The hearing officer or appeals officer ultimately determines
39 that the treatment or other services should have been covered, or the
40 insurer, organization for managed care, third-party administrator or
41 employer who provides accident benefits subsequently accepts
42 responsibility for payment,

43 ➤ the hearing officer or appeals officer shall order the insurer,
44 organization for managed care, third-party administrator or
45 employer who provides accident benefits to pay to the injured



1 employee or the health or casualty insurer the amount which the
2 injured employee or the health or casualty insurer paid that is
3 allowed for the treatment or other services set forth in the schedule
4 of fees and charges established pursuant to NRS 616C.260 or, if the
5 insurer has contracted with an organization for managed care or
6 with providers of health care pursuant to NRS 616B.527, the
7 amount that is allowed for the treatment or other services under that
8 contract.

9 4. If the injured employee or the health or casualty insurer paid
10 the provider of health care any amount in excess of the amount that
11 the provider would have been entitled to be paid pursuant to this
12 section, the injured employee or the health or casualty insurer is
13 entitled to recover the excess amount from the provider. Within 30
14 days after receiving notice of such an excess amount, the provider of
15 health care shall reimburse the injured employee or the health or
16 casualty insurer for the excess amount.

17 5. *If a hearing officer, appeals officer or court renders a*
18 *decision on a claim for compensation and the insurer or employer*
19 *appeals that decision, does not or is unable to obtain a stay of the*
20 *decision and makes or is ordered to make any payments for*
21 *treatment or other services pending the appeal:*

22 (a) *The insurer or employer shall pay for the treatment or*
23 *other services related to the industrial injury or occupational*
24 *disease which is contested until the claim reaches final resolution;*
25 *and*

26 (b) *If a hearing officer, appeals officer or court ultimately*
27 *determines that the treatment or other services should not have*
28 *been covered, any amount paid by the insurer or employer on*
29 *behalf of the injured employee may be recovered from the injured*
30 *employee or the health or casualty insurer of the injured employee*
31 *for approved treatment or other services related to the industrial*
32 *injury or occupational disease in an amount not to exceed:*

33 (1) *The lesser of the amount set forth in the schedule of*
34 *fees and charges established pursuant to NRS 616C.260 or the*
35 *amount of the usual fees charged by the provider of health care;*
36 *or*

37 (2) *If the insurer has contracted with an organization for*
38 *managed care or with providers of health care pursuant to NRS*
39 *616B.527, the amount that is allowed for the treatment or other*
40 *services under that contract.*

41 ↪ *In any order issued by a hearing officer, appeals officer or*
42 *court determining that treatment or other services should not have*
43 *been covered, the hearing officer, appeals officer or court shall*
44 *direct the injured employee to provide to the insurer or employer*
45 *the name, contact information and any other information*



1 *necessary to identify the health or casualty insurer of the injured*
2 *employee.*

3 6. As used in this section:

4 (a) "Casualty insurer" means any insurer or other
5 organization providing coverage or benefits under a policy or
6 contract of casualty insurance in the manner described in subsection
7 2 of NRS 681A.020.

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

11 (c) "Health insurer" means any insurer or other organization
12 providing health coverage or benefits in accordance with state or
13 federal law.

14 **Sec. 4.** NRS 616C.230 is hereby amended to read as follows:

15 616C.230 1. Compensation is not payable pursuant to the
16 provisions of chapters 616A to 616D, inclusive, or chapter 617 of
17 NRS for an injury:

18 (a) Caused by the employee's willful intention to injure himself
19 or herself.

20 (b) Caused by the employee's willful intention to injure another.

21 (c) Proximately caused by the employee's intoxication. If the
22 employee was intoxicated at the time of his or her injury,
23 intoxication must be presumed to be a proximate cause unless
24 rebutted by evidence to the contrary.

25 (d) Proximately caused by the employee's use of a controlled *or*
26 *prohibited* substance. If the employee had any amount of a
27 controlled *or prohibited* substance in his or her system at the time of
28 his or her injury for which the employee did not have a current and
29 lawful prescription issued in the employee's name or that the
30 employee was not using in accordance with the provisions of
31 chapter 453A of NRS, the controlled *or prohibited* substance must
32 be presumed to be a proximate cause unless rebutted by evidence to
33 the contrary.

34 2. For the purposes of paragraphs (c) and (d) of subsection 1:

35 (a) The affidavit or declaration of an expert or other person
36 described in NRS 50.310, 50.315 or 50.320 is admissible to prove
37 the existence of any alcohol or the existence, quantity or identity of
38 a controlled *or prohibited* substance in an employee's system. If the
39 affidavit or declaration is to be so used, it must be submitted in the
40 manner prescribed in NRS 616C.355.

41 (b) When an examination requested or ordered includes
42 testing for the use of alcohol or a controlled *or prohibited* substance
43 ~~to that~~:

44 (1) *The* laboratory that conducts the testing must be licensed
45 pursuant to the provisions of chapter 652 of NRS ~~to~~ *and*



1 ***(2) The results of the examination and testing must be***
2 ***made available to the insurer or employer upon request.***

3 3. No compensation is payable for the death, disability or
4 treatment of an employee if the employee's death is caused by,
5 or insofar as the employee's disability is aggravated, caused or
6 continued by, an unreasonable refusal or neglect to submit to or to
7 follow any competent and reasonable surgical treatment or medical
8 aid.

9 4. If any employee persists in an unsanitary or injurious
10 practice that imperils or retards his or her recovery, or refuses to
11 submit to such medical or surgical treatment as is necessary to
12 promote his or her recovery, the employee's compensation may be
13 reduced or suspended.

14 5. An injured employee's compensation ~~[- other than accident~~
15 ~~benefits.]~~ must be suspended if ~~[-~~

16 ~~—(a) A] a~~ physician or chiropractor determines that the employee
17 is unable to undergo treatment, testing or examination for the
18 industrial injury solely because of a condition or injury that did not
19 arise out of and in the course of employment ~~[-] and~~

20 ~~[-(b)] :~~

21 ~~(a)~~ It is within the ability of the employee to correct the
22 nonindustrial condition or injury ~~[-] ; or~~

23 ~~(b)~~ ***If the condition or injury is a nonindustrial illness, the***
24 ***condition or injury interferes with the ability of the physician or***
25 ***chiropractor to treat, test or examine the employee.***

26 ↳ The compensation must be suspended until the injured employee
27 is able to resume treatment, testing or examination for the industrial
28 injury. The insurer may elect to pay for the treatment of the
29 nonindustrial condition or injury.

30 **Sec. 5.** NRS 616C.232 is hereby amended to read as follows:

31 616C.232 1. If an injured employee is discharged from his or
32 her employment as a result of misconduct, an insurer may deny
33 compensation for temporary total disability ***and vocational***
34 ***rehabilitation services*** to the injured employee because of that
35 discharge for misconduct only if the insurer proves by a
36 preponderance of the evidence that:

37 (a) The injured employee was discharged from his or her
38 employment solely for the employee's misconduct and not for any
39 reason relating to the employee's claim for compensation; and

40 (b) It is the injured employee's discharge from his or her
41 employment for misconduct, and not the injury, that is the sole
42 cause for the injured employee's inability to return to work with the
43 preinjury employer.

44 2. ~~[-An]~~ ***If an injured employee voluntarily resigns from his or***
45 ***her employment as a result of misconduct, an insurer*** ~~[-waives its~~



1 ~~rights under subsection 1 if the insurer does not make a~~
2 ~~determination to~~ *may* deny ~~for suspend~~ compensation *for*
3 *temporary total disability and vocational rehabilitation services* to
4 the injured employee . ~~within 70 days after the date on which the~~
5 ~~insurer learns that the injured employee has been discharged for~~
6 ~~misconduct.~~

7 3. An insurer may not deny any compensation pursuant to this
8 section except for compensation for temporary total disability *and*
9 *vocational rehabilitation services* pursuant to ~~subsection 1.~~
10 *subsections 1 and 2.*

11 4. Discharge *or voluntary resignation* from employment for
12 reasons other than ~~gross~~ misconduct does not limit an injured
13 employee's entitlement to receive benefits for temporary total
14 disability.

15 **Sec. 6.** NRS 616C.375 is hereby amended to read as follows:

16 616C.375 If an insurer, employer or claimant, or the
17 representative of an insurer, employer or claimant, appeals the
18 decision of an appeals officer, that decision is not stayed unless *a*
19 *request for a stay is granted by submitted to* the appeals officer or
20 the district court . *The decision of the appeals officer is stayed until*
21 *the appeals officer or district court issues an order granting or*
22 *denying the request for a stay. The appeals officer or district court*
23 *shall issue an order granting or denying the request for a stay*
24 *within 30 days after the date on which the decision was rendered.*
25 *request was submitted. If a request for a stay is denied, the parties*
26 *shall comply with the decision of the appeals officer within 10*
27 *days after issuance of the order denying the request for a stay.*

28 **Sec. 7.** NRS 616C.390 is hereby amended to read as follows:

29 616C.390 Except as otherwise provided in NRS 616C.392:

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

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

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

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

40 2. After a claim has been closed, the insurer, upon receiving an
41 application and for good cause shown, may authorize the reopening
42 of the claim for medical investigation only. The application must be
43 accompanied by a written request for treatment from the physician
44 or chiropractor treating the claimant, certifying that the treatment is



1 indicated by a change in circumstances and is related to the
2 industrial injury sustained by the claimant.

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

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

11 (a) The application is supported by medical evidence
12 demonstrating an objective change in the medical condition of the
13 claimant; and

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

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

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

21 (b) The claimant did not receive benefits for a permanent partial
22 disability.

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

27 6. If an employee's claim is reopened pursuant to this section,
28 the employee is not entitled to vocational rehabilitation services or
29 benefits for a temporary total disability if ~~before~~ :

30 (a) *Before* the claim was reopened, the employee ~~is~~
31 ~~(a)~~ *, for reasons unrelated to the injury for which the claim*
32 *was originally made:*

33 (1) Retired; or

34 ~~(b)~~ (2) Otherwise voluntarily removed himself or herself from
35 the workforce ~~is~~

36 ~~for reasons unrelated to the injury for which the claim was~~
37 ~~originally made.~~ ; or

38 (b) *Except as otherwise provided in subsection 6 of NRS*
39 *616C.595, the insurer or employer demonstrates that, before the*
40 *claim was reopened, a physician determined that the injured*
41 *employee was capable of engaging in temporary, modified*
42 *employment and temporary, modified employment was available*
43 *with the employer.*

44 7. One year after the date on which the claim was closed, an
45 insurer may dispose of the file of a claim authorized to be reopened



1 pursuant to subsection 5, unless an application to reopen the claim
2 has been filed pursuant to that subsection.

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

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

12 10. The provisions of this section apply to any claim for which
13 an application to reopen the claim or to increase or rearrange
14 compensation is made pursuant to this section, regardless of the date
15 of the injury or accident to the claimant. If a claim is reopened
16 pursuant to this section, the amount of any compensation or benefits
17 provided must be determined in accordance with the provisions of
18 NRS 616C.425.

19 **Sec. 8.** NRS 616C.440 is hereby amended to read as follows:

20 616C.440 1. Except as otherwise provided in this section and
21 NRS 616C.175, every employee in the employ of an employer,
22 within the provisions of chapters 616A to 616D, inclusive, of NRS,
23 who is injured by accident arising out of and in the course of
24 employment, or his or her dependents as defined in chapters 616A
25 to 616D, inclusive, of NRS, is entitled to receive the following
26 compensation for permanent total disability:

27 (a) In cases of total disability adjudged to be permanent,
28 compensation per month of $66 \frac{2}{3}$ percent of the average monthly
29 wage.

30 (b) If there is a previous disability, as the loss of one eye, one
31 hand, one foot or any other previous permanent disability, the
32 percentage of disability for a subsequent injury must be determined
33 by computing the percentage of the entire disability and deducting
34 therefrom the percentage of the previous disability as it existed at
35 the time of the subsequent injury, but such a deduction for a
36 previous award for permanent partial disability must be made in a
37 reasonable manner and must not be more than the total amount
38 which was paid for the previous award for permanent partial
39 disability. The total amount of the allowable deduction includes,
40 without limitation, compensation for a permanent partial disability
41 that was deducted from:

42 (1) Any compensation the employee received for a
43 temporary total disability; or

44 (2) Any other compensation received by the employee.



1 (c) If the character of the injury is such as to render the
2 employee so physically helpless as to require the service of a
3 constant attendant, an additional allowance may be made so
4 long as such requirements continue, but the allowance may not be
5 made while the employee is receiving benefits for care in a
6 hospital or facility for intermediate care pursuant to the provisions
7 of NRS 616C.265.

8 2. Except as otherwise provided in NRS 616B.028 and
9 616B.029, an injured employee or his or her dependents are not
10 entitled to accrue or be paid any benefits for a permanent total
11 disability during the time the injured employee is incarcerated. The
12 injured employee or his or her dependents are entitled to receive
13 those benefits when the injured employee is released from
14 incarceration if the injured employee is certified as permanently
15 totally disabled by a physician or chiropractor.

16 3. An employee is entitled to receive compensation for a
17 permanent total disability only so long as the permanent total
18 disability continues to exist. The insurer has the burden of proving
19 that the permanent total disability no longer exists.

20 4. If an employee who has received compensation in a lump
21 sum for a permanent partial disability pursuant to NRS 616C.495 is
22 subsequently determined to be permanently and totally disabled, the
23 insurer of the employee's employer shall recover pursuant to this
24 subsection the actual amount of the lump sum paid to the employee
25 for the permanent partial disability. The insurer shall not recover
26 from the employee, whether by deductions or single payment, or a
27 combination of both, more than the actual amount of the lump sum
28 paid to the employee. To recover the actual amount of the lump
29 sum, the insurer shall:

30 (a) Unless the employee submits a request described in
31 paragraph (b), deduct from the compensation for the permanent total
32 disability an amount that is not more than 10 percent of the rate of
33 compensation for a permanent total disability until the actual
34 amount of the lump sum paid to the employee for the permanent
35 partial disability is recovered; or

36 (b) Upon the request of the employee, accept in a single
37 payment from the employee an amount that is equal to the actual
38 amount of the lump sum paid to the employee for the permanent
39 partial disability, less the actual amount of all deductions made to
40 date by the insurer from the employee for repayment of the lump
41 sum.

42 ***5. Except as otherwise provided in this subsection, if an***
43 ***employee who has received compensation in a lump sum for***
44 ***vocational rehabilitation services pursuant to NRS 616C.595 is***
45 ***subsequently determined to be permanently and totally disabled,***



1 *the insurer of the employee's employer shall recover pursuant to*
2 *this subsection the actual amount of the lump sum paid to the*
3 *employee for the vocational rehabilitation services. The insurer*
4 *shall not recover from the employee any amount which the*
5 *employee demonstrates he or she expended or attempted to spend*
6 *to obtain vocational rehabilitation services. The insurer shall not*
7 *recover from the employee, whether by deductions or single*
8 *payment, or a combination of both, more than the actual amount*
9 *of the lump sum paid to the employee. To recover the actual*
10 *amount of the lump sum, the insurer shall:*

11 (a) *Unless the employee submits a request described in*
12 *paragraph (b), deduct from the compensation for the permanent*
13 *total disability an amount that is not more than 10 percent of*
14 *the rate of compensation for a permanent total disability until the*
15 *actual amount of the lump sum paid to the employee for the*
16 *vocational rehabilitation services is recovered; or*

17 (b) *Upon the request of the employee, accept in a single*
18 *payment from the employee an amount that is equal to the actual*
19 *amount of the lump sum paid to the employee for the vocational*
20 *rehabilitation services, less the actual amount of all deductions*
21 *made to date by the insurer from the employee for repayment of*
22 *the lump sum.*

23 **Sec. 9.** NRS 616C.475 is hereby amended to read as follows:

24 616C.475 1. Except as otherwise provided in this section,
25 NRS 616C.175 and 616C.390, every employee in the employ of an
26 employer, within the provisions of chapters 616A to 616D,
27 inclusive, of NRS, who is injured by accident arising out of and in
28 the course of employment, or his or her dependents, is entitled to
29 receive for the period of temporary total disability, 66 2/3 percent of
30 the average monthly wage.

31 2. Except as otherwise provided in NRS 616B.028 and
32 616B.029, an injured employee or his or her dependents are not
33 entitled to accrue or be paid any benefits for a temporary total
34 disability during the time the injured employee is incarcerated. The
35 injured employee or his or her dependents are entitled to receive
36 such benefits when the injured employee is released from
37 incarceration if the injured employee is certified as temporarily
38 totally disabled by a physician or chiropractor.

39 3. If a claim for the period of temporary total disability is
40 allowed, the first payment pursuant to this section must be issued by
41 the insurer within 14 working days after receipt of the initial
42 certification of disability and regularly thereafter.

43 4. Any increase in compensation and benefits effected by the
44 amendment of subsection 1 is not retroactive.

45 5. Payments for a temporary total disability must cease when:



1 (a) A physician or chiropractor determines that the employee is
2 physically capable of ~~{any gainful}~~ **returning to** employment ~~{for~~
3 ~~which the employee is suited, after giving consideration to the~~
4 ~~employee's education, training and experience.}~~ **in the employee's**
5 **preinjury occupation;**

6 (b) The employer offers the employee ~~High duty employment~~
7 ~~or~~ employment that is modified , **temporarily or permanently,**
8 according to the limitations or restrictions imposed by a physician or
9 chiropractor pursuant to subsection 7; or

10 (c) Except as otherwise provided in NRS 616B.028 and
11 616B.029, the employee is incarcerated.

12 6. Each insurer may, with each check that it issues to an injured
13 employee for a temporary total disability, include a form approved
14 by the Division for the injured employee to request continued
15 compensation for the temporary total disability.

16 7. A certification of disability issued by a physician or
17 chiropractor must:

18 (a) Include the period of disability and a description of any
19 physical limitations or restrictions imposed upon ~~{the work of}~~ the
20 employee;

21 (b) Specify whether the limitations or restrictions are permanent
22 or temporary; and

23 (c) Be signed by the treating physician or chiropractor
24 authorized pursuant to NRS 616B.527 or appropriately chosen
25 pursuant to subsection 3 or 4 of NRS 616C.090.

26 8. If the certification of disability specifies that the physical
27 limitations or restrictions are temporary, the employer of the
28 employee at the time of the employee's accident may offer
29 temporary, light-duty employment to the employee. **An offer of**
30 **temporary, light-duty employment pursuant to this subsection may**
31 **be effective as soon as the next scheduled work shift.** If the
32 employer makes such an offer, the employer shall confirm the offer
33 in writing within 10 days after making the offer. The making,
34 acceptance or rejection of an offer of temporary, light-duty
35 employment pursuant to this subsection does not affect the
36 eligibility of the employee to receive vocational rehabilitation
37 services, including compensation, and does not exempt the
38 employer from complying with NRS 616C.545 to 616C.575,
39 inclusive, and 616C.590 or the regulations adopted by the Division
40 governing vocational rehabilitation services. Any offer of
41 temporary, light-duty employment made by the employer must
42 specify a position that:

43 (a) Is substantially similar to the employee's position at the time
44 of his or her injury in relation to the location of the employment and
45 the ~~{hours}~~ **shift schedule** the employee is required to work . ~~{}~~



1 (b) Provides a gross wage that is:

2 (1) If the position is in the same classification of
3 employment, *and the physical limitations or restrictions specified*
4 *are within the physical requirements of the employee's*
5 *employment*, equal to the gross wage the employee was earning at
6 the time of his or her injury; or

7 (2) If the position is not in the same classification of
8 employment, substantially similar to the gross wage ~~the~~ *payable to*
9 *an employee* ~~was earning at the time of his or her injury; and~~
10 *within the same classification of employment. If the gross*
11 *wage earned is less than the employee would be entitled to receive*
12 *for a temporary total disability, the employee is entitled to*
13 *receive benefits for a temporary partial disability pursuant to*
14 *NRS 616C.500.*

15 (c) Has the same employment benefits as the position of the
16 employee at the time of his or her injury ~~it~~, *subject to any*
17 *minimum requirements established by any independent provider*
18 *of benefits.*

19 **Sec. 10.** NRS 616C.495 is hereby amended to read as follows:

20 616C.495 1. Except as otherwise provided in NRS 616C.380,
21 an award for a permanent partial disability may be paid in a lump
22 sum under the following conditions:

23 (a) A claimant injured on or after July 1, 1973, and before
24 July 1, 1981, who incurs a disability that does not exceed 12 percent
25 may elect to receive his or her compensation in a lump sum. A
26 claimant injured on or after July 1, 1981, and before July 1, 1995,
27 who incurs a disability that does not exceed ~~12 1/2~~ *30* percent may
28 elect to receive his or her compensation in a lump sum.

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

34 (c) Any claimant injured on or after July 1, 1981, and before
35 July 1, 1995, who incurs a disability that exceeds ~~12 1/2~~ *30* percent
36 may elect to receive his or her compensation in a lump sum equal to
37 the present value of an award for a disability of ~~12 1/2~~ *30* percent. If
38 the claimant elects to receive compensation pursuant to this
39 paragraph, the insurer shall pay in installments to the claimant that
40 portion of the claimant's disability in excess of ~~12 1/2~~ *30* percent.

41 (d) Any claimant injured on or after July 1, 1995, may elect to
42 receive his or her compensation in a lump sum in accordance with
43 regulations adopted by the Administrator and approved by the
44 Governor. The Administrator shall adopt regulations for
45 determining the eligibility of such a claimant to receive all or any



1 portion of his or her compensation in a lump sum. Such regulations
2 may include the manner in which an award for a permanent partial
3 disability may be paid to such a claimant in installments.
4 Notwithstanding the provisions of NRS 233B.070, any regulation
5 adopted pursuant to this paragraph does not become effective unless
6 it is first approved by the Governor.

7 2. If the claimant elects to receive his or her payment for a
8 permanent partial disability in a lump sum pursuant to subsection 1,
9 all of the claimant's benefits for compensation terminate. The
10 claimant's acceptance of that payment constitutes a final settlement
11 of all factual and legal issues in the case. By so accepting the
12 claimant waives all of his or her rights regarding the claim,
13 including the right to appeal from the closure of the case or the
14 percentage of his or her disability, except:

15 (a) The right of the claimant to:

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

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

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

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

24 ➤ The claimant, when he or she demands payment in a lump sum,
25 must be provided with a written notice which prominently displays a
26 statement describing the effects of accepting payment in a lump sum
27 of an entire permanent partial disability award, any portion of such
28 an award or any uncontested portion of such an award, and that the
29 claimant has 20 days after the mailing or personal delivery of the
30 notice within which to retract or reaffirm the demand, before
31 payment may be made and the claimant's election becomes final.

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

35 4. Except as otherwise provided in this subsection, the total
36 lump-sum payment for disablement must not be less than one-half
37 the product of the average monthly wage multiplied by the
38 percentage of disability. If the claimant received compensation in
39 installment payments for his or her permanent partial disability
40 before electing to receive payment for that disability in a lump sum,
41 the lump-sum payment must be calculated for the remaining
42 payment of compensation.

43 5. The lump sum payable must be equal to the present value of
44 the compensation awarded, less any advance payment or lump sum
45 previously paid. The present value must be calculated using monthly



1 payments in the amounts prescribed in subsection 7 of NRS
2 616C.490 and actuarial annuity tables adopted by the Division. The
3 tables must be reviewed annually by a consulting actuary.

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

8 *7. The percentages of disability used in this section refer to*
9 *the degree of physical impairment of the whole person.*

10 **Sec. 11.** NRS 616C.570 is hereby amended to read as follows:

11 616C.570 1. A plan for a program of vocational rehabilitation
12 developed pursuant to NRS 616C.555 may include a program for
13 on-the-job training, if the training is suitable for the injured
14 employee.

15 2. Before an injured employee may participate in a program for
16 on-the-job training, the insurer and the employer *providing the*
17 *training* must execute a written agreement which contains *the cost,*
18 *the schedule and* an explanation of the ~~training and a schedule for~~
19 ~~that~~ training.

20 3. ~~Except as otherwise provided in subsection 4, the~~ *The*
21 insurer may pay ~~not more than 50 percent of the wages of~~
22 *temporary partial disability benefits to* an injured employee who is
23 participating in a program for on-the-job training. ~~An insurer~~
24 ~~contributing toward the wages of an injured employee shall pay the~~
25 ~~employee within 10 days after the employee submits documentation~~
26 ~~of his or her payroll to the insurer. The insurer shall not contribute~~
27 ~~to the wages of the injured employee for more than the period~~
28 ~~authorized for the particular employee pursuant to subsection 3 of~~
29 ~~NRS 616C.555 or 616C.560.~~

30 ~~4. The insurer shall, within 30 days after receipt of a request~~
31 ~~for payment, reimburse the training employer for the wages paid by~~
32 ~~the training employer to the injured employee pursuant to this~~
33 ~~section if:~~

34 ~~(a) After the successful completion of the training, the training~~
35 ~~employer continues to employ the injured employee for at least 90~~
36 ~~days in a position which requires the training so obtained; or~~

37 ~~(b) The injured employee:~~

38 ~~(1) Within 30 days after his or her successful completion of~~
39 ~~the training, obtains employment which requires the skills obtained~~
40 ~~by him or her as a direct result of the training provided by the~~
41 ~~training employer; and~~

42 ~~(2) Retains that or similar employment for at least 6 months~~
43 ~~after the completion of the training.]~~



1 **Sec. 12.** NRS 616C.595 is hereby amended to read as follows:

2 616C.595 1. If an injured employee is eligible for vocational
3 rehabilitation services pursuant to NRS 616C.590, the insurer and
4 the injured employee may, at any time during the employee's
5 eligibility for such services, execute a written agreement providing
6 for the payment of compensation in a lump sum in lieu of the
7 provision of vocational rehabilitation services. An insurer's refusal
8 to execute such an agreement may not be appealed.

9 2. If the insurer and the injured employee execute an agreement
10 pursuant to subsection 1, the acceptance of the payment of
11 compensation in a lump sum by the injured employee extinguishes
12 the right of the injured employee to receive vocational rehabilitation
13 services under the injured employee's claim. Except as otherwise
14 required by federal law, an injured employee shall not receive
15 vocational rehabilitation services from any state agency after the
16 injured employee accepts payment of compensation in a lump sum
17 pursuant to this section.

18 3. Before executing an agreement pursuant to subsection 1, an
19 insurer shall:

20 (a) Order an assessment of and counseling concerning the
21 vocational skills of the injured employee, unless the provisions of
22 subsection 3 of NRS 616C.580 are applicable;

23 (b) Consult with the employer of the injured employee; and

24 (c) Provide a written notice to the injured employee that
25 contains the following statements:

26 (1) That the injured employee is urged to seek assistance and
27 advice from the Nevada Attorney for Injured Workers or to consult
28 with a private attorney before signing the agreement.

29 (2) That the injured employee may rescind the agreement
30 within 20 days after the injured employee signs it.

31 (3) That the 20-day period pursuant to subparagraph (2) may
32 not be waived.

33 (4) That acceptance by the injured employee of payment of
34 compensation in a lump sum in lieu of the provision of vocational
35 rehabilitation services extinguishes the right of the injured employee
36 to receive such services.

37 4. Except as otherwise provided in NRS 616C.580, any
38 payment of compensation in a lump sum in lieu of the provision of
39 vocational rehabilitation services must not be less than 40 percent of
40 the maximum amount of vocational rehabilitation maintenance due
41 to the injured employee pursuant to NRS 616C.555.

42 5. No payment of compensation in a lump sum may be made
43 pursuant to this section until the 20-day period provided for the
44 rescission of the agreement has expired.



1 6. *If, after execution of a written agreement pursuant to*
2 *subsection 1, a claim is reopened pursuant to NRS 616C.390 and a*
3 *physician has determined that the injured employee is capable of*
4 *engaging in temporary, modified employment, the injured*
5 *employee is not entitled to benefits for a temporary total disability*
6 *unless:*

7 (a) *The injured employee provides the insurer with*
8 *documentation which:*

9 (1) *Substantiates that the injured employee has been*
10 *retrained in an occupation;*

11 (2) *Sets forth the physical requirements of the occupation;*
12 *and*

13 (3) *Provides that the physician's determination that the*
14 *injured employee is capable of engaging in temporary, modified*
15 *employment does not authorize the injured employee to return to*
16 *the occupation for which the injured employee was retrained; or*

17 (b) *The injured employee provides the insurer with*
18 *documentation which:*

19 (1) *Substantiates that the injured employee returned to*
20 *gainful employment;*

21 (2) *Sets forth the physical requirements of the new*
22 *employment; and*

23 (3) *Provides that the physician's determination that the*
24 *injured employee is capable of engaging in temporary, modified*
25 *employment does not authorize the injured employee to return to*
26 *work in the new employment.*

27 **Sec. 13.** Any person who:

28 1. Is otherwise entitled pursuant to NRS 616C.490 to receive
29 the compensation provided for permanent partial disability;

30 2. Was injured on or after July 1, 1981, and before July 1,
31 1995;

32 3. Incurs a disability that does not exceed 30 percent; and

33 4. Has not previously made such an election,

34 ↪ may, on or after October 1, 2013, elect to receive his or her
35 compensation in a lump sum pursuant to NRS 616C.495, as
36 amended by section 10 of this act.

