

SUMMARY—Revises provisions relating to industrial insurance. (BDR 53-594)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.

Effect on the State: Yes.

AN ACT relating to industrial insurance; revising provisions governing certain civil actions involving injured employees; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides for the payment of compensation under industrial insurance if, during the course of employment, an employee is injured or killed by a workplace accident or occupational disease. (Chapters 616A-617 of NRS) Existing law defines the term “compensation” to mean the money which is payable to an employee or to the dependents of the employee as provided in existing law governing industrial insurance, including benefits for funerals, accident benefits or medical benefits and money for rehabilitative services. (NRS 616A.090, 617.050)

If the injury of an injured employee was caused under circumstances entitling the employee to recover another payment from the employer for the injury in the form of a gift, settlement or otherwise, existing law requires the amount of compensation to which the injured employee or the dependents of the employee are entitled, including any future compensation, to be reduced by the additional amount paid by the employer. Existing law provides that the industrial insurer or



Administrator of the Division of Industrial Relations of the Department of Business and Industry has a lien against the total amount paid by the employer. (NRS 616C.215)

If the injury of an injured employee was caused under circumstances creating legal liability in a person other than the employer or a person in the same employ, or entitling the employee or the dependents of the employee to receive proceeds under his or her employer's policy of uninsured or underinsured vehicle coverage, existing law authorizes an injured employee or the dependents of the employee, under certain circumstances, to take proceedings to recover damages from that third party or to recover those proceeds under the policy. Existing law also authorizes the industrial insurer or Administrator, under certain circumstances, to recover damages from that third party or recover proceeds under the policy. Additionally, under existing law, the industrial insurer or Administrator has a lien against the total proceeds of any recovery by the injured employee or the dependents of the employee. Existing law requires the amount of compensation to which the injured employee or the dependents of the employee are entitled, including any future compensation, to be reduced by the amount of damages or proceeds recovered. (NRS 616C.215)

This bill limits the reduction of compensation, including future compensation, to a reduction based on the portion of any amount paid or the portion of damages or proceeds recovered which represents economic damages. This bill also provides that the industrial insurer or Administrator only has a lien upon the portion of any amount paid or the portion of any judgment, settlement or otherwise which represents economic damages, instead of the total amount paid or the total proceeds of any recovery. This bill defines the term "economic damages," in accordance with



provisions of existing law, to mean damages for medical treatment, care or custody, loss of earnings and loss of earning capacity. (NRS 41A.007)

This bill provides that the injured employee or the dependents of the employee are entitled to be made whole for the injury, and a lien amount is recoverable only if the injured employee or the dependents of the employee have been made whole. This bill: (1) requires adjustment of the lien amount to reflect a proportional share of any expenses incurred by the injured employee or the dependents of the employee in procuring the payment or recovery; (2) limits the lien amount to the compensation received by the injured employee or dependents of the employee; and (3) excludes from the lien the amount of any benefit penalty or certain other administrative fines.

Existing law requires an injured employee or the dependents of the employee, or the attorney or representative of the injured employee or the dependents, to notify the industrial insurer or the Administrator in writing before initiating certain proceedings or actions. (NRS 616C.215) This bill removes that requirement. Existing law generally provides that an action to recover damages for an injury or death of a person must be commenced within 2 years. (NRS 11.190) This bill prohibits an industrial insurer or the Administrator from initiating certain proceedings or actions against a person other than the employer or a person in the same employ unless the injured employee or the dependents of the employee has not initiated a proceeding or action within 1 year of the date on which the injury occurred. If the industrial insurer or Administrator initiates such a proceeding or action, this bill: (1) requires the industrial insurer or the Administrator to immediately notify the injured employee or the dependents of the employee, or an attorney or representative of the injured



employee or the dependents, of the proceeding or action in writing; and (2) entitles the injured employee or the dependents of the employee to intervene in the proceeding or action.

In any trial of certain actions against a person other than the employer or a person in the same employ, existing law requires that the jury must receive: (1) proof of the amount of all payments made or to be made by the insurer or Administrator; and (2) certain instructions from the court. (NRS 616C.215) This bill removes those requirements and instead prohibits the jury from receiving proof of any such payments. This bill provides that evidence of the amount of compensation, accident benefits and other expenditures which the insurer or certain accounts under control of the Administrator have paid or become obligated to pay is not admissible at trial.

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

Section 1. NRS 616C.215 is hereby amended to read as follows:

616C.215 1. If an injured employee or, in the event of his or her death, the dependents of the employee, bring an action in tort against his or her employer to recover payment for an injury which is compensable pursuant to the provisions of chapters 616A to 616D, inclusive, or chapter 617 of NRS and, notwithstanding the provisions of NRS 616A.020, receive payment from the employer for that injury:



(a) The amount of compensation the injured employee or the dependents of the employee are entitled to receive pursuant to the provisions of chapters 616A to 616D, inclusive, or chapter 617 of NRS, including any future compensation, must be reduced by the *portion of any* amount paid by the employer ~~[-]~~ *which represents economic damages*.

(b) The insurer, or in the case of claims involving the Uninsured Employers' Claim Account or a subsequent injury account the Administrator, has a lien upon the ~~total~~ *portion of any* amount paid by the employer *which represents economic damages* if the injured employee or the dependents of the employee receive compensation pursuant to the provisions of chapters 616A to 616D, inclusive, or chapter 617 of NRS.

↪ This subsection is applicable whether the money paid to the employee or the dependents of the employee by the employer is classified as a gift, a settlement or otherwise. The provisions of this subsection do not grant to an injured employee any right of action in tort to recover damages from the employer for the injury.

2. When an employee receives an injury for which compensation is payable pursuant to the provisions of chapters 616A to 616D, inclusive, or chapter 617 of NRS and which was caused under circumstances creating a legal liability in some person, other than the employer or a person in the same employ, to pay damages in respect thereof:

(a) The injured employee, or in case of death the dependents of the employee, may take proceedings against that person to recover damages, but the amount of the compensation the injured employee or the dependents of the employee are entitled to receive pursuant to the provisions of chapters 616A to 616D, inclusive, or chapter 617 of NRS, including any future



compensation, must be reduced by the ~~[amount]~~ *portion* of the damages recovered ~~[.]~~ *which represents economic damages*, notwithstanding any act or omission of the employer or a person in the same employ which was a direct or proximate cause of the employee's injury.

(b) If the injured employee, or in case of death the dependents of the employee, receive compensation pursuant to the provisions of chapters 616A to 616D, inclusive, or chapter 617 of NRS, the insurer, or in case of claims involving the Uninsured Employers' Claim Account or a subsequent injury account the Administrator, has a right of action against the person so liable to pay *economic* damages and is subrogated to the rights of the injured employee or of the employee's dependents to recover ~~[therefor.]~~ *such economic damages*.

(c) The injured employee, or in the case of death the dependents of the employee, must initiate any proceeding or action within the applicable statute of limitations. The insurer, or in the case of claims involving the Uninsured Employers' Claim Account or a subsequent injury account, the Administrator, may not initiate a proceeding or action pursuant to this subsection unless the injured employee, or in the case of death the dependents of the employee, has not initiated a proceeding or action pursuant to this subsection within 1 year after the date on which the injury occurred. If the insurer or Administrator, as applicable, initiates a proceeding or action pursuant to this subsection, the insurer or Administrator shall immediately notify the injured employee or the dependents of the employee, or the attorney or representative of the injured employee or the dependents of the employee, of such a proceeding or action in writing. The injured employee or the dependents of the employee are entitled to intervene in the proceeding or action.



3. When an injured employee incurs an injury for which compensation is payable pursuant to the provisions of chapters 616A to 616D, inclusive, or chapter 617 of NRS and which was caused under circumstances entitling the employee, or in the case of death the dependents of the employee, to receive proceeds under his or her employer's policy of uninsured or underinsured vehicle coverage:

(a) The injured employee, or in the case of death the dependents of the employee, may take proceedings to recover those proceeds, but the amount of compensation the injured employee or the dependents of the employee are entitled to receive pursuant to the provisions of chapters 616A to 616D, inclusive, or chapter 617 of NRS, including any future compensation, must be reduced by the ~~[amount]~~ *portion* of proceeds received ~~[.]~~ *which represents economic damages*.

(b) If an injured employee, or in the case of death the dependents of the employee, receive compensation pursuant to the provisions of chapters 616A to 616D, inclusive, or chapter 617 of NRS, the insurer, or in the case of claims involving the Uninsured Employers' Claim Account or a subsequent injury account the Administrator, is subrogated to the rights of the injured employee or the dependents of the employee to recover *the portion of* proceeds *which represents economic damages* under the employer's policy of uninsured or underinsured vehicle coverage. The insurer and the Administrator are not subrogated to the rights of an injured employee or the dependents of the employee under a policy of uninsured or underinsured vehicle coverage purchased by the employee.

(c) Any provision in the employer's policy of uninsured or underinsured vehicle coverage which has the effect of:



(1) Limiting the rights of the injured employee or the dependents of the employee to recover proceeds under the policy because of the receipt of any compensation pursuant to the provisions of chapters 616A to 616D, inclusive, or chapter 617 of NRS;

(2) Limiting the rights of subrogation of the insurer or Administrator provided by paragraph (b); or

(3) Excluding coverage which inures to the direct or indirect benefit of the insurer or Administrator,

↪ is void.

4. In any action or proceedings taken by the insurer or the Administrator pursuant to this section ~~[, evidence]~~:

(a) *Except as otherwise provided in subsection 10, evidence* of the amount of compensation, accident benefits and other expenditures which the insurer, the Uninsured Employers' Claim Account or a subsequent injury account have paid or become obligated to pay by reason of the injury or death of the employee is admissible.

(b) If in such action or proceedings the insurer or the Administrator recovers more than ~~[those]~~ *the* amounts ~~[,]~~ *described in paragraph (a)*, the excess must be paid to the injured employee or the dependents of the employee.

5. In any case where the insurer or the Administrator is subrogated to the rights of the injured employee or of the employee's dependents as provided in subsection 2 or 3, the insurer or the Administrator has a lien upon the ~~[total proceeds]~~ *portion* of any recovery from some person other than the employer ~~[,]~~ *which represents economic damages*, whether the proceeds of such recovery



are by way of judgment, settlement or otherwise. The injured employee, or in the case of his or her death the dependents of the employee, are ~~[not]~~ entitled to ~~[double recovery]~~ *be made whole* for the ~~[same injury, notwithstanding any act or omission of the employer or a person in the same employ which was a direct or proximate cause of the employee's]~~ injury.

6. The lien provided for pursuant to subsection 1 or 5 ~~[includes]~~ :

(a) *Includes only* the total compensation expenditure incurred by the insurer, the Uninsured Employers' Claim Account or a subsequent injury account for the injured employee and the dependents of the employee ~~[]~~;

(b) *Is recoverable only if the injured employee, or in the case of his or her death the dependents of the employee, has been made whole for the injury; and*

(c) *Must be adjusted to reflect a pro rata share of any expenses incurred by the injured employee or the dependents of the employee in procuring the recovery.*

7. An injured employee, or in the case of death the dependents of the employee, or the attorney or representative of the injured employee or the dependents of the employee, ~~[shall]~~ *may* notify the insurer, or in the case of claims involving the Uninsured Employers' Claim Account or a subsequent injury account the Administrator, in writing before initiating a proceeding or action pursuant to this section.

8. Within 15 days after the date of recovery by way of actual receipt of the proceeds of the judgment, settlement or otherwise:

(a) The injured employee or the dependents of the employee, or the attorney or representative of the injured employee or the dependents of the employee; and



(b) The third-party insurer,

↳ shall notify the insurer, or in the case of claims involving the Uninsured Employers' Claim Account or a subsequent injury account the Administrator, of the recovery and pay to the insurer or the Administrator, respectively, the amount due pursuant to this section together with an itemized statement showing the distribution of the total recovery. The attorney or representative of the injured employee or the dependents of the employee and the third-party insurer are jointly and severally liable for any amount to which an insurer is entitled pursuant to this section if the attorney, representative or third-party insurer has knowledge of the lien provided for in this section.

9. An insurer shall not sell its lien to a third-party insurer unless the injured employee or the dependents of the employee, or the attorney or representative of the injured employee or the dependents of the employee, refuses to provide to the insurer information concerning the action against the third party.

10. In any trial of an action ~~[by the injured employee, or in the case of his or her death by the dependents of the employee,]~~ *pursuant to subsection 2* against a person other than the employer or a person in the same employ, *evidence of the amount of compensation, accident benefits and other expenditures which the insurer, the Uninsured Employers' Claim Account or a subsequent injury account have paid or become obligated to pay is not admissible and* the jury must *not* receive proof of ~~[the amount of all]~~ *any* payments made or to be made by the *employer, insurer or the Administrator.* ~~[The court shall instruct the jury substantially as follows:~~



~~—Payment of workmen’s compensation benefits by the insurer, or in the case of claims involving the Uninsured Employers’ Claim Account or a subsequent injury account the Administrator, is based upon the fact that a compensable industrial accident occurred, and does not depend upon blame or fault. If the plaintiff does not obtain a judgment in his or her favor in this case, the plaintiff is not required to repay his or her employer, the insurer or the Administrator any amount paid to the plaintiff or paid on the behalf of the plaintiff by the plaintiff’s employer, the insurer or the Administrator.~~

~~—If you decide that the plaintiff is entitled to judgment against the defendant, you shall find damages for the plaintiff in accordance with the court’s instructions on damages and return your verdict in the plaintiff’s favor in the amount so found without deducting the amount of any compensation benefits paid to or for the plaintiff. The law provides a means by which any compensation benefits will be repaid from your award.]~~

11. To calculate an employer’s premium, the employer’s account with the private carrier must be credited with an amount equal to that recovered by the private carrier from a third party pursuant to this section, less the private carrier’s share of the expenses of litigation incurred in obtaining the recovery, except that the total credit must not exceed the amount of compensation actually paid or reserved by the private carrier on the injured employee’s claim.

12. As used in this section ~~[, “third party”]~~ :

(a) *“Economic damages” has the meaning ascribed to it in NRS 41A.007.*



(b) *“Third-party insurer”* means an insurer that issued to a third party who is liable for damages pursuant to subsection 2, a policy of liability insurance the proceeds of which are recoverable pursuant to this section. The term includes an insurer that issued to an employer a policy of uninsured or underinsured vehicle coverage.

(c) *“Total compensation expenditure” means compensation received by an employee or the dependents of the employee. The term does not include a benefit penalty or other administrative fine imposed pursuant to NRS 616D.120.*

Sec. 2. 1. The amendatory provisions of this act apply to any:

(a) Action or proceeding initiated pursuant to or which is subject to the provisions of NRS 616C.215, as that section existed before the effective date of this act, or as amended by section 1 of this act, in which a final judgment, settlement or other disposition has not been entered by the effective date of this act.

(b) Claim for compensation pursuant to chapters 616A to 616D, inclusive, or 617 of NRS, which is open on or filed on or after the effective date of this act.

2. As used in this section, “compensation” has the meaning ascribed to it in NRS 616A.090 or 617.050, as applicable.

Sec. 3. This act becomes effective upon passage and approval.

